

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LUCY ANN PEACHEY,

Defendant-Appellant.

---

UNPUBLISHED

May 24, 1996

No. 175912

LC No. 93-003656-FH

Before: Sawyer, P.J., and Griffin and M.G. Harrison,\* JJ.

PER CURIAM.

Defendant appeals as of right her convictions by a jury of two counts of embezzlement by an agent, MCL 750.174; MSA 28.371. Defendant was sentenced to five years' probation, thirty days in jail, an additional 120 days on a tether, 100 hours of community service, and restitution of \$2,585 and \$4,102. We affirm.

Defendant first argues that there was insufficient evidence to support her convictions. We disagree. To review a claim of insufficiency of the evidence, this Court must consider the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have concluded that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hurst*, 205 Mich App 634, 640; 517 NW2d 858 (1994).

The elements of "embezzlement by an agent" include: (1) the money or personal property in question belonged to the principal; (2) the defendant had a relationship of trust with the principal because he was an agent, servant, employee, trustee, bailee or custodian of the principal; (3) the money or personal property in question came into the defendant's possession or under his control because of that relationship of trust; (4) the money or personal property was dishonestly disposed of or converted to the defendant's own use, or taken or secreted with intent to convert to his own use; (5) the act was done without the consent of the principal; and (6) at the time of the conversion or appropriation to his own use, the defendant intended to defraud or cheat the principal. *People v Wood*, 182 Mich App 50, 53; 451 NW2d 563 (1990).

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

The evidence clearly establishes that as the owner and sole officer and operator of Peachco Ltd. (an insurance corporation), defendant negotiated with the complainants as an insurance agent and performed various tasks on their behalf, that she was entrusted with their money and the responsibility of procuring and maintaining their insurance coverage, that she deposited their money into the corporate account with the intent to use those funds to save her corporation from going financially bankrupt and failed to obtain the promised insurance coverage for their businesses, and that the complainants never consented to such a dishonest disposal of their funds. We find that the prosecution presented sufficient evidence to prove each element beyond a reasonable doubt.

Defendant next argues that she was denied a fair trial as the result of erroneous and prejudicial jury instructions. In failing to raise an objection and/or request a curative instruction at trial, defendant has not preserved this issue for appellate review. We nevertheless find that the court properly instructed the jury concerning the law of agency, and therefore no relief is necessary to avoid manifest injustice. MCL 768.29; MSA 28.1052; *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993).

Finally, defendant argues that she is entitled to a new trial because she was denied effective assistance of counsel, stating that counsel was deficient in failing to present the defense of diminished capacity and/or insanity. However, because defendant failed to move for a new trial or an evidentiary hearing on this basis, our review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

To successfully prove that she was denied the effective assistance of counsel, defendant must establish that her counsel's performance fell below an objective standard of reasonableness and that the representation prejudiced defendant to the point of depriving her of a fair trial. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). Effective assistance of counsel is presumed, and defendant bears a heavy burden of proving otherwise. *People v Stanaway*, 446 Mich 643, 687; 521 Mich 557 (1994), cert den sub nom *People v Caruso*, 513 US \_\_; 115 S Ct 923; 130 L Ed 2d 802 (1995). Furthermore, counsel is given great latitude regarding matters of trial strategy, and in hindsight, this Court is unwilling to substitute its judgment for that of counsel. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987).

After reviewing the record, we find no evidence that lends support for defendant's argument, and in the absence of a *Ginther* hearing, we are unable to make any determination concerning the propriety of counsel's decision to pursue one trial strategy as opposed to another. Defendant has failed to overcome the presumption that she was afforded effective assistance of counsel. *Stanaway, supra* at 687.

Affirmed.

/s/ David H. Sawyer  
/s/ Richard Allen Griffin

/s/ Michael G. Harrison