

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JULIA MARIE HALE,

Defendant-Appellant.

UNPUBLISHED

November 29, 2005

No. 255765

Wayne Circuit Court

LC No. 04-000352-01

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

Defendant Julia Marie Hale appeals as of right from her bench trial conviction for felonious assault.¹ Defendant was sentenced to one year of probation with the first 30 days to be served in jail. We affirm.

I. Factual Background

On August 15, 2003, following the widespread power outage that affected the entire Northeast and Midwest, defendant cut into a long line of vehicles waiting to turn into a gas station. Although defendant testified that she unintentionally cut into the line at an intersection, she did not leave the line once she was made aware of her error.² Numerous other customers, who had waited in line for over an hour, testified regarding defendant's subsequent conduct.

When defendant first turned into the line, several cars behind her began to honk. Beth Klenczar exited her vehicle and approached the driver-side window of defendant's car. Ms. Klenczar yelled at defendant to go to the back of the line, but testified that defendant ignored her. Gerald Murphy also exited his vehicle and informed the gas station attendant that defendant had cut into the line. The attendant promised that defendant would not be allowed to get gas at his station and called the police. Mr. Murphy then approached defendant's vehicle. He yelled at defendant and told her that she would not be allowed to get gas at the station. However, she did

¹ MCL 750.82.

² Defendant testified that she suffers from an anxiety disorder and was unable to leave the line as the honking and the yelling of the other customers brought on a panic attack.

not acknowledge his presence. Defendant continued to move forward, even after Mr. Murphy walked in front of her car.³ Mr. Murphy asked defendant if she planned to hit him and defendant moved forward again. Defendant's car hit Mr. Murphy at knee level. He fell forward onto the hood of the car. Mr. Murphy stepped away and fell onto a grassy embankment. Defendant testified that she then pulled forward and parked next to the gas station attendant. Other witnesses testified that defendant continued to move forward toward the gas pumps, but was blocked by other vehicles. It is undisputed, however, that defendant made no inquiry into Mr. Murphy's condition.

II. Sufficiency of the Evidence

Defendant first contends that the prosecution presented insufficient evidence to support her conviction for felonious assault. We disagree. When reviewing a claim that insufficient evidence was presented to support a defendant's conviction, this Court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.⁴ "[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime."⁵

"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."⁶ Defendant does not challenge the trial court's findings that an assault with a dangerous weapon occurred. Defendant only contends that the prosecution presented insufficient evidence to establish, and the trial court erroneously found, that she intended to hit Mr. Murphy with her car. We review a trial court's findings of fact in a bench trial for clear error.⁷

The prosecution presented sufficient evidence for the trial court to find that defendant intentionally hit Mr. Murphy with her car. Defendant cut into a line of cars in which people had been waiting for over an hour to purchase gas. Defendant could have avoided the confrontation with Mr. Murphy by leaving the line. Instead, defendant continued to move forward until she hit Mr. Murphy. Two witnesses testified that defendant appeared to accelerate or "lunge" the car toward Mr. Murphy. While defendant testified that she could not leave the line due to the onset of a panic attack, we defer to the trial court's superior position to judge the credibility of the

³ Mr. Murphy testified that he only crossed in front of defendant's car to return to his own car, but other witnesses testified that Mr. Murphy stood in front of the car to block defendant's path.

⁴ *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

⁵ *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

⁶ *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

⁷ MCR 2.613(C); *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

witnesses.⁸ Viewed in the light most favorable to the prosecution, this evidence was sufficient to support defendant's conviction.

III. Judicial Bias

Defendant also contends that she was denied a fair trial, as the trial judge was biased against her, based his verdict on his opinion of her character, and shifted the burden onto defendant to establish that the assault was accidental. We disagree. As defendant did not seek to disqualify the trial judge based on her claim of bias,⁹ our review is limited to plain error affecting defendant's substantial rights.¹⁰

As a general rule, a judge will not be disqualified absent a showing of actual bias or prejudice.¹¹ Impartiality is presumed and the challenging party has the heavy burden of overcoming that presumption.¹² “[O]pinions formed by the judge on the basis of facts introduced or events occurring during the course of the current proceedings . . . do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.”¹³ Similarly, “[c]omments critical of or hostile to counsel or the parties are ordinarily not supportive of finding bias or partiality.”¹⁴

The trial judge's closing remarks were very critical of defendant. He described defendant as fundamentally dishonest, self-centered, inconsiderate and pathologically selfish. He also stated that defendant lacked compassion and etiquette. However, these comments were not a display of deep-seated antagonism against defendant. They were a fair description of defendant's conduct based on the evidence presented. While the trial judge may have formed a strong opinion of the defendant from her conduct, her conduct also supported the verdict.

Furthermore, contrary to defendant's assertion, the trial judge did not improperly shift the burden of proof onto defendant to negate the intent element of the charged offense. Rather, defendant raised the defense that the collision was accidental and the court found that her testimony in this regard was not credible. In light of the testimony of the numerous prosecution

⁸ *Avant, supra* at 506.

⁹ See MCR 2.003; *Bracco v Michigan Technological Univ*, 231 Mich App 578, 601 n 16; 588 NW2d 467 (1998).

¹⁰ *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

¹¹ MCR 2.003(B)(1); see also *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996).

¹² *Cain, supra* at 497.

¹³ *Id.* at 496, quoting *Liteky v United States*, 510 US 540, 555; 114 S Ct 1147; 127 L Ed 2d 474 (1994).

¹⁴ *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999).

witnesses, the court's finding was not in error. Accordingly, we find that defendant has not established that her conviction was based on any bias or partiality on the part of the trial judge.

Affirmed.

/s/ Alton T. Davis

/s/ E. Thomas Fitzgerald

/s/ Jessica R. Cooper