

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMAL GARTH,

Defendant-Appellant.

UNPUBLISHED

March 19, 2002

No. 229654

Wayne Circuit Court

LC No. 99-008842

Before: O’Connell, P.J., and White and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction, following a jury trial, of being a felon in possession of a firearm, MCL 750.224f. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to a term of one to seven and a half years’ imprisonment. We affirm.

Defendant first argues that the trial court abused its discretion when it denied his directed verdict motion.¹ We disagree. This Court reviews de novo a trial court’s ruling on a motion for directed verdict. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

When ruling on a motion for directed verdict, the trial court “must consider the evidence presented by the prosecution up to the time the motion is made in a light most favorable to the prosecution, and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997), quoting *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979) (ellipses omitted). Questions concerning the credibility of the witnesses are to be left to the trier of fact. *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), modified on other grounds 457 Mich 885 (1998).

¹ Defendant was originally charged as a second habitual offender with carrying a concealed weapon, MCL 750.227, and being a felon in possession of a firearm, MCL 750.224f. Defendant was ultimately acquitted of the CCW charge. Therefore, our review is limited to defendant’s directed verdict motion with respect to the felon-in-possession charge because the CCW directed verdict motion ruling is moot. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994) (“Where a subsequent event renders it impossible for this Court to fashion a remedy, an issue becomes moot”).

“A person convicted of a specified felony may not possess, use, transport, sell, purchase, carry, ship, receive or distribute a firearm in [Michigan] until . . . [t]he expiration of five years after . . . (i) the person has paid all fines imposed for the [felony], (ii) the person has served all terms of imprisonment imposed for the [felony], and] (iii) the person has successfully completed all conditions of probation or parole imposed for the [felony].” MCL 750.224f(2)(a). The parties conceded before trial that defendant was a convicted felon ineligible to possess or transport a firearm.

After a review of the record, we are satisfied that the trial court did not abuse its discretion in denying defendant’s directed verdict motion because the prosecution presented ample evidence for the jury to find beyond a reasonable doubt that defendant knowingly possessed and transported a firearm. For example, defendant was operating the car when the officers stopped him for a routine traffic stop. The car was owned by and registered to defendant, and a consensual search of defendant’s car produced a firearm surreptitiously hidden in the spare tire wheel well – under stereo equipment and a towel – in the trunk of defendant’s car. Importantly, one of the police officers testified that defendant admitted to him that the firearm was his and that he kept it in his car for protection. Viewing this evidence in the light most favorable to the prosecution, the jury could have concluded that defendant possessed or transported the firearm in violation of MCL 750.224f.

Defendant next asserts that the trial court erred in denying his new trial motion. We disagree. “This Court reviews for an abuse of discretion the trial court’s denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence.” *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001), citing *People v Stiller*, 242 Mich App 38, 49; 617 NW2d 697 (2000).

A motion for new trial on the basis that the verdict is against the great weight of the evidence may be granted only if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998); *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). This Court may not resolve credibility issues on appeal, *id.*, and “[n]ew trial motions based solely on the weight of evidence regarding witness credibility are not favored.” *Lemmon*, *supra* at 639. In the instant case the trial court did not abuse its discretion when it denied defendant’s new trial motion because the jury properly concluded that defendant knowingly possessed and transported the firearm in his car. Specifically, one of the police officer witnesses testified that defendant admitted that the firearm was his and that he kept it for his protection. The jury was free to believe this witness’ testimony and reject defendant’s witness’ testimony that she placed the firearm in the car without telling defendant.

Finally, defendant argues that the trial court abused its discretion in permitting improper rebuttal evidence. We disagree. This Court reviews a trial court’s evidentiary decision for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). “[A]n abuse of discretion . . . exists when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling.” *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996), citing *People v Taylor*, 195 Mich App 57, 60; 489 NW2d 99 (1992).

Rebuttal testimony is admissible to “contradict, repel, explain, or disprove evidence produced by the other party and tending directly to weaken or impeach the same.” The question whether rebuttal is proper depends on what proofs the defendant introduced and not on merely what the defendant testified about on cross-examination. [*People v Pesquera*, 244 Mich App 305, 314; 625 NW2d 407 (2001), quoting *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996).]

The trial court did not abuse its discretion when it permitted rebuttal evidence where it was responsive to evidence offered by the defense and a theory defendant developed during trial. *Figgures*, *supra* at 399.

Affirmed.

/s/ Peter D. O’Connell
/s/ Helene N. White
/s/ Jessica R. Cooper