

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIVONNIE RAMONE JONES,

Defendant-Appellant.

UNPUBLISHED
October 17, 2019

No. 345473
Muskegon Circuit Court
LC No. 17-004486-FH

Before: MARKEY, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial conviction of indecent exposure, MCL 750.335a. Defendant was sentenced to serve 252 days' imprisonment. Defendant argues that the jury verdict was against the great weight of the evidence because the jury relied on inconsistent testimony provided by the prosecution's two witnesses, and that allowing the verdict to stand would be a miscarriage of justice. For reasons set forth in this opinion, we affirm.

I. BACKGROUND

On August 13, 2017, while an inmate in the Muskegon County Jail, defendant exposed himself to a deputy and a jail nurse. According to Deputy Jeff Holstrom and the nurse, Frankie Hathaway, while conducting a medication pass, Hathaway noticed that in lieu of defendant putting his hands on the latch to get his medication, he had placed his exposed penis in or on the hatch. Holstrom testified that when he turned around to check that the medication was successfully passed to defendant, he saw that defendant's penis was out of his jail uniform and in the hatch area. Both Hathaway and Holstrom testified that they scolded defendant for his inappropriate behavior, and that defendant responded by climbing onto a table in his cell, then grabbed his exposed penis, shook it, and said, "Suck my dick." Hathaway testified that defendant was fully nude when he jumped on the table and that he "was dancing and wagging his penis back and forth some more."

II. ANALYSIS

On appeal, defendant argues that because the prosecution's two witnesses provided inconsistent testimony on matters material to his case, his conviction is against the great weight of the evidence. Defendant did not move for a new trial after the jury rendered its verdict, hence, this issue is not preserved. *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011). The plain error standard of review applies to unpreserved claims of nonconstitutional error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* at 763. The final prong requires "a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.* Reversal is appropriate "only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings" *Id.* (quotation marks and citation omitted; alteration in original).

"The test to determine whether a verdict is against the great weight of the 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 Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). "[D]isputed issues of fact are for the jury" *People v Lemmon*, 456 Mich 625, 638; 576 NW2d 129 (1998). Accordingly, "absent exceptional circumstances, issues of witness credibility are for the jury, and the trial court may not substitute its view of the credibility for the constitutionally guaranteed jury determination thereof." *Id.* at 642 (quotation marks and citation omitted).

MCL 750.335a(1) states that "[a] person shall not knowingly make any open or indecent exposure of his or her person or the person of another." "[T]he plain language of the statute provides that one may be guilty of open exposure or indecent exposure, as it prohibits two different types of conduct." *People v Neal*, 266 Mich App 654, 656; 702 NW2d 696 (2005). Proscribing open exposure means that the statute "prohibit[s] the display of any part of the human anatomy under circumstances that create a substantial risk that someone might be offended." *Id.* at 659. "[E]xposure that was not open, because it did not take place under circumstances that created a substantial risk that someone might be offended, could still be proscribed under the statute as indecent" *Id.* (quotation marks and citation omitted). Moreover, a person can be convicted of the charge even if the conduct occurs in a private place. *Id.* at 657-658.

Holstrom and Hathaway testified that they saw defendant's exposed penis in the cell door hatch and that he got on top of a table in his cell and shook or wagged his penis at them. They also testified that although their employment occasionally required them to view inmates' genitalia, defendant's conduct was unexpected and out of the ordinary. Accordingly, a reasonable juror could conclude that defendant openly exposed his genitalia under circumstances that created a substantial risk of offending someone. *Neal*, 266 Mich App at 659.

Defendant argues that the State cannot meet its burden of proof through the testimony of Holstrom and Hathaway because there are two critical contradictions in the witnesses' testimony. First, defendant contends that the testimony was contradictory concerning where Holstrom was

at the time of the incident. Second, defendant notes that Hathaway's written report omitted a description that the defendant was nude dancing on the table. However, in the absence of exceptional circumstances, "conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial" *Lemmon*, 456 Mich at 642-643 (quotation marks and citation omitted). The role of the jury to assess the credibility of witnesses will remain undisturbed unless "the testimony is patently incredible or is so inherently implausible that it could not be believed by a reasonable juror," *Id.* at 647, or "directly 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," *id.* at 645-646 (quotation marks and citation omitted).

To the extent that a conflict exists in the testimony of the two witnesses regarding Holstrom's precise location at the time defendant exposed himself, it certainly did not render either witness's testimony "patently incredible" or "so inherently implausible that it could not be believed by a reasonable juror" *Lemmon*, 456 Mich at 644 (quotation marks and citations omitted). Similarly, any inconsistency between Hathaway's testimony and her written report presented a credibility issue for the jury to resolve and did not demonstrate that the "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" *Id.* at 645-646 (quotation marks and citation omitted). In short, the trivial discrepancies in the witnesses' testimony did not deprive the evidence of all probative value such that allowing the verdict to stand would constitute a miscarriage of justice.

Affirmed.

/s/ Jane E. Markey
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra