

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RASOUL ETMINAN,

Defendant-Appellant.

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UNPUBLISHED

November 22, 2005

No. 256617

Recorder's Court

LC No. 03-000864-FH

Before: Donofrio, P.J. and Zahra and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial conviction for aggravated stalking, MCL 750.411i, for which the trial court sentenced him to one year in jail and two years' probation. We affirm.

Defendant's sole contention on appeal is that the trial court erred in denying his motion for a new trial because the verdict was against the great weight of the evidence when the victim's testimony was contradictory to other evidence presented. We disagree.

We review for an abuse of discretion a trial court's ruling on motion for a new trial based on the assertion that the verdict was against the great weight of the evidence. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). A new trial based on the weight of the evidence should be granted only in cases in which the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). In considering such a motion, "absent exceptional circumstances, issue of witness credibility are for the jury, and the trial court may not substitute its view of the credibility 'for the constitutionally guaranteed jury determination thereof.'" *Id.*, quoting *Sloan v Kramer-Orloff Co*, 371 Mich 403, 412; 124 NW2d 255 (1963).

Defendant essentially argues that the victim's testimony was so seriously impeached that there is a real concern that an innocent person may have been convicted or it would be a manifest injustice to allow the conviction to stand. *Lemmon, supra* at 644. After reviewing the record, we conclude that the victim's testimony does not fit within this narrow exception. The evidence demonstrated that the victim reported to police that she saw defendant stalking her in a red car. She also told the police that defendant drove a red Ford Probe. However, evidence clearly demonstrated that, before the alleged stalking incident, defendant's red Ford Probe had been destroyed. Defendant contends that this renders the victim's testimony "pure fiction." We

disagree. Any discrepancy regarding the victim's testimony about the car defendant drove while stalking the victim could have been resolved, in the jury's minds, by the evidence that the victim simply remembered, and identified to the police, the car defendant formerly drove while the victim failed to accurately recall and describe the vehicle defendant actually drove at the time of the stalking. Moreover, even if the jury was convinced that the victim inaccurately identified the car defendant drove at the time of the stalking, it could still have believed that the victim nonetheless saw defendant stalking her in a car. Additionally, notwithstanding the discrepancy regarding the car defendant drove, other evidence supported the victim's assertions that defendant contacted her in violation of the personal protection order. As such, the victim's testimony was not so seriously impeached that there is a real concern that an innocent person was convicted or that it would be a manifest injustice for the verdict to stand. Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Affirmed.

/s/ Pat M. Donofrio

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly