

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL WINFRED BROOKS,

Defendant-Appellant.

UNPUBLISHED

September 13, 2007

No. 270062

Wayne Circuit Court

LC No. 05-012119-01

Before: O’Connell, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. At sentencing, defendant was sentenced to eighteen months to ten years in prison for his armed robbery conviction, and two years in prison for his felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that he was denied his right to a fair and impartial trial when the prosecutor elicited false testimony from the victim. We disagree. Defendant failed to properly preserve this issue for appeal with a timely objection at trial. *People v Nimeth*, 236 Mich App 616, 625; 601 NW2d 393 (1999). We review unpreserved claims of prosecutorial misconduct for plain error affecting defendant’s substantial rights. *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004). A prosecutor must report to the defendant and to the trial court whenever a government witness lies under oath. *People v Lester*, 232 Mich App 262, 276; 591 NW2d 267 (1998). A prosecutor may not knowingly use false testimony to obtain a conviction and must correct false evidence introduced into the proceedings. *Id.* at 276-277. However, a defendant may not win a new trial simply by citing opposing evidence and leaving the court to mistrust the prosecution’s evidence, its ignorance of the evidence’s presumed falsity, and its motive for introducing the presumably false evidence. Instead, defendant must demonstrate that the victim conclusively perjured herself and that the prosecutor knew it. *Id.* at 278-279.

Here, the victim testified that she went to her house to take possession of it from defendant’s girlfriend, Tawana Dick. The victim testified that, while at the house, defendant came out of the house, grabbed her, hit her across the face with a gun, and took her manila folder and some cash out of her pocket. The victim also testified that she had evicted Dick prior to November 19, 2005, and that when someone from Wiley’s Locksmith arrived at the house, defendant came out with a gun and scared the locksmith away. Defendant argues that the

evidence regarding the prior eviction and locksmith were undermined by a lack of supporting documents. Defendant also argues that the victim's testimony that defendant was not home when the police arrived, and that Dick exited the house during the incident and stated, "Get her," was contradicted by other testimony.

Nevertheless, the testimony regarding the prior eviction and locksmith was never proven to be conclusively false, and it was not material evidence that was used to convict defendant. Moreover, no evidence was presented that suggests that the prosecutor attempted to conceal the contradictions. In fact, the prosecutor disclosed all conflicting facts, including the 36th District Court's lack of relevant eviction documents predating November 19, 2005, and Wiley's lack of service call records for the relevant residence. Furthermore, the prosecution presented police testimony that defendant was home when the police arrived, and defense counsel was allowed to introduce Dick and defendant's contradictory testimony that Dick was not home when the incident took place. Therefore, the prosecutor did not deny defendant his right to a fair and impartial trial, and defendant has not established any plain error affecting his substantial rights. *Lester, supra; Thomas, supra.*

Defendant next argues that the trial court improperly shifted the burden of proof when it stated that the victim had no reason to lie. We disagree. "Although a defendant has no burden to produce any evidence, once the defendant advances evidence or a theory, argument on the inferences created does not shift the burden of proof." *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995). Furthermore, a prosecutor may properly argue from the facts that a witness has no reason to lie or has a special reason for telling the truth. See *Thomas, supra* at 455. A trial court, sitting as the trier of fact, should always consider whether a witness has a reason to lie, because ferreting out conflicts of interest is an integral part of determining witness credibility. See *id.*

Here, defendant suggested that the victim was not credible and presented an alibi defense by testifying that he was not at the scene, and he never touched the victim. Therefore, it was proper for the trial court, as trier of fact, to consider whether it believed the victim or defendant, and to consider whether the victim had a reason to lie. *Fields, supra; Thomas, supra.* Accordingly, the trial court did not commit plain error affecting substantial rights when it considered the victim's lack of any motive for fabricating the charges.

Defendant next argues that the trial court's verdict was against the great weight of the evidence. We disagree. "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). Armed robbery requires that the defendant commit an assault while armed with a dangerous weapon or an imitation of one, and a felonious taking of property from the victim. MCL 750.529; *People v Ford*, 262 Mich App 443, 458; 687 NW2d 119 (2004). "The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

The victim testified that defendant grabbed her, hit her across the face with his gun, and stole her property. If believed, this testimony was enough to convict defendant of armed robbery and felony-firearm, because it established all the necessary elements for those crimes. *Ford*,

supra at 458; *Avant, supra* at 505. Although defendant presented evidence that he was working with his partner James Hurley from about 4:30 p.m. to 8:30 p.m. on the day of the robbery, and that he has never touched the victim, we afford deference to the factfinder's special opportunity and ability to determine the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial. *Musser, supra* at 219. The victim's testimony was not contradicted by indisputable physical realities and was not so patently incredible or inherently implausible that a reasonable trier of fact could not believe it, so the evidence is not against the great weight of the evidence. *Id.*

Defendant's final argument on appeal is that the trial court's findings of fact and conclusions of law were insufficient. We disagree. We will not remand for further findings unless "a trial court's fact-findings are so deficient that doubt is created as to whether the trial court correctly applied the law to the facts." *People v Feldmann*, 181 Mich App 523, 534; 449 NW2d 692 (1998). A trial court's findings are sufficient if they demonstrate that the trial court was aware of the pertinent issues and applied the law correctly. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). Here, the trial court's findings establish that the trial court found the victim to be a credible witness because of her demeanor and consistency at trial, the fact that the police corroborated the victim's testimony that her jacket had been ripped, and the fact that, although the delinquent rent could have caused some animosity between the victim and defendant, it was unreasonable to assume that the victim would fly back and forth from Atlanta (at her own cost) just to pin false charges on defendant. The trial court's findings established that it was aware of the case's controlling issues and correctly applied the law, so the findings were sufficient. *Id.*

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald