

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAMEKA B. LAYTON,

Defendant-Appellant.

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UNPUBLISHED

December 9, 1997

No. 196746

Oakland Circuit Court

LC No. 96-143717-FC

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM EARL BROOKS a/k/a  
EARL WILLIAM BROOKS,

Defendant-Appellant.

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No. 196762

Oakland Circuit Court

LC No. 96-143719-FC

Before: Bandstra, P.J., and Cavanagh and Markman, JJ.

PER CURIAM.

In these consolidated appeals, defendants were convicted following a joint jury trial (with separate juries) of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), armed robbery, MCL 750.529; MSA 28.797, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant Brooks also pleaded guilty to two counts of being an habitual offender, third offense, MCL 769.11; MSA 28.1083. The trial court sentenced defendant Layton to life imprisonment without parole for the first-degree murder conviction, forty to sixty years' imprisonment for the armed robbery conviction and two years' imprisonment for each felony-firearm conviction. It sentenced defendant Brooks to the statutorily mandated life imprisonment without parole for the first-degree murder conviction, life imprisonment for the armed

robbery conviction and two years' imprisonment for each felony-firearm conviction. The court then vacated defendant Brooks' sentences for first-degree murder and armed robbery and imposed two terms of life imprisonment for the habitual offender convictions. Defendants now appeal as of right. We affirm, with the exception that we vacate defendants' convictions and sentences for armed robbery and the corresponding felony-firearm convictions and sentences, as well as one of defendant Brooks' habitual offender convictions and sentences.

Defendants' convictions arise from the shooting death of James Groppi, which occurred in the parking lot of a Madison Heights bowling alley. The evidence at trial showed that defendants and two other individuals approached the victim and his wife as they were walking to their van. Rosemarie Jackson attacked Mrs. Groppi and struggled with her to obtain her purse, while defendants and the other individual prevented the victim from assisting his wife. During Jackson's struggle with Mrs. Groppi, she dropped the gun that she had been carrying. The gun belonged to defendant Brooks, who had given it to Jackson earlier. Defendant Layton picked up the gun. At some point, the Groppis' daughter drove up to the group, attempting to scare away the attackers. Defendant Brooks and one other attacker turned and fled. Within seconds, defendant Layton shot and fatally wounded Mr. Groppi. Defendants and the other individuals drove away in a light colored Escort but were apprehended by police shortly thereafter.

Defendant Layton first argues that there was insufficient evidence to support her conviction because the prosecutor did not disprove her accident defense. We disagree. Layton claims that her statements to the police that she did not mean for the shooting to occur, that the gun just "went off," and that she was sorry that the incident occurred established that the shooting was an accident. We find that despite these statements, the prosecution presented sufficient evidence to allow a rational jury to find that Layton acted with malice.

Defendant Layton admitted to Detective Sergeant Vohs that she was going to participate in a robbery and her awareness that one of the participants, Jackson, had a gun. Moreover, Layton admitted picking up the gun from the ground during the struggle and pulling the trigger. She did not kick the gun away or take other action that would suggest she was attempting to reduce the potential for danger. Sean Adair testified that he saw Layton shoot the gun at Mr. Groppi with her arm extended. The jury could infer, at the very least, that she knowingly created a very high risk of death or great bodily harm from her actions of pointing a loaded gun at the victim, even if she involuntarily squeezed the gun's trigger. This is sufficient to prove that defendant Layton acted with malice. *People v Turner*, 213 Mich App 558, 566; 540 NW2d 728 (1996).

Moreover, there was evidence from which the jury could infer that defendant Layton did not "involuntarily" squeeze the trigger. Adair testified that when the car reached the group, the two black males ran away and that the gun was fired seconds later. He also testified that he did not see a struggle over the gun and did not see the car strike anyone. The driver of the car, Karen Groppi, testified that she saw the gun when it hit her windshield and that she did not hear any gunshots. In light of this evidence, the jury was fully entitled to reject Layton's version that the shooting was an accident.

Defendant Layton further argues that the trial court committed reversible error when it instructed the jury that it would not provide video replays of the testimony at trial. We only review this issue for the presence of manifest injustice, because there was no objection to this instruction at trial. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993).<sup>1</sup> We find that manifest injustice is not present in this case. The trial court's instruction is distinguishable from those given in the cases cited by Layton, because it addressed video replays and did not address, let alone "completely foreclose," the possibility of having testimony reread to the jury upon request. See *People v Henry Smith*, 396 Mich 109, 110-111; 240 NW2d 202 (1976). We find that the trial court's comment in this case also did not completely foreclose the possibility of having the testimony replayed; rather it merely indicated the trial court's typical and customary approach to these matters. Moreover, the challenged comment in this case was made prior to the presentation of any evidence and appeared to emphasize to the jurors the importance of paying attention to the testimony and taking good notes, rather than relying on later replays of the testimony. In our judgment, reversal is not required on this basis. *People v Johnson*, 124 Mich App 80, 89-90; 333 NW2d 585 (1983).

