

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUENTON THOMAS WHITSELL,

Defendant-Appellant.

UNPUBLISHED

November 29, 2005

No. 255944

Wayne Circuit Court

LC No. 04-001767-01

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

PER CURIAM.

Defendant appeals as of right his convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm.

Officer Dembinski testified that he participated in the execution of a search warrant at a residence. He further stated that, after knocking and announcing his presence, he heard the sound of running within the house, and that when he entered he saw defendant run into the kitchen and throw a handgun beneath the table. Defendant testified that he was doing maintenance work at the house, which he owned, and denied that he was in possession of a gun when the police arrived.

Defendant moved for a new trial on the ground that the verdict was against the great weight of the evidence. The trial court denied the motion and defendant appealed claiming that the trial court erred by refusing to grant his motion. We disagree.

A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). Determining whether a verdict is against the great weight of the evidence requires a review of the entire body of proofs. The test is whether the evidence preponderates so heavily against the verdict 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). We review a trial court's decision on a motion for a new trial for an abuse of discretion. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003).

Defendant essentially argues that Dembinski's testimony was deceitful and unreliable and, therefore, should be disregarded. Defendant premises this conclusion on the fact that Dembinski testified that he heard running in the house, even though the house was carpeted and

the fact that the police later offered him a deal in exchange for cooperation with a different investigation. These facts were before the jury and were properly issues of witness credibility. Absent exceptional circumstances, issues of witness credibility are left to the jury. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). Dembinski's testimony, if believed, was sufficient to support findings that defendant possessed a firearm.¹ Because the proffered impeachment evidence did not deprive Dembinski's testimony of all probative value, this issue was properly left to the jury. *Id.* Therefore, the trial court did not abuse its discretion by denying defendant's motion for a new trial.

Affirmed.

/s/ Michael R. Smolenski

/s/ Bill Schuette

/s/ Stephen L. Borrello

¹ The parties stipulated that defendant had a prior felony conviction and was ineligible to possess a firearm.