

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB DAVID SCOTT,

Defendant-Appellant.

UNPUBLISHED
February 19, 2002

No. 227621
Saginaw Circuit Court
LC No. 99-017755-FC

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, discharge of a weapon at a dwelling or occupied structure, MCL 750.234b, conspiracy, MCL 750.157a, larceny in a building, MCL 750.360, receiving or concealing stolen property, MCL 750.535, carrying a concealed weapon with unlawful intent, MCL 750.226, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charges against defendant arose out of an incident in which a bullet was fired into a home and a child was wounded. Two witnesses testified that they saw defendant steal bullets from a store, load the bullets into a gun, and fire a shot into the home. The jury found defendant guilty as noted above. The trial court imposed various concurrent terms of imprisonment, with the longest minimum term being five years and the longest maximum term being ten years, and a consecutive two-year term of imprisonment.

Defendant argues that his convictions must be reversed because the verdict was against the great weight of the evidence. However, defendant did not move for a new trial below. Thus, defendant is not entitled to relief unless he can show a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-765; 597 NW2d 130 (1999).

Generally, a new trial may be granted on some or all of the issues if the verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). 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). Defendant's sole argument is that the testimony of the witnesses who stated that defendant fired the gun into the home was not worthy of belief. He does not state the basis for this assertion, and does not

contend that this testimony, if believed and coupled with the other evidence, did not support the verdict. It is well established that, where there is conflicting evidence, the issue of credibility ordinarily should be left for the trier of fact. *Id.* Here, the jury was within its power to resolve credibility issues against defendant. Thus, the verdict was neither a miscarriage of justice nor against the great weight of the evidence, as necessary to entitle defendant to a new trial. See *id.* Consequently, defendant may not avoid forfeiture of this issue. See *Carines, supra* at 763-765.

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin D. Doctoroff

/s/ Donald S. Owens