STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACY LYNN LEITER,

Defendant-Appellant.

UNPUBLISHED
November 18, 1997

No. 197663
Ionia Circuit Court
LC No. 96-001054-FH

Before: Saad, P.J., and Holbrook, Jr., and Doctoroff, JJ

PER CURIAM.

Defendant appeals by right from her jury conviction of embezzlement over $100, MCL 750.174; MSA 28.371. We affirm.

I

Defendant argues that the trial court abused its discretion by admitting summaries of videotaped evidence which were later shown to be partially inaccurate. MRE 1006 allows admission of summaries of "voluminous recordings" where the recordings themselves are admissible as evidence. *Hofman v Auto Club Ins Ass'n*, 211 Mich App 55, 100; 535 NW2d 529 (1995), citing *White Industries v Cessna Aircraft Co*, 611 FSupp 1049, 1070 (WD Mo, 1985). A precursor to the admission of summaries is that they be accurate. *Hofman*, at 100. The accuracy of the summaries may be based on "assumptions" where there is an evidentiary basis to support them. *Id*. at 102. Here, the witness who prepared the summaries eventually admitted that he had no basis to support his allegation that defendant was fabricating bottle redemptions because he never inventoried the bottle returns. However, in view of the entire trial and the abundance of properly admitted evidence, this error was harmless and did not result in manifest injustice, MCL 769.26; MSA 28.1096. The videotapes also showed dozens of scenes in which defendant took store items without paying for them, where she gave items to others without charging them, and where she simply took money and put it in her purse. The evidentiary error was harmless.

II

Defendant also contends, incorrectly, that that the trial judge abused his discretion in denying her motion to disqualify himself. Pursuant to MCR 2.003(B), a judge is disqualified when he cannot hear a case *impartially*. *Cain v Dep't of Corrections*, 451 Mich 470, 494; 548 NW2d 210 (1996). One such instance is when the judge "is personally biased or prejudiced for or against a party." *Id.* at 494-495. The burden of establishing actual bias or prejudice lies with the moving party. *People v Houston*, 179 Mich App 753, 756; 446 NW2d 543 (1989). Here, defendant did not meet her burden.

It is true that the trial judge had recused himself in a previous, unrelated action involving the son of the key prosecution witness in this case. However, as the trial judge explained, the earlier case was a divorce matter, the judge's former law partner represented the witness' son in the matter, and the judge would have been acting as finder of fact in the divorce case. (i.e. unlike here, where there was a jury). The trial judge need not have recused himself here.

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff