

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ANGELA MARIE COCOZZOLI,

Defendant-Appellant.

UNPUBLISHED
November 2, 2001

No. 225564
Oakland Circuit Court
LC Nos. 99-167968-FH
99-167970-FH
99-167971-FH

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

PER CURIAM.

Defendant appeals as of right her convictions and sentences following a jury trial. The jury convicted defendant of three counts of embezzlement by an agent, MCL 750.174, and the trial court sentenced defendant as an habitual offender, second offense, MCL 769.12, to one to fifteen years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant worked for Timothy Bearden's financial planning company. She was hired in October 1998 as an assistant. In November 1998, she became independently responsible for financial matters for the company. In January 1999, Bearden discovered questionable charges on one credit card account. After publicizing the discrepancies to those in the office, defendant came to Bearden and told him that she had written checks against the account. Defendant told Bearden that the father of her child, whom she had given up for adoption, was extorting money from her, threatening to go after the child if she did not pay.

Defendant testified that she had spoken to Bearden about the fact she had financial problems. After attending a retirement financial planning class he taught, she stayed after class and helped Bearden pack up. He offered her a ride to her car, and she accepted. Bearden told her that to help solve her financial problems, she could gratify him. Defendant testified that she performed oral sex for Bearden. The next day, he gave her a check for the credit card account and told her she could write it out for a couple of hundred dollars. On another occasion after a class and on four mornings at the office, defendant performed oral sex at Bearden's request. Following these interludes, defendant wrote out checks in her mother's name and forged Bearden's signature.

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

The jury convicted defendant of the embezzlement charges. Defendant appeals. She first argues that the trial court's conduct during trial demonstrated bias against defense counsel. We disagree.

The trial court's discretion and power while conducting a trial is wide, but not unlimited. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). The record must be reviewed as a whole to determine whether the trial court was biased against a defendant. *Id.* Where the trial court's conduct or comments unduly influence the jury and deny the defendant a fair and impartial trial, the conduct pierces the veil of impartiality. *Id.*

The court is permitted to question a witness to clarify testimony or elicit additional relevant information. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). However, it "must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial." *Id.* To determine whether the court's questioning was improper, the test is whether the questions and comments by the judge may have unjustifiably aroused suspicion in the jurors' minds concerning a witness' credibility and whether the jury's decision could possibly have been influenced by partiality. *Id.*

Defendant complains about the trial court's questioning of Bearden, the result of which laid the foundation for the prosecution's admission of defendant's job application and W-2. Although the questioning led to the admission of the documents, as sought by the prosecution, there is nothing from the questions to suggest partiality on the part of the trial court or that the jury would have thought the judge was biased.

Next, defendant argues that the trial court's reaction to defense counsel's questioning of a witness was improper. The prosecution offered the testimony of Jackie Gretzinger, who worked for Bearden. Gretzinger offered testimony that contradicted defendant's testimony regarding attending Bearden's classes and remaining after class with Bearden. On cross-examination, defense counsel attempted to impeach Gretzinger by eliciting testimony regarding the relationship between her and Bearden, suggesting it was an intimate relationship, rather than solely professional. Defense counsel asked Gretzinger a question about her conduct at a party and whether it was a party where she took off her shirt. The prosecution objected, and the court responded, "Oh counsel—objection sustained." This isolated comment cannot be construed as evidence of bias against defense counsel.

Defendant also complains about the trial court's comments when sustaining an objection to defense counsel's questioning of a witness. Defense counsel attempted to elicit hearsay testimony from the witness. We find no evidence of bias on the part of the trial court in sustaining the prosecution's objection and directing defense counsel to discontinue the line of questioning.

Finally, defendant argues that the trial court's ruling sustaining the prosecution's objection to defense counsel's questioning of Gretzinger denied him his right to a fair trial. There exists a constitutional right to confront accusers. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1998). Defendants are guaranteed a reasonable opportunity to challenge the credibility of a witness. *Id.* The trial court has the discretion to impose reasonable limits on cross-examination on the basis of concerns regarding harassment, prejudice, issue confusion, or questioning that is repetitive or only marginally relevant. *Id.*

The trial court stopped defense counsel's questioning of Gretzinger while he was attempting to impeach her by asking about her behavior at a party. Defendant has not established the relevancy of the question to Gretzinger's credibility. The trial court's limitation of the cross-examination was not erroneous.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker