

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY LOMAX,

Defendant-Appellant.

UNPUBLISHED

May 19, 2009

No. 284526

Wayne Circuit Court

LC No. 07-023459-FH

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Detroit police officers received a complaint about narcotics trafficking at a home in Detroit. Officer Vannice Ward testified that he responded and observed defendant and other individuals involved in what appeared to be a narcotics transaction. Defendant went to a nearby home that appeared to be vacant. Ward called other officers who were present nearby in a “raid van” and gave them defendant’s description. Ward then saw defendant and another man leave the home, come onto the porch, and begin to walk away from his location. Ward saw other officers arrive and left the scene once he saw that those officers had begun to detain defendant.

Officer Lamar Penn testified that as he moved toward defendant, he saw defendant throw a handgun to the ground three or four feet away. Penn stopped defendant and turned him over to the officers following him. Penn recovered the gun defendant had discarded, a .32 caliber loaded handgun. Penn stated that the handgun was not checked for fingerprints because it came directly from defendant’s person. Officers discovered a plastic bag containing a rock of crack cocaine on defendant’s person.

Defendant first argues that the trial court erred when it allowed him to waive his right to a jury trial. We disagree.

We review a trial court’s determination regarding the validity of a defendant’s waiver of his right to a jury trial for clear error. *People v Williams*, 275 Mich App 194, 196-197; 737 NW2d 797 (2007).

A criminal defendant is guaranteed the right to a jury trial. US Const, Ams VI, XIV; Const 1963, art 1, § 20. With the prosecutor's consent and the trial court's approval, the defendant may waive this right and "be tried before the court without a jury." MCR 6.401. To this end, MCR 6.402(B) provides:

Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

There is a presumption that the waiver was knowing, voluntary, and intelligent if the record shows that the trial court complied with the court rule. *People v Mosly*, 259 Mich App 90, 96; 672 NW2d 897 (2003).

Defendant argues that he was forced to trade his right to a jury trial for a continuance in order to locate a defense witness. The record does not support this contention. Admittedly, the somewhat disjointed combined discussion about both the search for a missing witness and defendant's decision to opt for a bench trial is somewhat confusing. However, after a thorough review of the proceedings, we do not agree with defendant's assertion that he was somehow coerced into a bench trial. The trial court did not condition any continuance to find a missing witness on defendant's decision regarding whether to have a jury trial. Instead, the court appeared more interested in receiving a final decision from defendant on the waiver issue before moving on to the continuance request. The trial court appeared willing to allow more time for defendant to discuss his decision with his attorney. Defendant did not assert that he was waiving his right to a jury trial in return for any consideration or in avoidance of a punitive decision concerning a continuance. Nothing points to clear error in the trial court's finding that defendant's decision was voluntary.

Defendant next argues that the prosecution did not present sufficient evidence to support his felon in possession, CCW, and felony-firearm convictions. He further argues that the trial court's verdicts on these charges were against the great weight of the evidence. We disagree.

We review a defendant's allegations regarding insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* However, we should not interfere with the fact-finder's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence, and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

To preserve a claim that the verdict is against the great weight of the evidence for appellate review, the defendant must raise the issue in a motion for a new trial. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). Defendant failed to raise this issue at trial; accordingly, the issue is not preserved. See *People v Eccles*, 260 Mich App 379, 385; 677 NW2d 76 (2004). Thus, we review defendant's claim for plain error affecting his substantial rights. *Musser, supra*. A verdict is against the great weight of the evidence only if the evidence preponderates so heavily against the verdict that it would be a miscarriage for the verdict to stand. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). Even when the evidence conflicts, the issue of credibility should be left for the trier of fact absent exceptional circumstances. *Id*; *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998).

Defendant argues that because only one officer testified to seeing him discard the handgun, there was insufficient evidence that he possessed a firearm to support his felon in possession, CCW, and felony-firearm convictions. Defendant likewise argues that the trial court's finding that he possessed the weapon was against the great weight of the evidence.

Officer Penn's testimony, if believed, established the element of possession. Penn testified that he saw defendant discard a handgun. Since there is no requirement for corroboration, the prosecution presented sufficient evidence to allow the fact-finder to conclude that defendant possessed the handgun. *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976).

Defendant has not shown that the verdict was clearly against the great weight of the evidence. None of the other officers' testimony clearly contradicted Penn's testimony. Instead, Penn's observation of defendant's act of throwing the handgun to the ground can be explained by Penn's position at the front of the raid crew, and the fact that the remaining officers were focused on detaining defendant's companion at the time Penn was confronting defendant. Defendant has not shown that he is entitled to a new trial because "[a] new trial based upon the weight of the evidence should only be granted where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *Lemmon, supra* at 642, citing *State v Ladabouche* 146 Vt 279, 502 A2d 852 (1985).

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens