

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STARLISA DELAINE¹,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 249193
Wayne Circuit Court
LC No. 03-002398-01

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant was convicted of armed robbery, MCL 750.529, following a bench trial. She was sentenced to 80 to 122 months in prison. Defendant appeals as of right. We affirm, but remand for the ministerial task of correcting the spelling of defendant's last name on the judgment of sentence. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is whether the prosecution presented sufficient evidence to support her armed robbery conviction. Defendant argues that there was insufficient evidence presented to conclude that defendant was armed. We disagree. This Court reviews the sufficiency of the evidence de novo and in the light most favorable to the prosecution, and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000).

Armed robbery has three essential elements: (1) an assault, (2) a felonious taking of property from the victim's presence or person, and (3) the defendant was armed with a weapon specified in the statute. MCL 750.529; *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Only the third element is at issue in this appeal. The victim's testimony established that defendant robbed him with a black handled knife. Defendant, holding a knife to the victim's throat, directed the victim to drive to an ATM. After arriving at the ATM, the victim jumped out of his car and ran to the police station next door, notifying the police that he had been robbed.

¹ The judgment of sentence and the appellate court docket sheet indicate defendant's last name is "Delaino." But the record clearly indicates that defendant's last name is actually "Delaine."

The police located defendant and searched her for the robbery weapon. During the search, a black handled knife fell from underneath defendant's clothing. Viewed in the light most favorable to the prosecution, the evidence was sufficient to convict defendant of armed robbery, as the trial court could have found beyond a reasonable doubt that defendant was armed.

Defendant counters that the victim's testimony was not credible. However, this Court gives deference to the trial court's determination of witness credibility. *Sherman-Huffman, supra* at 267. The trial court had the opportunity to observe the witnesses and to assess their credibility. The trial court found the victim's testimony to be more credible than that of defendant, and ruled accordingly. We defer to the trial court's assessment.

Although we affirm defendant's conviction and sentence, we remand for the ministerial task of correcting the spelling of defendant's last name on the judgment of sentence, which has defendant's last name as "Delaino." However, at trial, defendant and her counsel indicated that her last name is "Delaine," and the trial court specifically directed that the record should reflect this spelling. Therefore, defendant's last name on the judgment of sentence should be spelled "Delaine."

Affirmed, but remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski