

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL MINTER,

Defendant-Appellant.

UNPUBLISHED

November 22, 2005

No. 255766

Wayne Circuit Court

LC No. 03-010998-01

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of armed robbery, MCL 750.529, and one count of assault with intent to rob while armed, MCL 750.89. Defendant appeals his convictions as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the verdict was against the great weight of the evidence because the victims' testimony was fraught with "discrepancies and weaknesses." A defendant convicted after a bench trial need not file a motion to remand to challenge the great weight of the evidence in order to preserve the issue for appellate review. MCR 7.211(C)(1)(c).

A motion for a new trial may be granted where the verdict was manifestly against the clear weight of the evidence, i.e., the evidence so clearly weighed in the defendant's favor that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). Generally, a verdict may be vacated only when it is not reasonably supported by the evidence and was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial absent exceptional circumstances, as where the testimony contradicts indisputable physical facts or laws, the testimony is patently incredible or defies physical realities, the testimony is material and is so inherently implausible that it could not be believed by a reasonable juror, or the testimony has been seriously impeached and the case is marked by uncertainties and discrepancies. *People v Lemmon*, 456 Mich 625, 642-644, 647; 576 NW2d 129 (1998). "The credibility of the identification testimony was a matter for the trial court, as the trier of fact, to decide," and this Court "will not resolve it anew." *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

The victims were consistent in and certain of their identification of defendant as the perpetrator. While there were minor discrepancies in their testimony, the circumstances were not so exceptional as to warrant a new trial. The alibi witness' testimony did not preclude a finding that defendant committed the charged offenses. Because the evidence does not clearly preponderate so heavily against the verdict that a miscarriage of justice would result if the verdict was allowed to stand, the verdict is not against the great weight of the evidence. *People v McCray*, 245 Mich App 631, 637-638; 630 NW2d 633 (2001).

Defendant also argues that he was denied a fair trial due to a lack of impartiality of the trial judge. Defendant did not raise any objection below; thus, the issue has not been preserved for appeal. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Therefore, in order to be entitled to relief, defendant must establish the existence of plain error that affected the outcome of the trial. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The court is permitted to question any witnesses called by the parties. MRE 614(b). The judge's discretion to question witnesses "is greater in bench trials than in trials before juries." *People v Meatte*, 98 Mich App 74, 78; 296 NW2d 190 (1980). The trial court briefly questioned one witness regarding his identification of defendant. Given that a judge who conducts a nonjury trial "has the duty to weigh the testimony and assess the credibility of the witnesses," *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982), and "must make specific findings of fact and state conclusions of law," *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993), it was not improper for the court to seek clarification of the victim's testimony so it could render a reasoned decision. The trial court's questions were not "intimidating, argumentative, prejudicial, unfair, or partial," *People v Sterling*, 154 Mich App 223, 228; 397 NW2d 182 (1986), and it cannot reasonably be argued that the trial court was improperly influenced by its questioning of the witness. *People v Wilder*, 383 Mich 122, 125; 174 NW2d 562 (1970).

Affirmed.

/s/ Michael R. Smolenski

/s/ Bill Schuette

/s/ Stephen L. Borrello