

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYAN LAVELL CARTER,

Defendant-Appellant.

UNPUBLISHED

April 27, 2006

No. 260547

Wayne Circuit Court

LC No. 04-007678-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of falsely reporting a felony, MCL 750.411a(1)(b), and was sentenced to serve six months' incarceration or pay a \$1,000 fine.¹ Defendant appeals as of right. We affirm.

Defendant's home was raided by Detroit Police officers seeking illegal drugs. Defendant asserted that during the raid the police took a total of approximately \$5,000 in cash from his person and premises, far more than the \$863 that the police documented. An investigation immediately followed, in which the officers present emptied their pockets, revealing amounts of cash not coming close to adding up to the total defendant alleged. Defendant persisted with his accusation, and signed a statement prepared in the course of the ensuing investigation.

In the statement, defendant explained that he obtained the large quantities of cash through recent casino winnings and the proceeds of a lawsuit. The police verified that defendant had collected \$3,704.67 from a lawsuit approximately two weeks before the raid. An executive host for the casino at which defendant said he had won at blackjack testified that table winnings over \$2,500 would generate documentation, but that, going back to 1999, there was no record of any such payout to defendant.

The trial court expressly discredited defendant's truthfulness, and found him guilty of falsely reporting a felony.

¹ Defendant reports that he elected to pay the fine.

Defendant argues that the verdict was contrary to the great weight of the evidence. That doctrine, however, is normally invoked when asking a trial court to set aside a jury's verdict. See generally *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). A trial court's findings of fact in a bench trial are reviewed for clear error. See MCR 2.613(C); *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "A finding is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.*

Defendant argues that the evidence overwhelmingly shows that he did not in fact accuse the police of committing any crime, but instead merely protested that there was more currency located on his premises than what the police acknowledged taking. However, Police Sergeant Jeffrey Clyburn testified that defendant had specifically accused one of the police officers of stealing his money at the site, then afterward admitted he was lying. Officer Helen Hunter, an Internal Affairs investigator, testified that defendant informed her that the police had taken approximately \$5,000 of his money during the raid, and signed a statement detailing how he had come to possess so much cash. Finally, Police Sergeant John Kennedy testified that defendant accused the police of taking his money, and expressed his wish that the offending officers serve time in jail for doing so. This evidence shows that defendant did not merely indicate that he had more money on the premises than the police acknowledged seizing, but that he specifically alleged that his money was stolen, and knowingly set in motion a police investigation of the matter.

Defendant additionally argues that others in the house who were not police officers could also have taken the money he reported missing, and that he could truthfully have complained of missing money even if the police were not responsible for its disappearance. It is not our purpose to entertain plausible alternative interpretations of the evidence; the test is whether the trial court's findings were clearly erroneous. MCR 2.613(C); *Gistover, supra* at 46. Moreover, the prosecution need not disprove every reasonable theory of innocence, but need only prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defense may produce. See *People v Hardiman*, 466 Mich 417, 424; 646 NW2d 158 (2002); *People v Johnson*, 137 Mich App 295, 303; 357 NW2d 675 (1984).

Defendant further points out that the casino host testified that table winnings did not generate documentation for tax purposes until they reached \$10,000, but that the trial court stated that the casino would note table winnings over \$2,500. However, the testimony in fact made clear that, although the casino was not legally required to document table winnings under \$10,000, it nonetheless started doing so at \$2,500. The trial court's statement thus comported with the testimony.

What defendant presents on appeal is a classic credibility contest, not a situation where testimony upon which the verdict depended is plainly patently incredible, or in defiance of uncontestable physical realities. See *Lemmon, supra* at 643-644. Accordingly, we "leave the test of credibility where our system reposed it—in the trier of the facts." *Sloan v Kramer-Orloff Co*, 371 Mich 403, 411; 124 NW2d 255 (1963).

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot