STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 20, 2008
v	No. 279973 Wayne Circuit Court
TYRESE ANTHONY MOORE, Defendant-Appellant.	LC No. 07-003463-01

Before: Jansen, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

After a jury trial, defendant Tyrese Anthony Moore was convicted of one count of manslaughter, MCL 750.321.[1] The trial court sentenced defendant to 53 to 180 months' imprisonment. He appeals as of right. We affirm.

First, defendant argues that he should receive a new trial because the evidence preponderates heavily against the verdict. We disagree.[2] A trial court may grant a new trial if a verdict is contrary to the great weight of the evidence. MCR 2.611(A)(1)(e); *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003). For a verdict to be contrary to the great weight of the evidence, the evidence must preponderate so heavily against the verdict "that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). To determine whether a verdict is contrary to the great weight of the evidence, we review the whole body of proofs, *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled on other grounds *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998), and we will only vacate a conviction if the verdict "'does not find reasonable support in the evidence, but is more likely to be attributed to causes outside the record such as passion, prejudice, sympathy, or some extraneous influence,'" *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993), quoting *Nagi v Detroit United R*, 231 Mich 452, 457; 204 NW 126

[1] Defendant was originally charged with second-degree murder, MCL 750.317. However, the trial court instructed the jury regarding both second-degree murder and manslaughter.

[2] Because defendant's claim is unpreserved, our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

(1925). "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *Lemmon*, *supra* at 647.

Defendant does not argue that the evidence contradicts indisputable facts or laws, nor does he argue that it was implausible or seriously impeached. Rather, he argues that the verdict finding him guilty of manslaughter is contrary to the great weight of the evidence because he presented self-defense testimony that he grabbed a knife only because the decedent, Kenneth Curd, attacked him with a baseball bat. However, the prosecutor presented conflicting evidence regarding the bat to show that defendant's life was not in imminent danger and he did not face a threat of serious bodily harm. Defendant's girlfriend, Barbara Gustafson, testified that she did not see Curd with a bat during the fight in the kitchen. In addition, defendant's sister, Laemiza Moore, testified that she took the bat from Curd in the dining room before he entered the kitchen. Defendant's statement to Sgt. Charles Clark that he did not see the bat was consistent with this evidence.

Although defendant presented testimony that conflicted with evidence presented by the prosecution, this conflicting testimony is insufficient to grant a new trial based on the weight of the evidence. See *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). Further, in the face of this conflicting testimony, the jury chose to believe the prosecution witnesses and the prosecution's theory of the case, and we will not interfere with the jury's credibility determinations. See *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999) ("Questions of credibility are left to the trier of fact and will not be resolved anew by this Court."). Although defendant provided some evidence to support his acquittal, the evidence presented at trial did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. Accordingly, defendant's conviction is not against the great weight of the evidence, and remand for a new trial is not necessary.

Defendant also contends that his trial counsel was ineffective for failing to adequately establish the defense of self-defense. Because defendant failed to move for a new trial or an evidentiary hearing, our review is limited to the facts contained on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). The mere fact that the self-defense strategy ultimately failed is insufficient to establish ineffective assistance of counsel, *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001), so defendant's claim lacks merit.

Next, defendant argues that he was illegally arrested pursuant to an invalid arrest warrant, because the warrant was not supported by a sworn complaint or affidavit. Because this warrant was invalid, defendant argues, the trial court did not properly acquire jurisdiction and improperly admitted evidence against him. We disagree.[3] Contrary to defendant's claim, the record contains an arrest warrant and a sworn complaint. The arrest warrant is arguably invalid under *People v Burrill*, 391 Mich 124, 127 n 2; 214 NW2d 823 (1974), because of the complaint's

[3] Again, we review defendant's unpreserved challenges to the issuance of the warrant, jurisdiction, and the admission of evidence for plain error affecting his substantial rights. *Carines*, *supra* at 763-764.

conclusory nature. Yet even if the arrest warrant is deemed defective, "[a] court's jurisdiction to try an accused person cannot be challenged on the ground that physical custody of the accused was obtained in an unlawful manner." *Id.* at 133. Instead, the *Burrill* Court noted, "the sole sanction imposed by the United States Supreme Court for the invalidity of an arrest warrant has been the suppression of evidence obtained from the person following his illegal arrest." *Id.* Therefore, the trial court had jurisdiction over defendant despite the challenged warrant. Further, defendant does not argue that evidence admitted at trial was obtained from his person following the arrest. Instead, the knife and other physical evidence was recovered from Moore's home before defendant's arrest. Therefore, despite the challenged warrant, we conclude that defendant's substantial rights were not violated when the trial court admitted evidence against him at trial.

Defendant also argues that the magistrate committed misconduct when he issued the warrant without having an adequate basis. In addition, defendant claims that a probable cause finding supporting the issuance of the warrant should have taken place on the record, in the presence of a court reporter. Our Supreme Court has concluded that *ex parte* review of complaining witnesses before the issuance of a warrant would unduly burden witnesses and the courts. *Id.* at 131. The Court explained that a similar process occurs at the preliminary examination, where the court determines whether there is probable cause to bind over the defendant for trial. *Id.* at 128 n 3. Because defendant had a preliminary examination within two weeks of his arrest, the district court judge did not commit plain error affecting defendant's substantial rights when he issued the warrant. *People v Conley*, 270 Mich App 301, 307; 715 NW2d 377 (2006).

Finally, defendant argues that his trial counsel was ineffective for failing to discover the arguably invalid warrant, object to the warrant, and move for dismissal. We disagree.[4] "[C]ounsel does not render ineffective assistance by failing to raise futile objections." *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). Because the trial court properly exercised jurisdiction, an objection and motion for dismissal for lack of jurisdiction would have been futile, and defense counsel's omissions were not ineffective. Thus, defense counsel's performance did not fall below an objective standard of reasonableness or make a difference in the outcome of the trial. *People v Grant*, 470 Mich 477, 485-486; 684 NW2d 686 (2004).

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Donald S. Owens

[4] Again, our review of defendant's claim of ineffective assistance of counsel is limited to the facts contained on the record. *Rodriguez*, *supra* at 38.