Finally, defendant Layton contends that she was denied the effective assistance of counsel when trial counsel failed to adequately preserve the instructional issue for review. In light of our finding that the trial court's instruction was proper, defendant Layton cannot establish the prejudice necessary to sustain her claim. *People v Eloby (After Remand)*, 215 Mich App 472, 476; 547 NW2d 48 (1996).

Defendant Brooks first argues that the trial court erred in denying his motion to quash the information because no evidence of malice was presented at the preliminary examination. We disagree. At the preliminary examination, the prosecution introduced evidence that Brooks brought a loaded gun into the car and gave it to Jackson before the group arrived at the bowling alley. There was also evidence that Brooks participated in the attack on the Groppis. A reasonable jury could infer that Brooks acted with malice from this evidence. *Turner, supra* at 572-573, 575, 580-581. Therefore, the magistrate did not abuse its discretion in binding Brooks over. *People v Kieronski*, 214 Mich App 222, 228; 542 NW2d 339 (1995).

Next, defendant Brooks argues that the trial court erred in ruling that his statement to Detective Vohs given the afternoon following the crime was voluntarily made. After an independent review of the record, we find that Brooks' statement was freely and voluntarily made. *People v Krause*, 206 Mich App 421, 423; 522 NW2d 667 (1994). Brooks' claim that he was intimidated or threatened into making a statement is contradicted by his refusal to make a written statement and his previous experience with the police. Moreover, the trial court characterized his testimony at the *Walker*<sup>2</sup> hearing as "somewhat equivocal or evasive, perhaps lacking in credibility." Its determination that the statement was voluntarily made was not improper.

Defendant Brooks next argues that his convictions should be reversed because the trial court erroneously solicited questions from the victim's widow at trial. We review this challenge to the trial court's conduct for the presence of manifest injustice, because there was no objection at trial. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Manifest injustice is not present in this case. Although it may not have been the best course of action for the trial court to ask Mrs. Groppi whether she had any questions for the medical examiner, we find that any error was cured by the trial

court's specific instructions on this issue. See *People v Ullah*, 216 Mich App 669, 682; 550 NW2d 568 (1996).

Finally, defendant Brooks argues that the prosecution did not present sufficient evidence of malice to sustain his conviction; therefore, the trial court erred in denying his motion for a directed verdict. We disagree. There was evidence that Brooks participated in the robbery of the Groppis by restraining Mr. Groppi. Moreover, there was evidence from which a jury could infer that Brooks had knowledge that Jackson possessed a loaded gun during the robbery, which he had given to her at some point prior to their arrival at the bowling alley. A reasonable jury could infer from this evidence that defendant acted with "wanton and willful" disregard sufficient to support a finding of malice. *Turner, supra* at 572-573, 575, 580-581.

Defendant Layton also argues that her convictions and sentences for both felony murder and the underlying felony, armed robbery, constitute multiple punishments for the same offense and thus violate the Double Jeopardy Clauses of the federal and state constitutions. She also argues that the felony-firearm conviction that corresponds to her armed robbery conviction should be vacated. These contentions are correct. *People v Harding*, 443 Mich 693, 712, 735 (Opinion by Brickley, J), 735 (Concurring opinion by Cavanagh, C.J.); 506 NW2d 482 (1993); *People v Gimotty*, 216 Mich App 254, 259; 549 NW2d 39 (1996). Accordingly, we must vacate Layton's conviction and sentence for armed robbery and the corresponding felony-firearm conviction and sentence. *Gimotty, supra* at 259-260. Although defendant Brooks did not raise this same issue, we must also vacate his conviction for armed robbery, vacate his conviction and sentence for the corresponding felony-firearm and vacate one of his habitual offender convictions and sentences.

Defendants' convictions and sentences are affirmed in all respects, except that the armed robbery and the corresponding felony-firearm convictions and sentences are vacated, as well as one of defendant Brooks' habitual offender convictions and sentences.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Stephen J. Markman

<sup>1</sup> We note that Layton's contention that the prosecutor raised this issue before the trial court is incorrect. As we read the exchange to which defendant refers, the prosecutor was addressing a different issue, i.e. whether the trial court was required to provide the jury with a transcript of codefendant Brooks' taped statement to the police.

<sup>2</sup> *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).