

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KYLE EUGENE TAYLOR,

Defendant-Appellant.

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UNPUBLISHED  
September 3, 2009

No. 284642  
Wayne Circuit Court  
LC No. 07-014914-FH

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

The jury convicted defendant of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f(1), and possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b. The Court sentenced defendant to five years' incarceration for the felony-firearm conviction and concurrent five years' probation for the other two convictions. Defendant appeals and we affirm.

Defendant argues that the jury verdicts were against the great weight of the evidence. The test to determine whether a verdict is against the great weight of evidence 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 McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *People v Lemmon*, 456 Mich 625, 647; 576 NW2d 129 (1998). "[U]nless it can be said that contradictory testimony was so far impeached that it 'was deprived of all probative value or that the jury could not believe it,' or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination." *Id* at 645-646, quoting *Sloan v Kramer-Orloff Co*, 371 Mich 403, 410; 124 NW2d 255 (1963).

To preserve an argument that a verdict is against the great weight of the evidence, it must be raised before the trial court in a motion for new trial. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Although defendant moved for a new trial on the theory that a witness existed that could refute the prosecution's evidence, the motion was not heard because the witness was not identified. Therefore, this issue has not been preserved, and our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999); *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003).

The jury verdict was supported by the testimony of Officer Riccinto, one of the police officers on the scene. Although defendant argues that no evidence was presented that he handled the gun, Officer Riccinto's testimony established this. Officer Riccinto testified that he observed defendant walk away from a crowd of people when the officers arrived at the scene. He followed defendant down a driveway to the back of the building while shining his flashlight on defendant. He observed defendant take a large black object from the side of his waistband and slide the object into a space in a parking bay. When the object slid down the space, Officer Riccinto heard a metallic sound. Officer Riccinto grabbed defendant by the arm and led him to his partner to be detained while he went back to the location in the parking bay to retrieve the object that defendant dropped. Officer Riccinto retrieved a black handgun from that location, and there were no other objects in that particular vicinity. We find that a miscarriage of justice did not occur here because there is sufficient evidence from which the jury could find, and did find, that defendant possessed a handgun.

Affirmed.

/s/ Henry William Saad  
/s/ William C. Whitbeck  
/s/ Brian K. Zahra