

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ILENE SESSION,

Defendant-Appellant.

UNPUBLISHED

August 25, 2005

No. 253795

Wayne Circuit Court

LC No. 02-003708-01

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

At the conclusion of a jury trial, defendant was convicted of three counts of embezzlement over \$1,000 but under \$20,000, MCL 750.174(4)(a), and was sentenced to two to five years' probation. Defendant appeals as of right, challenging the trial court's denial of her request for the appointment of an expert witness at public expense. We affirm.

In late 2001, defendant worked for the tax department of the Wayne County treasurer's office. Her job was to review paperwork from various departments including the tax tribunal and board of review to determine if certain property taxpayers were due a refund. In October 2001, two checks were issued to a Mr. France in the amounts of \$1,117.56 and \$1,025.23. A third check was issued to Mr. France in November in the amount of \$3,123.17. Mr. France, however, did not own property in Wayne County and was not owed any amount of money from the county for property tax refunds.

The first two checks were cashed without incident. After Mr. France deposited the third check and used those funds, a stop payment was placed on the check by defendant.

Defendant stated she put the stop payment on the check because, in her review of the documentation, she found that she did not have the proper paperwork to support the check. All of the reports in the tax department indicate that defendant prepared the paperwork requesting all three checks. Defendant, however, stated that she did not recall requesting the first two checks and the third check request was not prepared by her because she did not have the proper documentation, which was why she placed a stop payment on the check. Defendant also repeatedly stated that she did not know and had never met Mr. France.

Mr. France, however, testified that he and defendant had dated for a time and were gambling partners. As gambling partners, Mr. France loaned money to defendant. He testified

that the three checks were repayments of the personal loans to defendant. He also testified that defendant placed a stop payment on the third check because she asked him for more money out of those funds and he refused to give it to her.

Mr. France also testified that he had been to defendant's house. He provided a general description of the location of her house, her car, and the type of couch and television in the house. He also testified that defendant had personally given him letters or cards. Three of those letters/cards were entered into evidence at the trial.

In a pre-trial motion, defendant requested an adjournment so that she could get a court appointed handwriting expert to testify that the letters/cards were not in her handwriting. The trial court denied that motion. The prosecution had also requested a handwriting expert, and that expert and his report were excluded because the trial court found it to be inconclusive. The trial court also denied defendant's request because it was originally made to rebut the prosecution's expert and not for independent reasons. The trial court stated that defendant had been made aware of the letters/cards and there was no surprise concerning them.

The trial court also limited testimony concerning the letters/cards. The prosecution was not allowed to elicit testimony concerning recognition of the handwriting. The court only allowed testimony concerning Mr. France personally receiving the cards from defendant. To rebut that testimony, defendant stated that she did not know and had never met Mr. France.

A trial court's decision whether to appoint an expert is reviewed for an abuse of discretion. *People v Lueth*, 253 Mich App 670, 689; 660 NW2d 322 (2002). "An abuse of discretion will be found only when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made." *Id.*

Authorization for the payment of expert witness fees for an accused is statutory. MCL 775.15. The statute leaves that decision to the discretion of the court when the accused is able to show "that there is a material witness in his favor within the jurisdiction of the court, without whose testimony he cannot safely proceed to trial . . ." *Id.* Additionally, the defendant must show a nexus between the facts of the case and the need for the expert, and there must be an indication that the expert testimony would likely benefit the defense. *Id.*; see, also, *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995).

In the present case, there was no testimony regarding the handwriting on the letters/cards. Rather, Mr. France testified that he received those letters/cards from defendant when she personally handed them to him. The prosecution was not allowed to elicit any testimony concerning recognition of defendant's handwriting. Defendant's rebuttal testimony was that she had never met Mr. France and did not know him.

Defendant's request to the trial court was to appoint an expert witness to respond to the report prepared by the prosecutor's witness. That report and the prosecutor's expert witness were excluded. Defendant also argued to the trial court that the purpose was to show that the handwriting was not hers. Such a request did not provide an indication that the expert testimony would benefit the defense because the handwriting itself was not at issue before the jury. Rather the only issue for the jury concerning the letters/cards was the credibility of the witnesses where

the witness testified he met with defendant and personally received the cards from her, and where defendant testified that she had never met that witness.

The trial court did not abuse its discretion in denying defendant's request for an expert handwriting witness. Defendant was able to safely proceed to trial because the letters/cards were not the only issue of credibility before the jury, and the handwriting itself was not an issue. The issue for the jury was one of credibility as to whether defendant had ever met the witness. Defendant had the ability to and did mount a defense on her own behalf to contradict the prosecution's witness.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens