

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THELMA CHAVOUS,

Defendant-Appellant.

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UNPUBLISHED

May 6, 2004

No. 240340

Wayne Circuit Court

LC No. 00-005432-01

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions for third-degree fleeing and eluding, MCL 257.602a(3)(b), and accessory after the fact, MCL 750.505.<sup>1</sup> The trial court sentenced defendant to ninety days to five years' imprisonment for the third-degree fleeing and eluding conviction and to thirteen months to five years' imprisonment for the accessory after the fact conviction. We affirm.

Defendant first contends the trial court committed error requiring reversal when it denied her motion to disqualify the trial judge. We disagree. In reviewing a decision on a motion to disqualify a judge, this Court reviews the trial court's findings of fact for an abuse of discretion, but reviews the applications of these facts to the relevant law de novo. *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999). A judge will not be disqualified unless actual personal bias or prejudice is presented, and the party challenging a judge for bias must overcome the heavy presumption of judicial impartiality. *Id.* Comments critical of defendant or his counsel do not ordinarily support a finding of bias or partiality. *Id.*

In the present case, the trial judge disclosed that he knew the prosecutor as a child because they lived in the same neighborhood. However, the last communication between the two had occurred in 1996. Prior to 1996, they had not seen each other since college. The trial judge stated that he was comfortable handling the case, and there was no need to recuse. Although the prosecutor apprised defense counsel of the prior relationship months earlier, defendant sought disqualification just before the commencement of trial. At the request of his

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<sup>1</sup> The prosecution initially charged defendant with assault with intent to murder, MCL 750.83, but the jury convicted defendant of being an accessory after the fact.

client, defense counsel moved to disqualify the trial judge. Both the trial court and the chief judge denied the motion. Following de novo review of the record, we cannot conclude that the trial court's decision was an abuse of discretion. *Wells, supra*. Defendant failed to meet her burden of establishing bias or prejudice with blanket assertions unsupported by citations to the record. *Id.* Defendant's only argument is that the rulings against her objections may show bias, but this Court has specifically stated that repeated rulings against a litigant do not require disqualification of a judge. *People v Fox*, 232 Mich App 541, 559; 591 NW2d 384 (1998). Therefore, defendant's claim fails.

Next, defendant claims that the trial court erred in refusing to give a requested instruction regarding alleged prosecutorial misconduct. We disagree. This Court reviews issues on jury instructions de novo. *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002). Instructional issues are reviewed in their entirety to judge if reversal is required. Reversal is not required where the jury instructions, judged as a whole, sufficiently protect defendant's rights. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995).

A prosecutor cannot vouch for the credibility of his witness by implying that he has some special knowledge of the witness' truthfulness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). However, a prosecutor may comment on the credibility of his own witnesses during closing, especially when there is conflicting evidence, and the question of defendant's guilt turns on which witness the jury believes. *People v Stacy*, 193 Mich App 19, 29-30; 484 NW2d 675 (1992). The record must be read as a whole and the allegedly impermissible statements judged in the context they were made. *People v Reed*, 449 Mich 375, 398; 535 NW2d 496 (1995).

Here, the prosecutor was not implying that he had some special knowledge of the truthfulness of the witnesses. He merely argued, based on the testimony elicited during the trial and the facts of the case, that there was little motivation to lie or to make up a story to frame defendant. Judging these statements in the context that they were made, the prosecutor did nothing more than ask the jury to consider the credibility of the witnesses when deliberating the contested events surrounding the assault. These statements were a fair comment on the witnesses' credibility. *Stacy, supra*. Given that the statements were not prosecutorial misconduct, the trial court did not err in refusing to give the requested jury instruction. *Moldenhauer, supra*. Furthermore, even if the statements were prosecutorial misconduct, a separate instruction was not necessary because the given instructions sufficiently addressed the issue. *Id.* Therefore, the trial court did not err in refusing to grant the special instructions.

Affirmed.

/s/ Hilda R. Gage  
/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood