

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
April 19, 2012

v

JOE WILLIE WILLIAMS,
Defendant-Appellant.

No. 302410
Wayne Circuit Court
LC No. 10-007316-FC

Before: M.J. KELLY, P.J., and FITZGERALD and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of first-degree premeditated murder, MCL 750.316(1)(a), possession of a firearm during the commission of a felony, MCL 750.227b, felon in possession of a firearm, MCL 750.224f, and felonious assault, MCL 750.82. Because the jury’s verdict was not against the great weight of the evidence, we affirm.

Defendant argues that he is entitled to a new trial because the verdict contravened the great weight of the evidence. Because defendant failed to preserve this issue for our review by raising it in a motion for a new trial in the trial court, our review is limited to “plain error affecting his substantial rights.” *People v Cameron*, 291 Mich App 599, 618; 806 NW2d 371 (2011). “To avoid forfeiture, the defendant bears the burden to show that (1) an error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error prejudiced substantial rights, i.e., the error affected the outcome of the lower court proceedings.” *Id.*

A verdict is against the great weight of the evidence when “the evidence preponderates 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). Questions involving credibility should be left to the trier of fact, and “[c]onflicting 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). A trial court must defer to the jury’s determination “[u]nless it can be said that directly contradictory testimony was so far impeached that it ‘was deprived of all probative value or that the jury could not believe it,’” or that it “contradicted indisputable physical facts or defied physical realities[.]” *Musser*, 259 Mich App at 219, quoting *Lemmon*, 456 Mich at 645-646 (citation omitted).

Here, the prosecution presented evidence showing that defendant possessed a gun and shot William Alsup, Jr. and LaBaron McKee. Jimmy Wright and Deartic Barnes testified that defendant knocked on the apartment door, and Alsup opened the door. At that time, Wright was in the living room, and Barnes was in the dining room. A hanging curtain separated the two rooms. Defendant walked through the living room and into the dining room. At that point, Wright could no longer see defendant, but Barnes testified that defendant walked through the dining room and continued into the kitchen. Both Wright and Barnes testified that, a few seconds later, defendant returned to the living room, brandishing a gun. Thereafter, Wright heard five to eight shotguns, and Barnes heard a total of 8 to 10 gunshots. Thus, Wright's and Barnes's testimony supported the jury's verdict.

Defendant argues that there were inconsistencies in Wright's and Barnes's testimony and focuses on those seeming inconsistencies. Questions concerning the credibility of witnesses, however, are generally insufficient to grant a new trial. *Lemmon*, 456 Mich at 643, 647. Barnes testified that he was in the dining room during the shooting. According to Barnes, after defendant fired several gunshots in the living room, he reentered the dining room, where Barnes wrestled the gun away from him. Defendant contends that Wright offered no testimony about the scuffle for the gun. Defendant also asserts that Barnes's testimony did not correspond with Wright's testimony regarding defendant's accomplice striking Wright on the head with a beer bottle. Contrary to defendant's assertion, the record reveals that Wright's and Barnes's testimony was not inconsistent. Rather, their testimony merely failed to include activity that occurred in other areas of the residence, i.e., incidents that the witnesses apparently did not observe. In any event, any minor inconsistency in Wright's and Barnes's testimony did not contradict their undisputed claim that they both saw defendant with a gun and heard numerous gunshots.

Further, Wright's and Barnes's testimony did not contradict "indisputable physical facts or laws," and was not "so inherently implausible that it could not be believed by a reasonable juror[.]" *Lemmon*, 456 Mich at 643-644 (quotation marks and citations omitted). The jury's verdict depended on its determination of Wright's and Barnes's credibility, regarding which this Court will not interfere. *Id.* at 643, 647. The evidence did not preponderate so heavily against the verdict such that allowing it to stand would result in a miscarriage of justice. Thus, defendant has failed to establish plain error affecting his substantial rights.

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio