

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD LORENZOCO ANDREWS,

Defendant-Appellant.

UNPUBLISHED

June 30, 2011

No. 297313

Oakland Circuit Court

LC No. 2009-228427-FC

Before: BORRELLO, P.J., and JANSEN and SAAD, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), and five counts of assault with intent to rob while armed, MCL 750.89. He was sentenced as a habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 13 to 50 years for each conviction. Defendant appeals as of right and for the reasons set forth in this opinion, we affirm the convictions and sentence of defendant.

Defendant's convictions arise from his participation in an incident in which he, along with codefendant Kimberly Grusnick and two other men, entered a trailer without permission and threatened five people inside. The evidence showed that Grusnick and Chhoug Mak or a person named "Ricko" entered the trailer without permission and politely asked for Luke Dickerson, who was not present. While Mak or "Ricko" used the bathroom, Grusnick left and said she would return. When Mak came out of the bathroom, he produced a gun and made threats. Grusnick returned to the trailer accompanied by defendant and another man. Mak searched Dickerson's room. Some witnesses saw defendant rummage through the bedroom and in the kitchen. Ultimately, Mak took a backpack containing an Xbox 360 video gaming system. One witness testified that defendant took a pack of cigarettes. Within minutes after the incident, defendant and his companions were apprehended by the police while in possession of the backpack containing the Xbox and an envelope with the driver's license, birth certificate, and social security card of the owner of the backpack. The police later recovered a gun hidden in their car and some duct tape that witnesses said Grusnick was holding during the offense.

On appeal, defendant argues that the jury's verdict is against the great weight of the evidence and that the trial court therefore abused its discretion in denying his motion for a new trial. This Court reviews a trial court's decision to grant or deny a motion for a new trial for an abuse of discretion. *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998).

Defendant's assertion that the jury's verdict was against the great weight of the evidence is predicated on two distinct theories. First, defendant argues that conflicts in the testimony of the various witnesses is against the great weight of the evidence. "New trial motions based solely on the weight of the evidence regarding witness credibility are not favored." *Id.* at 639. Absent exceptional circumstances, the issue of credibility should be left for the trier of fact. *Id.* at 642. Even where the "testimony is in direct conflict and testimony supporting the verdict has been impeached, if it cannot be said as a matter of law that the testimony thus impeached was deprived of all probative value or that the jury could not believe it, the credibility of witnesses is for the jury." *Id.* at 643 (citation and internal quotation marks omitted). Exceptional circumstances that may justify a new trial include testimony that "contradicts indisputable physical facts or laws, where the testimony is patently incredible or defies physical realities, where a witness's testimony is material and 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 (citations and internal quotation marks omitted). A trial court may grant a new trial "only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *Id.* at 627.

Although defendant contends that the accounts of the prosecution witnesses were not consistent, the only discrepancy he references is that "[s]ome witnesses put [him] at the front of the trailer; some said he was there in the back." Defendant is correct that some witnesses saw defendant in Dickerson's room, others saw him in the front by the kitchen, and others saw him in both places. The fact that the witnesses' recollection on this point differed is not the type of exceptional circumstance that would warrant the trial court interfering with the jury's assessment of credibility.

Second, defendant challenges the great weight of the evidence by asserting that a rational trier of fact could not conclude that the essential elements of aiding and abetting were proven beyond a reasonable doubt. The prosecution witnesses identified defendant as one of the perpetrators in the trailer. No one authorized defendant's entry. Contrary to defendant's assertion that he was merely present at the scene of the crime, the evidence clearly indicated that defendant was an active participant in the seizure of items from the trailer. Joshua Knope saw defendant looking in the freezer for money. Chad Hipkins saw a man matching defendant's description rummaging through Dickerson's closet while stating that Dickerson owed him money. Sabrina Desjardins and Monica Pepin also saw defendant searching Dickerson's room. Pepin testified that defendant took a pack of cigarettes. Defendant left with the other perpetrators. Although defendant did not threaten the complainants and did not personally remove the backpack, a jury could reasonably infer from the testimony that defendant acted in concert with Mak in the perpetration of the crimes. The evidence does not "preponderate 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). Accordingly, the trial court did not abuse its discretion by denying defendant's motion for a new trial.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Henry William Saad