

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY L. JOHNSON,

Defendant-Appellant.

UNPUBLISHED

April 4, 2000

No. 211353

Recorder's Court

LC No. 97-008471

Before: Neff, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of possession of a firearm by a felon, MCL 750.224f; MSA 28.421(6), and possession of a short-barreled shotgun, MCL 750.224b; MSA 28.421(2). Defendant was originally sentenced to three years' probation with the first 90 to 120 days in boot camp, but this sentence was amended to ten months in jail with probation continued because defendant did not complete boot camp and otherwise violated his probation. We affirm.

Defendant argues that the trial court abused its discretion in denying his motion for a new trial because the verdict was against the great weight of the evidence. We disagree. This Court reviews a denial of a motion for a new trial for an abuse of discretion. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993), overruled in part on other grounds *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). Motions for a new trial are not favored and should be granted only when the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *Lemmon, supra*, 456 Mich 639.

Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial. *Lemmon, supra*, 456 Mich 647. In order to grant a motion for a new trial, a trial judge must determine if the credibility of a witness has been seriously undermined, and if so, if there is a real concern that an innocent person has been convicted or that it would be a manifest injustice if the verdict was allowed to stand. *Id.*, 644

Questions regarding the credibility of witnesses are to be resolved by the trier of fact. When reviewing a trial court's decision regarding a motion for a new trial based on the great weight of

evidence, this Court will not attempt to resolve credibility issues anew. *People v Daost*, 228 Mich App 1, 17; 577 NW2d 179 (1998). Here, Bucy testified that he arrived at the Indiana home, saw defendant standing in the yard next to the house and that, when the floodlight flashed on defendant, defendant pulled something out of his waistband and appeared to drop the item before entering the home. Bucy found defendant in the home and retrieved a short-barreled shotgun from the area in which defendant had been standing.

Defendant gave conflicting testimony, saying that he was only carrying a paper bag and that he did not drop anything in the yard. Defendant testified that there were other men in the area. Stone also gave testimony which conflicted with Bucy's. Stone testified that he saw defendant approach the home with a paper bag in hand and that he did not see defendant drop anything in the yard.

The trial court found Officer Bucy's testimony to be credible and defendant's testimony to be incredible. Bucy testified that his partner shined the floodlight on defendant, that he saw defendant pull something that looked like a weapon out of his waistband and that he believed that defendant dropped this weapon. The field was secured until Bucy returned and retrieved a short-barreled shotgun from the area where defendant was standing that was the same length as the weapon Bucy thought he saw defendant pull out of his pants.

The trial court weighed the credibility of the defense witnesses, including defendant, Naomi Green and Darius Stone, and found that they had motive to lie and that their demeanor and the substance of their testimony did not raise a reasonable doubt of defendant's guilt. The trial court's findings, although based on circumstantial evidence, show that the trial court made a careful determination of the credibility of the witnesses. As the credibility of Bucy was not seriously undermined by the conflicting testimony of defendant and other witnesses, the verdict was not against the great weight of the evidence. *Lemmon, supra*, 456 Mich 644, 647.

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ Henry William Saad