

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEBORAH FAYE CORNELIUS,

Defendant-Appellant.

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UNPUBLISHED

September 20, 1996

No. 179507

LC No. 93-00130

Before: Gribbs, P.J., and Saad and J. P. Adair,\* JJ.

PER CURIAM.

Defendant appeals her bench trial conviction of embezzlement by an agent, MCL 750.174; MSA 28.371. The judge sentenced defendant to probation and ordered her to pay \$1,313.66 in restitution. We reverse.

Defendant was a probation officer for the 30th District Court in Highland Park. Initially, the alcohol fines, which were statutorily required for individuals who were convicted of or pleaded guilty to DUI offenses, were handled by an outside source. Subsequently, a new system was implemented by the court in which defendant performed the assessments. The fees for these assessments were retained by defendant. When it was discovered that defendant kept the money, she was charged with embezzlement. Although defendant contended at trial that she had the court's permission to keep the money, she was convicted.

I.

Defendant argues that the trial court abused its discretion in *sua sponte* recalling a prosecution witness after both parties had rested, because this gave the prosecutor an unfair advantage and because it was not for the presentation of newly discovered, material evidence. We disagree.

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

It is within the trial court's discretion to reopen a case for the presentation of additional proofs, and in determining whether to do so, there are several factors which should be considered, including whether surprise or undue advantage would result therefrom, and whether the evidence sought to be admitted is newly discovered and material. *People v Van Camp*, 356 Mich 593, 602; 97 NW2d 726 (1959); *People v Keeth*, 193 Mich App 555, 560; 484 NW2d 761 (1992). Pursuant to MRE 614, the trial court possesses significant discretion to reopen a criminal case for the introduction of further evidence even after the parties have rested. *People v Betts*, 155 Mich App 478, 481-482; 400 NW2d 650 (1986) (*quoting* 75 Am Jur 2d, Trial, §158, p 246). We have carefully reviewed the record and find no abuse of discretion in the trial court's sua sponte recalling and re-examination of Judge Bledsoe.

## II.

Defendant next argues that the trial court's verdict was not based on sufficient evidence and was against the great weight of the evidence. The statutory crime of embezzlement is a specific intent crime requiring a showing that the defendant acted with the intent to defraud or cheat the principal. *People v Gadiant*, 185 Mich App 280, 186; 460 NW2d 896 (1990); *People v Word*, 182 Mich App 50, 53; 451 NW2d 563 (1990); CJI2d 27.1. Defendant challenges the evidence as to the intent element.

We need not address the sufficiency claim because, after reviewing the whole body of proofs, we conclude that the trial court's verdict was indeed clearly against the great weight of the evidence. Defendant testified that when she first started the in-house alcohol assessment program she told the chief judge that she was going to keep the money and that she believed that he agreed. Defendant believed that it would be appropriate for her to keep the alcohol assessment fees once she began a new assessment program because the court never received the fees under the old program. Moreover, the court never expended any money to implement the new program -- defendant personally absorbed the cost of obtaining the certification she needed to perform the assessments, as well as the costs for the computer discs needed to perform the assessments once she began computerized testing.

Other evidence about defendant's actions also supports the conclusion that she had no *intent* to embezzle. Although the probation office collected money from probationers for fees, costs, and restitution (as well as the alcohol assessment fees), per defendant's instructions, the only money which was not turned over to the court was the alcohol assessment fees. Defendant provided probationers with a signed receipt when they paid their alcohol assessment fees. Defendant's receipt book was kept on her desk and was also used by other individuals in the probation office. Defendant kept a copy of the receipts and noted all payments in the individual's probation file. Defendant also claimed the income earned from these assessments on her tax returns each year.

On this evidence, the overwhelming inference is that defendant believed that she was authorized to keep the alcohol assessment fees which she collected.<sup>1</sup> Because there was substantial evidence that defendant believed she was entitled to keep the money, she could not have had the requisite intent to defraud or cheat her employer. We therefore conclude that defendant's conviction of embezzlement

was manifestly against the great weight of the evidence. The trial court is directed to enter a judgment finding defendant not guilty.

Reversed and remanded. We do not retain jurisdiction.

/s/ Roman S. Gribbs

/s/ Henry William Saad

/s/ James P. Adair

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<sup>1</sup> Even the trial court concluded that defendant believed that she was entitled to the assessment fees she collected. The trial court judge stated:

I think indeed she may well have testified to what she remembers to be the truth when she told us that she had gotten permission from Judge Bledsoe to keep the money. I think to this day she probably believes that, and probably believes that that's what he said.