# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>June 28, 2002 |
| v | No. 232021<br>Wayne Circuit Court |
| WILLIE F. RICHARDSON,<br><br>Defendant-Appellant. | LC No. 00-005937 |

Before: Neff, P.J., and Griffin and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of felonious assault, MCL 750.82, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to a term of twenty-three months to four years' imprisonment for the felonious assault conviction, two to five years' imprisonment for the carrying a concealed weapon conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court should have granted his motion for a new trial on the ground that the verdict was against the great weight of the evidence. We disagree. This Court reviews a trial court's grant or denial of a motion for a new trial for an abuse of discretion. *People v Brown*, 239 Mich App 735, 744-745; 610 NW2d 234 (2000). A verdict is against the great weight of the evidence "only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Lemmon*, 456 Mich 625, 627, 642; 576 NW2d 129 (1998).

Defendant essentially argues that the jury should have wholly discredited complainants' testimony because their account of the incident was unbelievable. Absent exceptional circumstances, issues of witness credibility should be left for the jury, and the trial court may not substitute its view of the witnesses' credibility for that of the jury. *Lemmon, supra* at 642. Such exceptional circumstances may be found when testimony "contradicts indisputable physical facts or laws," is "patently incredible or defies physical realities," is "material and is so inherently implausible that it could not be believed by a reasonable juror," or where "the witness' testimony has been seriously impeached and the case marked by uncertainties and discrepancies." *Id.* at 643-644.

Defendant failed to establish that any such exceptional circumstances exist to justify rejecting complainants' testimony as incredible. Both complainants testified consistently, their testimony was corroborated by police testimony, their testimony did not directly conflict with any evidence presented, nor was it "seriously impeached" to the extent that "the case was marked by uncertainties and discrepancies." *Lemmon, supra* at 643-644. Complainants' testimony was not patently incredible or so inherently implausible that a reasonable juror could not believe it. *Id.*

The evidence showed that defendant, whom complainant James Doby described as "very aggravated" and "hollering and screaming," pointed and fired a gun at James' vehicle. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The testimony established that at a stoplight defendant pulled his vehicle alongside James' vehicle and waved a gun at complainants and fired shots. Shortly thereafter, when complainants were approximately one and a half blocks from defendant's vehicle, defendant exited the vehicle and fired shots at James' vehicle. Although defendant contends that the police never recovered a gun from the scene, both complainants testified consistently that defendant fired shots at their vehicle on two occasions and police testified that there appeared to be bullet holes in James' vehicle. Circumstantial evidence and reasonable inferences from it is sufficient to prove the elements of a crime. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). See MCL 750.82(1); MCL 750.227; MCL 750.227b; *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999); *Avant, supra* at 505.

The evidence adduced at trial did not clearly weigh in defendant's favor. The testimony, which was not contradicted or seriously impeached, provided reasonable support for the verdict. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). As such, the verdict did not result in a miscarriage of justice and the trial court did not abuse its discretion by denying defendant's motion for a new trial. *Lemmon, supra* at 627; *DeLisle, supra* at 661.

Defendant next claims that the trial court should have granted a new trial on the ground that the verdict resulted in a miscarriage of justice. Defendant maintains that he was prejudiced by a prosecution witness' improper response that revealed the existence of a photographic line-up, which the trial court had suppressed prior to trial. Although defendant objected to the witness' answer, defendant failed to move for a mistrial or to raise this issue in his motion for a new trial. Because this issue has not been preserved for appeal, review is precluded unless defendant demonstrates a plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant does not claim that the prosecutor was pursuing an improper line of questioning or that the prosecutor expected, or was attempting to elicit, the improper response. Rather, it is apparent from the record that the brief mention of the photographic line-up was volunteered in response to a proper question. Reversal is not warranted where the witness makes a brief, unresponsive, volunteered answer to a proper question. *People v Griffin*, 235 Mich App 27, 36-37; 597 NW2d 176 (1999), quoting *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). Moreover, the trial judge provided a curative instruction to the jury immediately after defense counsel's objection to the witness' reference to the photographic line-up. After a brief discussion outside of the presence of the jury, the trial judge further instructed the jury to disregard any testimony regarding a photo identification. See *People v Stinson*, 113

Mich App 719, 727; 318 NW2d 513 (1982) ("[W]here the trial court sustains an objection to an answer and instructs the jury to disregard the answer, no error occurs.").

The voluntary, unresponsive, and brief reference to the photographic line-up did not prejudice defendant. In light of the overwhelming and non-conflicting evidence in support of the verdict, we do not conclude that the witness' answer was so "strong in effect" as to influence the outcome of the jury verdict. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999); *People v Stegall*, 102 Mich App 147, 152; 301 NW2d 473 (1980). In addition, both complainants identified defendant in court as the perpetrator, thus, any testimony regarding identification made at a photographic line-up was cumulative. We find no plain error affecting defendant's substantial rights. *Carines, supra* at 763.

Affirmed.

/s/ Janet T. Neff
/s/ Richard Allen Griffin
/s/ Michael J. Talbot