

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUQAYYAH DANISHA BLUE,

Defendant-Appellant.

UNPUBLISHED

July 27, 2004

No. 246782

Wayne Circuit Court

LC No. 02-004755-01

Before: Griffin, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions for first-degree murder, MCL 750.316(1)(a), felony murder, MCL 750.316(1)(b), assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant argues that the trial court erred in denying her request for a jury instruction on duress as a defense to the felony murder and assault with intent to commit murder charges because her allegedly abusive boyfriend told her to commit the crimes. We disagree. Claims of instructional error are reviewed de novo. *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003).

Duress is an affirmative defense based on the rationale that, as a matter of social policy, it is better that the defendant choose to violate the criminal law in order to avoid the greater evil threatened by the other person. *People v Lemons*, 454 Mich 234, 245-246; 562 NW2d 447 (1997). Duress is not a defense to homicide. *People v Ramsdell*, 230 Mich App 386, 401; 585 NW2d 1 (1998). To properly raise the defense, a defendant has the burden of producing some evidence of the following elements:

- A) The threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm;
- B) The conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant;
- C) The fear or duress was operating upon the mind of the defendant at the time of the alleged act; and

D) The defendant committed the act to avoid the threatened harm. [*Lemons, supra* at 247.]

Moreover, the threatening conduct must be present, imminent, and impending; a threat of future injury is not sufficient. *Id.* If a defendant fails to submit sufficient evidence to warrant a finding of duress, the trial court is not required to instruct the jury on that defense. *Id.* at 248.

Defendant was convicted of first-degree murder and felony murder. She contends that she was entitled to a jury instruction on the defense of duress for the predicate felony of larceny, which supported the felony-murder charge, and to the assault with intent to commit murder charge. It is well established that duress is not a valid defense to homicide as “one cannot submit to coercion to take the life of a third person, but should risk or sacrifice his own life instead.” *People v Dittis*, 157 Mich App 38, 41; 403 NW2d 94 (1987); see, also, *Ramsdell, supra*; *People v Gimotty*, 216 Mich App 254, 257; 549 NW2d 39 (1996). Because defendant was also convicted of first-degree murder, and duress is not a defense to homicide, defendant’s argument that she was entitled to a duress instruction on the predicate felony of larceny need not be addressed. See *Ramsdell, supra*.

Further, no evidence established that defendant’s allegedly abusive boyfriend was present during the shootings; therefore, she failed to show that the “threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm.” *Lemons, supra* at 247. In fact, the evidence established that defendant planned the robbery and obtained a gun within a week before she committed the crimes. Any alleged threatening conduct was not present, imminent, or impending, and a threat of future injury is not sufficient to support a duress defense. *Id.* Accordingly, defendant was not entitled to the duress instruction with regard to the assault charge and the trial court properly denied such request.

Defendant next contends that the trial court erred in failing to sua sponte instruct the jury on accomplice testimony. We disagree. Defendant did not object to the jury instructions and, in fact, expressly approved of the instructions; accordingly, she has waived any such error. *Gonzalez, supra* at 642-643; *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000). In any event, the claim is without merit because the issue of defendant’s guilt was not “closely drawn.” See *Gonzalez, supra* at 643; *People v McCoy*, 392 Mich 231, 238-239, 240; 220 NW2d 456 (1974). An issue is “closely drawn” if its “resolution depends on a credibility contest between the defendant and the accomplice-witness.” *Gonzalez, supra* at 643 n 5. Even if there was a “credibility contest” between defendant and defendant’s alleged “accomplice,” the surviving victim testified that the “accomplice” did not participate in the shootings; accordingly, no error warranting reversal was committed. Further, defendant’s ineffective assistance claim based on her counsel’s failure to request such instruction is also without merit.

Finally, defendant argues that the trial court abused its discretion when it denied her motion to adjourn the trial so that she could obtain an independent psychiatric evaluation to support her potential insanity defense. We disagree. This Court reviews a trial court’s ruling on a defendant’s request for an adjournment or a continuance for an abuse of discretion. *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003). We review matters of statutory interpretation de novo. *People v Mutchie*, 251 Mich App 273, 280; 650 NW2d 733 (2002).

A motion for adjournment must be based on good cause. *Coy, supra* at 18. MCL 768.20a provides, in pertinent part:

(2) Upon receipt of a notice of an intention to assert the defense of insanity, a court shall order the defendant to undergo an examination relating to his or her claim of insanity by personnel of the center for forensic psychiatry or by other qualified personnel, as applicable, for a period not to exceed 60 days from the date of the order.

(3) The defendant may, at his or her own expense, or if indigent, at the expense of the county, secure an independent psychiatric evaluation by a clinician of his or her choice on the issue of his or her insanity at the time the alleged offense was committed.

An indigent defendant has the right to the appointment of a psychiatrist to assist her in her defense, once she has established that her sanity is an issue at trial. *People v Leonard*, 224 Mich App 569, 580-582; 569 NW2d 663 (1997); *People v Stone*, 195 Mich App 600, 604-605; 491 NW2d 628 (1992). The trial court's appointment of a state-employed expert, independent of the prosecution, is sufficient to satisfy the constitutional standards. *Id.* at 606. Here, defendant was first referred to the trial court psychiatric clinic for evaluation but refused to cooperate. The trial court then referred her to the state forensic center where she received a complete and independent evaluation which resulted in an unequivocal conclusion that defendant was not mentally ill when she committed the crimes. On the day of trial, defendant moved for an adjournment so as to obtain another psychiatric evaluation. In light of these facts, it was within the trial court's discretion to deny defendant's request for adjournment.

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood