STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 28, 2010
v	No. 291525 Oakland Circuit Court
HANAN DALLO, Defendant-Appellant.	LC No. 08-220979-FH

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Defendant appeals by right her convictions of embezzlement of $100,000 or more, MCL 750.174(7), embezzlement of $20,000 or more, MCL 750.174(5)(a), conspiracy to embezzle $20,000 or more, MCL 750.157a, and use of a computer to commit a crime, MCL 752.796. Defendant was sentenced to four to 20 years' imprisonment for her embezzlement of $100,000 or more conviction, four to ten years' imprisonment for her conspiracy conviction, four to ten years' imprisonment for her embezzlement of $20,000 or more conviction, and four to 20 years' imprisonment for her use of a computer to commit a crime conviction. We affirm.

Defendant first argues that the trial court abused its discretion when it admitted inaccurate summaries of evidence under MRE 1006. We disagree. Generally, we review the trial court's evidentiary decisions for an abuse of discretion. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010). An abuse of discretion occurs only when the court chooses an outcome outside the principled range of outcomes. *Id.*

In her brief on appeal, defendant argues that all the summaries admitted were objectionable. However, she only specifically identifies one summary which listed the checks that the prosecution and Hartman & Tyner, Inc. believed to be fraudulent. "An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). So, we limit our analysis to the summary of checks defendant specifically identified in her brief on appeal.

MRE 1006 states:

> The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart,

> summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court. [MRE 1006.]

Evidence submitted pursuant to MRE 1006 must meet the following four requirements:

> First, the summary must be of "voluminous writings, recordings or photographs which cannot be conveniently examined in court." . . .
>
> Second, . . . the underlying "writings, recordings or photographs" must themselves be admissible in evidence. . . .
>
> Third, the originals or duplicates of the underlying materials must be made available for examination or copying by the other parties, at a reasonable time and place. . . .
>
> Finally, . . . a summary must be an *accurate* summarization of the underlying materials. [*Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 100; 535 NW2d 529 (1995), quoting *White Industries v Cessna Aircraft Co*, 611 F Supp 1049, 1070 (WD Mo, 1985) (emphasis in original).]

A summary based on assumptions may be admitted when the assumptions have an evidentiary basis. *Hofmann*, 211 Mich App at 101-102.

In this case, defendant accepts that the summary at issue concerned documents which were voluminous, that the underlying records were admissible, and that the records were made available to her at a reasonable time and place. Defendant argues, however, that some of the checks listed in the summary did not have a corresponding invoice or purchase order; therefore, the summary was inaccurate. As the prosecution argues on appeal, defendant appears to be questioning the summary because it was previously titled "Summary of Embezzlement," which would be improper because the summary would contain a legal conclusion. For this reason, the trial court instructed the prosecution to change the title of the summary to "Summary of Checks and Related Invoices." With the name of the summary changed, defendant's arguments are without merit. Defendant does not argue that the checks themselves did not exist or did not contain the information summarized. Instead, she argues that the corresponding purchase order or invoice may not exist. As a result, defendant's argument relates to the legal significance of the summary rather than its accuracy. Therefore, the trial court did not abuse its discretion in admitting the summary.

Even if the trial court had abused its discretion in admitting the summary, the error was harmless. Given the significant amount of evidence submitted against defendant during the trial, this evidence likely did not affect the outcome of the case. Defendant argues that other employees of Hartman & Tyner, Inc., presumably Thomas Cianciolo, head of central maintenance, Pearl Taylor, an administrative assistant at central maintenance, and Gary Foster, director of operations, also had improper relationships with Joe Fakih and USA Construction. Defendant argues that their improper relationships might demonstrate that defendant was not culpable. But they admitted their improper relationships with Fakih at trial. Moreover, their relationships do not necessarily affect whether defendant was guilty. The evidence presented at

trial showed that defendant had the ability to write checks and alter purchase orders and invoices through her position at Hartman & Tyner, Inc. In addition, the evidence indicated that she did in fact alter old invoices on multiple occasions and issued checks to USA Construction that she should not have. Moreover, the evidence indicated that she received over a million dollars from Fakih between December 2002 and April 2007, whereas Cianciolo, Taylor and Foster received significantly less money from Fakih. The summary of checks was a small portion of the evidence presented at trial. Even if the trial court erred in admitting the summary, the error was harmless.

Defendant's second issue on appeal is that the trial court erred in allowing a late endorsement of a witness, Detective James Dziedzic of the Southfield Police Department, as an expert. We again disagree. We review a trial court's decision to permit or deny the late endorsement of a witness for an abuse of discretion. MCR 6.201(J); *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). As noted above, an abuse of discretion occurs only when the court chooses an outcome outside the principled range of outcomes. *Feezel*, 486 Mich at 192.

MCR 6.201 governs discovery in criminal cases. MCR 6.201 states:

> (A) Mandatory Disclosure. In addition to disclosures required by provisions of law other than MCL 767.94a, a party upon request must provide all other parties:
>
> > (1) the names and addresses of all lay and expert witnesses whom the party may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party for interview; the witness list may be amended without leave of the court no later than 28 days before trial;
> >
> > * * *
> >
> > (3) the curriculum vitae of an expert the party may call at trial and either a report by the expert or a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion[.] [MCR 6.201.]

A party may modify its witness list through a showing of "good cause" and leave of the court. MCR 6.201(I); MCL 767.40a(4).

The trial court did not abuse its discretion in allowing the late endorsement of Dziedzic as an expert. In her brief on appeal, defendant suggests that she had no knowledge of Dziedzic before his being called as a witness, but the prosecution included Dziedzic on its witness lists filed on June 9, 2008, and October 3, 2008. Consequently, defendant was aware that Dziedzic was a potential witness. Defendant further argues that Dziedzic should have been designated as an expert on the prosecution's witness list and therefore he could not be called as an expert witness. Neither MCR 6.201 nor MCL 767.40a requires either party to designate whether a

witness is a lay witness or an expert witness.[1] See *People v McLaughlin*, 258 Mich App 635, 657; 672 NW2d 870 (2003). Although MCR 6.201(A)(3) would require the prosecution to disclose Dziedzic's curriculum vitae if defendant requested it, there is no evidence in the record that defendant made such a request. Moreover, the prosecution provided defendant with a copy of Dziedzic's report summarizing his analysis of defendant's hard drive. Defendant finally argues that the prosecution failed to show good cause for having Dziedzic testify as an expert. The prosecution indicated that it did not think it would call Dziedzic, but after defendant's cross-examination of the prosecution's witnesses, it concluded he should testify. Defendant recognized the potential need for calling an expert based on what occurred in the case as indicated in defendant's own witness list, in which defendant stated:

> In addition, the Defendant continues to exert [sic] his right under the court rules to amend this witness list by adding an expert at a later time. This pleading is not and cannot, under court rules, state statutes and current case law, to be used to prevent the Defendant and Defense counsel from hiring experts to provide testimony depending upon either further investigation and/or the Prosecution's Case in Chief.

Given that Dziedzic was listed as a potential witness, the prosecution disclosed before trial the substance of Dziedzic's testimony in his report, and defendant's own recognition that amendments might be necessary based on the presentation of evidence during the trial, we conclude the trial court did not abuse its discretion in endorsing Dziedzic as an expert witness.

In any event, even if Dziedzic was not properly endorsed as an expert, the trial court's error was harmless as Dziedzic's testimony helped defendant. Dziedzic testified regarding what he did with defendant's hard drive from Hartman & Tyner, Inc., and he further testified that he did not find any evidence of embezzlement. He also testified that he saw remnants of Yardi invoices in the temporary Internet files, but that information neither helped nor hurt defendant. Consequently, Dziedzic's testimony that he found no evidence of embezzlement on defendant's hard drive helped defendant; it was not prejudicial. As a result, any error committed by the trial court permitting Dziedzic to testify as an expert was harmless. MCR 2.613(A); MCL 769.26.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Jane M. Beckering

[1] We note, however, that if MCR 6.201(A)(1) did not intend to require identification of expert witnesses that a party might present at trial, it would not have been necessary to include the descriptors "lay and expert" between "all" and "witnesses."