

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TANIA MARIA SWAIZEY,

Defendant-Appellant.

UNPUBLISHED

February 2, 2006

No. 254802

Wayne Circuit Court

LC No. 03-014144-01

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Following a bench trial, the trial court convicted defendant Tania Maria Swaizey of armed robbery,¹ felon in possession of a firearm,² and possession of a firearm during the commission of a felony (felony-firearm).³ The trial court sentenced Swaizey to concurrent prison terms of 6 to 15 years for the armed robbery conviction and one to five years for the felon in possession conviction, and to the mandatory two-year consecutive sentence for the felony-firearm conviction. Swaizey appeals as of right. We affirm. We decide this appeal without oral argument.⁴

I. Basic Facts And Procedural History

On December 8, 2003, at approximately 8:00 a.m., the complainant, Travene Haley, went to the Sunoco Gas Station in Detroit to put air in the tire of her vehicle. When she got back into her vehicle, a woman (whom Haley later identified as Swaizey) opened her passenger door, got into the car, pointed a small silver automatic handgun at her head, and told her to drive. After a few turns, Swaizey told Haley to stop on a side street. Swaizey kept the gun pointed at Haley's side and demanded Haley's jewelry. Haley was wearing about \$2,500 worth of jewelry,

¹ MCL 750.529.

² MCL 750.224f.

³ MCL 750.227b.

⁴ MCR 7.214(E).

including five diamond rings of various karats. Swaizey also demanded Haley's money and took about \$270 from Haley's wallet. Swaizey then demanded Haley's cell phone. Although Haley had a cell phone in her left hand, she said that she did not have a cell phone and let it drop on the floor between the seat and the door. Haley was scared and nervous, and Swaizey was looking at her like she might "snap and shoot" her. Haley stated that she then jumped out of the vehicle, ran past the rear of her vehicle, and kept heading that way. Haley saw Swaizey running away from the vehicle in the opposite direction. After a man stopped her to find out what happened, Haley went back to the vehicle and drove home, where she called the police and reported the incident.

Detroit police officer Joshua Selby and his partner, John Eldrington, responded to Haley's call about 8:30 a.m. on December 8, 2003. After receiving information from the owner of the gas station that a possible suspect matching the description of the alleged robber was in the area, the officers went to that location and made contact with Swaizey, who fit the description that they had been given. Swaizey attempted to flee, but the officers were able to stop and handcuff her. Officer Selby did not recover any jewelry or a gun.

According to Swaizey, on the morning of December 8, 2003, she stopped at the Sunoco gas station after leaving a crack house. She asserted that she went to the crack house with Haley to make some money selling drugs. Swaizey alleged that she had known Haley since 1995 and that they had dated. Swaizey claimed that at some point a SUV pulled up to the house, and four men got out. According to Swaizey, Haley claimed to know the men. One of the men asked Haley how much drugs she had left, and Haley took him into the back bedroom. The other three men just stood around looking at Swaizey. After about 20 or 25 minutes, Swaizey heard footsteps coming from the back. She turned around to see what was going on, and one of the men hit her in her face with his fist so hard that she urinated on herself. The man ordered the door to be locked and said, "don't let her out of here." Swaizey jumped out of the window and kept running all the way to the Sunoco gas station. Swaizey stated that she stood at the gas station for about 20 minutes, trying to get her bearings after being hit. Haley then drove up to the gas station and went inside. When she came out, Haley asked Swaizey if she wanted to be taken somewhere. Swaizey answered yes, because she thought the men were probably looking for her. While Haley put air in her tire, Swaizey talked on her cell phone and waited by the passenger door until Haley unlocked it and let her in. After Haley dropped her off, they went their separate ways.

Swaizey denied that she robbed Haley. She explained that she ran from the police because she was in possession of a couple of rocks of cocaine. Swaizey admitted that she had been convicted of theft crimes. Swaizey was on parole from a 1998 conviction for one count of forgery and one count of financial transaction device stealing, retaining without consent. Swaizey stipulated that on September 25, 1998, she was sentenced in Oakland County for the charge of financial transaction device, stealing or unlawful use, and was not eligible to carry or purchase a weapon.

Following the parties' arguments, the trial court indicated that credibility was a key factor in its decision. The trial court stated that it did not believe Swaizey, rather it believed Haley's

version of events. The trial court found that the elements of robbery armed, felon in possession, and felony firearm were proven beyond a reasonable doubt.

II. Sufficiency Of The Evidence

A. Standard Of Review

Swaizey contends that Haley's testimony was the only evidence against her and that Haley was not credible. Thus, Swaizey argues that the evidence was not sufficient to prove the essential elements of the charged crimes beyond a reasonable doubt. In reviewing the sufficiency of the evidence, we must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.⁵

B. Credibility

Haley and Swaizey told conflicting versions about what happened. But the trial court found Haley's version to be credible. The assessment of credibility, when presented by two diametrically opposed versions of events, rests with the trier of fact.⁶ We will not interfere with the trier of fact's role of deciding the credibility of witnesses.⁷ Therefore, viewing the evidence de novo in the light most favorable to the prosecutor, we conclude that a rational trier of fact could find that the essential elements of armed robbery, felony-firearm, and felon in possession were proven beyond a reasonable doubt.⁸

III. MCR 2.517

Swaizey argues that the trial court did not comply with the requirements of MCR 2.517(A)(1). We disagree. On review of the record, we find that the trial court made sufficient findings of fact and conclusions of law to comply with MCR 2.517(A)(1) and (2).

IV. Judicial Impartiality

Swaizey complains that, because the trial court read a letter that she wrote to it, the trial court was no longer impartial. A criminal defendant is entitled to expect a detached and neutral magistrate.⁹ But Swaizey cannot be heard to complain that the trial court read a letter that she

⁵ *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

⁶ *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998).

⁷ *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

⁸ *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003); *People v Rodgers*, 248 Mich App 702, 707; 645 NW2d 294 (2001); *People v Parker*, 230 Mich App 677, 684-685; 584 NW2d 753 (1998).

⁹ *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996).

specifically wrote to the court.¹⁰ Further, Swaizey presented no evidence that the trial court was no longer impartial after it read her letter.

We affirm.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette

¹⁰ *People v Phillips*, 251 Mich App 100, 108; 649 NW2d 407 (2002).