STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 18, 2008
v	No. 279740 Macomb Circuit Court
BERNADETTE HOUGHTON HEADD, Defendant-Appellant.	LC No. 2007-001022-FH

Before: Zahra, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82, discharge of a firearm from a motor vehicle, MCL 750.234a, and possession of a firearm during the commission of a felony, MCL 750.227b. She was sentenced to concurrent jail terms of six months each for the assault and discharge of a firearm convictions, and to a consecutive two-year prison term for the felony-firearm conviction. She appeals as of right. We affirm.

I. Basic Facts

On February 21, 2007, at about 8:00 a.m., the complainant entered I-94 at 21 Mile Road, traveling about 70 miles an hour in a Dodge Ram truck. After the complainant had gone about one mile on the freeway, a red Cavalier driven by defendant "jumped across two lanes" and cut in front of the complainant, causing him to hit his brakes to avoid an accident. The complainant began tailgating defendant's vehicle. Defendant "started digging around on her right side," pulled out a gun, and "pointed it over her shoulder" toward the complainant. After the complainant saw the gun, he moved into the center lane, defendant immediately pulled in front of him, and the complainant returned to the left lane. As defendant sped up, the complainant pulled behind defendant and then eventually alongside defendant so he could see her. Defendant pointed her gun at the complainant and pretended that she was shooting him. The complainant sped away and defendant followed closely behind, steering with one hand and holding the gun in the other hand. Defendant changed lanes, pulled alongside the right side of the complainant's vehicle, and extended her arm out the window with the gun in her hand, "staring" at the complainant's front tire. The complainant hit his brakes and heard a gunshot. When defendant "took off," the complainant noted her license plate number, followed her as she exited the freeway, and attempted to call the police. Immediately after exiting the freeway, the complainant flagged down an officer and reported the incident.

Defendant testified that she has had a permit to carry a firearm since 1999. She further testified that, on the day of the incident, she entered I-94 at 20 Mile Road and, after signaling, moved into the left lane. She acknowledged that she may have "cut off" the complainant, although she did not think so. In a statement to the police, defendant stated that she "looked back and waved at the driver as if [she] were saying go right ahead and hit me because you can't go around or anything." Defendant testified that the complainant sped up to her bumper three times, as if he were going to "ram" her vehicle. Defendant was allegedly frightened because of the size of the complainant's vehicle and the condition of her 1993 vehicle. Defendant then moved into the center lane and, as the complainant drove by, defendant rolled down her window to "say something to him." The complainant then got in front of defendant and hit his brakes, causing defendant to "almost" lose control of her vehicle. At that point, defendant allegedly began to "fear for [her] life," and removed her firearm from her purse because she "wanted him to see and know that [she] could protect [herself] . . . and hopefully to scare him off of [her]." She "showed" the gun to the complainant and proceeded down the freeway toward the next exit. In her statement, defendant stated that she "pointed it at the driver." Defendant testified that the complainant began coming into her lane and nearly hit her vehicle. At that point, defendant discharged one warning shot into the grass median. Defendant exited the freeway and was arrested shortly thereafter. Defendant claimed that the complainant was pursuing her and she was defending herself from being run off the road. The defense presented a witness who testified that defendant has a reputation for truth and honesty.

A police detective testified that defendant admitted that she had cut in front of the Ram truck and had "fired a round off at the person's vehicle." Two independent witnesses testified to observing parts of the traffic altercation. Both witnesses testified that both parties had "mutual" involvement in the altercation, and that they were "jockeying" or playing "cat and mouse." One witness was behind the complainant's truck when she observed the Cavalier "cut across" both lanes and "cut off" the complainant. She explained that when defendant moved into the center lane, the complainant pulled in front of her and hit his brakes. Defendant then moved in front of the Ram truck and "did the same thing," and they went "back and forth." She also observed them "yelling at each other" and observed defendant extend her hand out the window before defendant exited the freeway, followed by the complainant. The other witness testified that the parties twice jockeyed for position and "weren't backing off each other." She saw defendant pull out a gun, speed up, point the gun out the driver's side window, and speed away after the gunshot. She opined that the Ram truck was never a threat to the Cavalier, that defendant had room to exit the freeway, and that neither vehicle attempted to "ram" or "make contact" with the other vehicle.

II. Sufficiency of the Evidence

Defendant argues that the evidence was insufficient to sustain her convictions because the prosecutor did not prove beyond a reasonable doubt that she did not act in self-defense. We disagree. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v*

Truong (After Remand), 218 Mich App 325, 337; 553 NW2d 692 (1996), lv den 455 Mich 870 (1997). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of felonious assault are "(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007) (internal citation and quotation marks omitted). To prove discharge of a firearm from a motor vehicle, the prosecution must show that the defendant intentionally discharged a firearm from a motor vehicle in such a manner as to endanger the safety of another. *People v Cortez*, 206 Mich App 204, 205-206; 520 NW2d 693 (1994). The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Once a defendant introduces evidence of self-defense, the prosecution bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). A successful claim of self-defense "requires both an honest and reasonable belief that the defendant's life was in imminent danger or that there was a threat of serious bodily harm," *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995), and use of only that force necessary to defend oneself, *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993).

Viewed in the light most favorable to the prosecution, the evidence was sufficient to sustain defendant's convictions, notwithstanding her claim of self-defense. Evidence was presented that defendant entered the freeway and "cut off" the complainant's vehicle, which led to "mutual" acts of "cutting off" and tailgating. Independent witnesses testified that defendant and the complainant were "jockeying" or playing "cat and mouse." During the episode, defendant retrieved a loaded weapon from her purse, pointed it at the complainant, and pretended to shoot him. There was evidence that the complainant sped away and defendant followed closely behind, steering with one hand and holding the gun in the other hand. Defendant then sped up, pulled alongside the complainant's vehicle, extended her arm out the window, and fired one shot toward the complainant's vehicle before exiting the interstate. An independent witness testified that the complainant was never a threat to defendant, that defendant had space to exit the freeway during the altercation, and that neither vehicle attempted to "ram" or "make contact" with the other vehicle.

Although defendant asserted that the complainant was pursuing her and was going to harm her, there was sufficient evidence from which the jury could infer that defendant did not have an honest and reasonable belief that she was in imminent danger of death or serious bodily harm. *Kemp*, *supra* at 322. Further, it is well established that this Court will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *Wolfe*, *supra* at 514. See also *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998) ("absent exceptional circumstances, issues of witness credibility are for the jury, and the trial court may not substitute its view of the credibility for the constitutionally guaranteed jury determination thereof" [internal citation and quotation marks omitted]). The evidence was sufficient to sustain defendant's convictions.

III. MRE 608(b)

Defendant also argues that the trial court denied her a fair trial by excluding testimony concerning the complainant's veracity under MRE 608(b). We disagree. We review the trial court's decision to admit evidence for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). If there is an underlying question of law, we review that question of law de novo. *Id.*

On the third day of trial, defendant sought to present "Mr. Warrick" as a defense witness to attack the complainant's veracity. During cross-examination, the complainant had testified that he drove on Jefferson Road to 21 Mile Road before entering I-94, and did not drive on Sugar Bush Road before entering I-94. Defense counsel argued that Warrick's proposed testimony would show that the complainant "deliberately lied to say that he didn't get on Sugar Bush." In an offer of proof, defense counsel indicated the Warrick would testify that on the morning of the incident, he was driving on Sugar Bush Road toward I-94, approximately one mile from 21 Mile Road, when he observed a heavy, middle-aged man driving a burgundy Dodge Ram truck enter I-94 at 21 Mile Road from Sugar Bush Road. Warrick would further testify that the truck traveled in the wrong lane, swerved toward him, and followed him down Sugar Bush Road, while blowing his horn. Although Warrick could not positively identify the complainant as the driver, defense counsel argued that Warrick's description of the driver and his truck was consistent with the complainant. The trial court ruled that the evidence was inadmissible under MRE 608(b) and MRE 404(b).[1]

On appeal, defendant argues that, under MRE 608(b), Warrick should have been allowed to testify that the complainant drove on Sugar Bush Road to show that the complainant lied about not driving on Sugar Bush Road. MRE 608(b) provides, in pertinent part:

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of a crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

We disagree that the trial court abused its discretion in disallowing Warrick's testimony. First, the relevance of the proposed testimony was tenuous because Warrick was not able to identify the complainant as the driver of the truck on Sugar Bush Road. In discussing this matter, defense counsel merely noted that it was "probably" the same driver. Also, the testimony did not fit within the plain language of MRE 608(b). Indeed, that rule indicates that specific instances of conduct may be inquired into on cross-examination "concerning the character for truthfulness or

[1] Contrary to defendant's assertion in his brief, the trial court did give a "clear reason" for excluding the evidence and the parties and the court discussed the matter at length.

untruthfulness of another witness *as to which character the witness being cross-examined has testified*." *Id*. (emphasis added). Here, defendant was attempting to directly examine Warrick about specific instances of conduct, not to cross-examine him after Warrick had already testified about the complainant's character for truthfulness or untruthfulness. See, e.g., *Guerrero v Smith*, ___ Mich App ___; ___ NW2d ___; 2008 WL 4366037. The trial court was within its discretion in excluding the proffered testimony.

IV. Sentence

Defendant's last argument is that, even if she was sentenced within the sentencing guidelines range, she is entitled to resentencing because her sentences of six months in jail for felonious assault and discharge of a firearm are disproportionate. Defendant's sentences are at the lower end of the sentencing guidelines range of 2 to 17 months. This Court must affirm a sentence within the guidelines range absent an error in the scoring of the guidelines or reliance on inaccurate information in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004). On appeal, defendant has not demonstrated that the guidelines were erroneously scored or that the trial court relied on inaccurate information. Therefore, we must affirm her sentences.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter