

STATE OF MICHIGAN  
IN THE 81ST DISTRICT COURT  
FOR THE COUNTY OF IOSCO

PEOPLE OF THE STATE OF MICHIGAN

File 16-707-FY

Plaintiff

v.

CATHERINE ANDERSON

Defendant

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE ALLEN C. YENIOR

Tawas City, MI - Tuesday, August 23, 2016

APPEARANCES:

For the People:

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Co-Counsel for Defendant:

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1 Tawas City, Michigan

2 August 23, 2016 - 4:16 p.m.

3 THE COURT: May want to get Mr. Rapp in here.

4 MR. RAPP: Well, Judge, I'm just going to let you  
5 know, I'm just going to probably sit second chair.

6 THE COURT: Sure.

7 MR. RAPP: And let Mr. Nichols handle it so that  
8 the issue of whether I am, or am not, disqualified isn't  
9 involved. And I don't think Mr. Nichols has a problem with  
10 that.

11 MR. NICHOL: I do not, for the purposes of the  
12 pre-lim. Although, depending on where we're at the end of  
13 the day, I may want to make a special record about what I  
14 believe to be the issue is and what the facts are about  
15 that. I would like to introduce associate attorney,  
16 Stephanie Tzafaroglou, from our law office who is seated  
17 next to Mr. Rapp's right.

18 THE COURT: Okay.

19 MR. NICHOL: The only other matter I have, Your  
20 Honor, is move to sequester any witnesses.

21 THE COURT: All witnesses will be sequestered.

22 MS. PALUMBO: The only witnesses at this point that  
23 I plan on calling are Sergeant Johnson and Ms. Hackborn.

24 THE COURT: Okay. Give me just a second. I want  
25 to finish some notes on this other--okay, who are we calling

1 first?

2 MS. PALUMBO: Jane Hackborn.

3 THE COURT: Raise your right hand, please. Do  
4 solemnly swear or affirm that the testimony you're about to  
5 give is the truth, the whole truth, and nothing but the  
6 truth under penalty of perjury?

7 JANE HACKBORN: I do.

8 THE COURT: Have a seat and state your name  
9 please.

10 THE WITNESS: Jane Hackborn.

11 THE COURT: Go ahead.

12 JANE HACKBORN

13 Called as a witnesses at 4:18 p.m., testified as follows:

14 DIRECT EXAMINATION

15 BY MS. PALUMBO:

16 Q What is your occupation?

17 A I am a senior tax specialist for Iosco County Treasurer.

18 Q How long have you worked for the Iosco County Treasurers?

19 A Since April 4th, 2005.

20 Q In the--in the capacity of your work, is it your  
21 responsibility to ever count money?

22 A Yes.

23 Q And, does the Treasurer's Department have cash in the  
24 office?

25 A Yes.

1 Q We want to draw your attention back in time to the--how much  
2 cash for change is maintained in the Treasurer's Office?

3 MR. NICHOL: I'm going to object and ask for  
4 specificity. Are we talking about a given week, daily,  
5 monthly?

6 THE COURT: Okay. Please?

7 Q On a daily basis?

8 A We start our day with four hundred dollars.

9 Q Okay. And, was that the case in 2007 as well?

10 A Yes?

11 MR. NICHOL: I object. I have got a complaint  
12 that charges embezzlement with a time period from 2011 to  
13 2014 and, it's not so much a variance issue, but it would be  
14 a statute of limitations issue for them to get into anything  
15 before that six-year period of when the complaint was filed.

16 THE COURT: Ms. Palumbo?

17 MS. PALUMBO: Your Honor, it's all relevant  
18 information as to systems that were in place, knowledge,  
19 identity.

20 THE COURT: You need to go back to 2007 to  
21 establish that?

22 MS. PALUMBO: Yes, Your Honor.

23 THE COURT: You have to?

24 MS. PALUMBO: Yes.

25 THE COURT: Why do you have to?

1 MS. PALUMBO: Because that's when the incidents  
2 began and continued on to the 2011-2012.

3 MR. NICHOL: Now I have an objection for saying  
4 that's when the incidents began. None of that was relevant,  
5 unless it's charged. The complaint says 2011 to 2014. I  
6 can only infer, as a lawyer when I read that, it's because  
7 that's anything that they have to try to prove within the  
8 statute of limitations. And I don't have any 404B notes, I  
9 might add.

10 MS. PALUMBO: Relevance, Your Honor, is as it  
11 relates to the matter. So it's not saying that that's the  
12 basis of the underlying charges, but it is relevant to the  
13 charges as it relates to a preliminary examination, I don't  
14 believe that the 404B is relevant as it relates to the  
15 preliminary examination.

16 THE COURT: But, again, what's the relevance of  
17 how much money they had in the till at the beginning of the  
18 day in 2007, 2008, 2009, 2010, if it's the same as in 2011--

19 MS. PALUMBO: Again, Your Honor, it goes to a set  
20 of circumstances regarding knowledge of the public funds and  
21 an understanding of the nature of the allegations--

22 THE COURT: Who's knowledge of the public funds?

23 MS. PALUMBO: The defendant's, Your Honor.

24 THE COURT: Mr. Nichols?

25 MR. NICHOLS: Your Honor, the Supreme Court

1 modified the rules for preliminary examinations in MCR  
2 6.110, May 27, 2015, and specifically said that the rules of  
3 evidence shall apply at a preliminary examination. So this  
4 stuff that 404B doesn't apply at pre-lim, I don't know from  
5 where that--

6 THE COURT: I've never seen that either.

7 MR. NICHOLS: All that's relevant from any  
8 witnesses, what supports probable cause within this charging  
9 document before the Court.

10 THE COURT: I'm going to sustain.

11 MS. PALUMBO: Your Honor, if I may?

12 THE COURT: Go ahead.

13 MS. PALUMBO: I can, as far as it relates to 404B,  
14 404B is specifically related to trial, not preliminary  
15 examination and so, the same with the rules of evidence  
16 apply. I'm not saying that the rules of evidence don't  
17 apply, I'm saying that 404B specifically relates to trial,  
18 not preliminary examination.

19 MR. NICHOLS: I'm sorry. Evidence of other crimes,  
20 wrongs, or acts is not admissible to prove the character of  
21 a person in order to show action in conformity therewith. I  
22 missed the part where it says for purposes of trial only.

23 MS. PALUMBO: That would be in two, subsection  
24 two. The prosecution in a criminal case shall provide  
25 reasonable notice in advance of trial or during a trial if

1 the Court excuses pre-trial notice on good cause. So, it's  
2 in specific reference to trial, Your Honor.

3 MR. NICHOLS: I don't think so, because B1 says--  
4 one sentence at the beginning of the rule, what I just read,  
5 and nowhere in B1 does it say that's for purposes of trial  
6 only. And, again, 6.110 says the rules of evidence apply at  
7 preliminary exam.

8 THE COURT: Okay. And I'm still not seeing the  
9 relevance of 2006 or 7.

10 MS. PALUMBO: Your Honor, If I may present to the  
11 Court, if the understand of, again, the elements of the  
12 embezzlement by the public official, one of the elements is  
13 that the defendant knew that the money was public property.  
14 The fact that there were specific discussions in 2007 and  
15 2008 and statements by the defendant that she was  
16 specifically instructed not to take that money for personal  
17 use is entirely relevant to the matter before the Court.

18 THE COURT: Okay. With regards to that issue,  
19 that limited issue?

20 MR. NICHOL: If I understand, it is what we are  
21 talking about would be two totally, separate acts or courses  
22 of conduct.

23 THE COURT: Okay. Well, why don't we take the  
24 testimony and we can deal with the issue of the objection at  
25 the conclusion of the testimony and you strike anything that

1 would appear to be irrelevant or inadmissible.

2 BY MS. PALUMBO:

3 Q The question was, back in 2007 you had cash in the  
4 Treasurer's Office?

5 A Yes.

6 Q And, how was that--how was that handled?

7 A There was two separate cash boxes. One was for  
8 certifications, that was kept up front. And then there was a  
9 cash box that we did delinquent taxes and all the other  
10 county monies.

11 Q Okay. And you mentioned the issues of four hundred dollars,  
12 where were that--where was that four hundred dollars kept?

13 A That would be in the safe overnight and then in our--the  
14 main cash box.

15 Q Okay. And was all four hundred dollars in the main cash  
16 box? Say during the day?

17 A Yes. Well, one hundred of it would go up front to wait on  
18 people--

19 Q Okay. That's my question to you, so can you please describe  
20 how that money was held?

21 A In the front of the--in the front office where we would  
22 start the day, there would be four tens, seven fives,  
23 sixteen ones, six dollars in quarters, a dollar fifty in  
24 dimes, a dollar twenty-five in nickels, and twenty-five  
25 pennies. That would go up front for us to conduct business



1 throughout the day and the rest of it would be in the little  
2 box in the back of the office.

3 Q And so, what was the balance in the back that was to be--the  
4 four hundred dollars?

5 A The rest, whatever that adds to up front, the balance of  
6 that would be in that box.

7 Q And, would there ever be a reason to go back and get that?

8 A If you needed to make change.

9 MR. NICHOLS: I'm sorry, get that what? I don't  
10 understand the question.

11 MS. PALUMBO: Get that--into those additional  
12 funds.

13 THE WITNESS: If you needed to make change, if  
14 someone came and paid with a large bill, or sometimes other  
15 offices would come and ask to change a hundred or--

16 Q Did there come a point in time where you had a concern  
17 regarding missing cash?

18 A Yes.

19 Q And, what was the nature of that concern?

20 A Cathy's mom got called into emergency surgery or--before she  
21 went to leave, she just acted very strange--

22 MR. NICHOLS: I'm going to object. Cathy, as in  
23 Cathy who, and on what foundation does the witness have this  
24 testimony?

25 THE COURT: Ms. Palumbo?

1 MS. PALUMBO: I was going to follow up with that  
2 when she finished answering the question.

3 THE COURT: Go ahead.

4 BY MS. PALUMBO:

5 Q You reference Cathy, who is Cathy?

6 A Cathy Anderson.

7 Q And, do you see Cathy Anderson in the courtroom today?

8 A Yes.

9 Q And, can you please point her out for the Court?

10 A Next to Gary Rapp in the black and white.

11 THE COURT: Noted.

12 BY MS. PALUMBO:

13 Q And what, what was her position? How did you know her?

14 A Co-worker.

15 Q What's that?

16 A She worked in the office with me.

17 Q Okay. She worked in the Treasurer's Office? And is this  
18 Iosco County?

19 A Yes.

20 Q So what was it that you observed?

21 A Sure-someone called her and said that her mother had gone  
22 into the Emergency Room and she acted so strangely before  
23 she left. She was moving money from the certification box to  
24 the other box and I was like, "Cathy, just go, I mean, I'll  
25 take care of--just leave and go help your mom."

1 Q What is the certification box?

2 A That's where we kept money to--if Register of Deeds comes  
3 to--we have to certify a deed that there are no delinquent  
4 taxes, we would stamp a deed and collect a dollar and also  
5 if we did a printout for history, all that money would be  
6 kept separate in this little box up front and we would just  
7 hand tally it and do a receipt at the end of the month. And  
8 then the following day she was gone, that total she was  
9 missing out of that box, which was another red flag to me.

10 Q Okay.

11 A I mean, it's odd.

12 UNIDENTIFIED SPEAKER: Judge, while she's up  
13 there, may I just--

14 THE COURT: Sure, yeah, yeah. Absolutely.

15 (At 4:30 p.m., PX1, PX2 marked)

16 BY MS. PALUMBO:

17 Q I'm showing you what's been marked as People's Proposed  
18 exhibit one and People's Proposed exhibit two. What is  
19 People's Proposed exhibit one?

20 A These were the sheets that we would make each week, Monday  
21 through Friday, and keep in that little box and this total  
22 sheet would be there as well.

23 Q Okay. So, this, you said this, you're referencing exhibit  
24 two? Is the total sheet?

25 A Yes.

1 Q Okay.

2 A For the month.

3 Q Okay. So, and do you recognize these?

4 A What are these?

5 Q Those are the sheets we would make up.

6 A Okay.

7 MR. NICHOLS: For the record, you should, she is  
8 being shown exhibit one, I believe?

9 MS. PALUMBO: Exhibit one, yes.

10 MR NICHOLS: Just to speed things up?

11 THE COURT: Those are the Monday Friday sheets?

12 THE WITNESS: Monday through Friday.

13 MS. PALUMBO: Okay.

14 BY MS. PALUMBO:

15 Q And these specific ones, do you recognize these specific  
16 documents that make up exhibit one?

17 A Yes.

18 Q And so these are examples of the sheets, the daily, and the  
19 Friday--Monday through Friday tally sheets?

20 A Yes.

21 Q Is that correct? These are photocopies?

22 A Yes.

23 MS. PALUMBO: Move to enter into evidence Peoples  
24 proposed exhibit one.

25 MR. NICHOLS: I intend to voir dire. Should I do

1 both one and two at the same time?

2 THE COURT: Sure, I mean--

3 MS. PALUMBO: Okay, I'll just--

4 THE COURT: Hit number two and then Mr. Nichols  
5 can voir dire on that as well.

6 MS. PALUMBO: Okay.

7 BY MS. PALUMBO:

8 Q And, number two, is--what is number two?

9 A This would be the total. We would move these amounts daily  
10 to the total sheet and then do a receipt at the end of the  
11 month.

12 Q Okay. And when you say do a receipt, you mean put into the  
13 system?

14 A Yes.

15 Q And, who--you say we, who is that?

16 A I would either--it would be Cathy or I. I did get trained  
17 on that at one point.

18 Q Okay. And, how was it determined who would do it?

19 A I don't recall that. She did it for the most part.

20 Q Okay. And so these are examples of you said of the daily  
21 sheets and of the--and this is an example of the monthly  
22 sheet?

23 A Those are all in her handwriting, so, at that point.

24 Q Where did these come from?

25 A I was re--I started, after I noticed her behavior, started

1 taking these out of the garbage.

2 Q Okay. So, these were compiled and thrown out. Onto this--  
3 exhibit one were compiled?

4 A Yeah, that--that she would get thrown out on Friday, you  
5 know, because the totals should be on this sheet.

6 Q On that sheet being exhibit two?

7 A Yes.

8 Q Okay. And then exhibit two would be a--take those weekly  
9 tallies and then what would happen to this at the end of the  
10 month--

11 A It would get thrown out.

12 Q --eventually? Okay. And so where did this physical document  
13 come from?

14 A I took it out of the garbage.

15 THE COURT: Voir dire?

16 MR. NICHOLS: Thank you.

17 VOIR DIRE

18 BY MR. NICHOLS:

19 Q Ma'am, you said you were trained on performing the procedure  
20 you just testified to?

21 A Yes.

22 Q When were you trained on that?

23 A I don't recall the date.

24 Q You said you started working at the Treasurer's office in  
25 2005?

1 A Yes.

2 Q Using that as a frame of reference, was it within one year  
3 of when you started working with the Treasurer's office?

4 A I don't know for sure. I would say maybe two years. I don't  
5 know for sure.

6 Q This seems to relate to the year 2007, would it have been  
7 before or after you pulled these out of the trash?

8 A I don't know. I'd have to see my handwriting.

9 Q So, at the time that you pulled these two purposed exhibits,  
10 State's exhibit one, this three page copy, and State's  
11 exhibit two. At the time you pulled these out of the trash,  
12 you don't recall if you've been trained on how to perform  
13 the same procedure that you just explained for the Court?

14 A Correct. I don't know if I was doing it at that time, or--  
15 like I knew how to put these numbers on here.

16 Q Now, I think I heard you testify, and let's just be specific  
17 in that we're making a record, I'm going to put it, proposed  
18 two to your right, proposed one; three pages, to your left.  
19 Okay? Do you agree?

20 A Yes.

21 Q Okay. Now you testified, I think, that proposed one is the  
22 handwriting of Ms. Anderson?

23 A The--this part, you know, the May 5th, 6th, 7th, 8th--

24 Q Okay, now we're making a record so when you say this part,  
25 what are you pointing to ma'am?

1 A To the month and then cert and history and five, six, seven,  
2 eight, nine.

3 Q Okay. So you believe that to be Ms. Anderson's handwriting?  
4 Why?

5 A I just recognize her handwriting?

6 Q How?

7 A I've seen it often.

8 Q How often?

9 A Daily.

10 Q Now, proposed two?

11 A Her handwriting?

12 Q Okay. What part of proposed two is her handwriting?

13 A All of it except for where it says copied five, twenty-  
14 three, oh-eight.

15 Q Who wrote copied five, twenty-three, oh-eight?

16 A I did.

17 Q Did you write the same hand notation on proposed exhibit  
18 one? In other words, copied five, twenty-three, oh-eight?

19 A No.

20 Q Okay. So, let's stick with proposed two. It says copied  
21 five, twenty-three, oh-eight. You testified that you  
22 believe those are from, did you say the year 2007?

23 A These weren't, no.

24 Q Okay. These are, two? Proposed two?

25 A Yes.



1 Q Okay. What year is proposed two from?

2 A Two thousand eight, I believe.

3 Q Okay. And what year is proposed one from?

4 A Two thousand eight.

5 Q Are one and two the same week?

6 A This is more than--two has more than one week on it.

7 Q Okay. Now, here is what I'm going to ask you, you said you  
8 see Cathy's handwriting here, okay? How do you know that  
9 she's the one who transposed the numbers for all of the  
10 entries on proposed two?

11 A It looks like her handwriting to me.

12 Q Okay. You said that the three run sheets will be thrown  
13 away at the end of the week. Those are the Monday through  
14 Friday sheets, right?

15 A Yes.

16 Q And then those will go on at the end of that particular week  
17 on an exhibit or a document like this ledger here?

18 A I believe each day would go to the sheet?

19 Q Each day? Did you watch Cathy transpose from the weekly  
20 tallies or daily tallies onto the monthly tallies?

21 A No.

22 Q Alright. So, why did you pull these out of the trash?

23 MS. PALUMBO: Your Honor, I'm going to object as  
24 to the beyond scope of voir dire as inadmissibility of these  
25 elements.

1 MR. NICHOLS: Because it's a relevancy issue. I  
2 don't know what these mean here.

3 THE COURT: We are three or four years before the  
4 alleged crimes were even committed. So, if we want to just  
5 move forward to 2011, I'd be more than happy to do that.  
6 But, if you're going to want to play around with stuff from  
7 2008, I'm going to give him latitude to ask questions about  
8 it. Go ahead.

9 BY MR. NICHOLS:

10 Q Why did you pull them out of the trash?

11 A I believed she was skimming off of these.

12 Q Did you say skimming?

13 A Yes.

14 Q What do you mean by skimming?

15 A Like, for instance, we took in eight dollars for  
16 certifications and she wrote three.

17 Q When you say, we took in eight dollars, you don't know that.  
18 You're just saying that because that's the entry we see on  
19 proposed exhibit one.

20 A Yes.

21 Q Right?

22 A Yes.

23 Q Now, its eight years ago. Over eight years ago. Do you  
24 have an independent recollection of whether the entry that  
25 is reflected here--what were you pointing at, this fourth

1 column here? It says one three one? Right?

2 A Right.

3 Q So, do you have an independent recollection of whether or  
4 not three dollars or eight dollars or twelve dollars came  
5 in?

6 A No.

7 Q You don't have an independent recollection?

8 A No.

9 Q You are just refreshing your memory with what you believed  
10 at that time and what you pulled out of the trash? Right?

11 A I'm not--I don't understand your question.

12 Q Sure. You don't specifically know which is right, the three  
13 dollars on one or the eight dollars on two, right?

14 A If you add up all of these, they will be less than what is  
15 on there.

16 Q That's not what I'm asking, I'm asking you if you don't have  
17 an independent recollection of whether what the Treasurer's  
18 Office actually took in, in this second column here, that  
19 shows three dollars was three or eight or fifteen and  
20 transposed correctly, or not. Correct?

21 A Correct.

22 Q And, at the end of your concerns, nothing came of it, right?

23 A Right.

24 Q Okay.

25 MR. NICHOLS: I simply object to one and two on

1 irrelevance grounds, based on what I raised at the beginning  
2 of this exam, Your Honor, and what's in the charging  
3 document.

4 THE COURT: Ms. Palumbo?

5 MS. PALUMBO: Again, for the same--his objection  
6 is based on the same reason he said from the very beginning,  
7 which we were talking about, the same argument that we had  
8 that it is relevant as relates to the nature of these--the  
9 cash, what was there, who had knowledge, and identity of who  
10 had taken the money and the--

11 THE COURT: Well, I'm not sure how much weight  
12 they--they're worth or they can be given. I think if she  
13 has testified sufficiently to their providence, then I'll  
14 accept them as admiss--or into evidence.

15 MS. PALUMBO: Thank you.

16 BY MS. PALUMBO:

17 Q Mr. Nichols asked you the question, I believe it was the  
18 last question he asked of you and said nothing came of it.  
19 He was in reference to these missing, or what you thought  
20 were money's being skimmed, is that correct?

21 A Yes.

22 Q When--what did you do with--when you had that belief, what  
23 did you do with that belief, that there was money missing?

24 A I took those exhibits--

25 Q And let me ask you this, were there more than these?

1 A Yes.

2 Q Okay.

3 A And other--took that and other things to Mr. Shellenbarger,  
4 our Iosco County Treasurer, and he did nothing with it.

5 Q Okay. You said he did nothing with it?

6 MR. NICHOLS: May I have a continuing objection on  
7 this line of questioning about this time frame?

8 THE COURT: Yeah, I understood it to be.

9 MR. NICHOLS: Thank you.

10 BY MS. PALUMBO:

11 Q Where-when did you tell him?

12 A In May of 2008.

13 Q Where were you at when you told him?

14 A We met at M-55 and Sand Lake Road per his instructions.

15 Q Was this in the evening?

16 A Yes, after work.

17 Q Okay. And what did you tell him?

18 A I told him that I believed there was someone embezzling in  
19 our office and I told him that over the phone and then he  
20 said that he wanted to meet me--

21 MR. NICHOLS: Objection. That's hearsay.

22 MS. PALUMBO: It-its going to the, not for the  
23 truth of the matter, Your Honor, its based on what they did  
24 and where they met and what happened.

25 THE COURT: Overruled.

1 THE WITNESS: So we met there and I showed him  
2 that paperwork and I showed him another check that had been  
3 cashed and--

4 BY MS. PALUMBO:

5 Q You showed him another check, let me, let me-- I'm showing  
6 you what's been marked as People's proposed exhibit four; is  
7 this the check?

8 (At 4:43 p.m, PX4 marked)

9 A Yes.

10 Q Or a copy of the check?

11 A A copy of the check.

12 Q That you believe that was cashed?

13 A Yes.

14 Q Why did you think this check was relevant?

15 A Because it had never been receipted into our system?

16 Q Okay. Did you indicate to him anything regarding the status  
17 of the cash box at that moment?

18 A At both cash boxes I did.

19 Q And, what was the status of that?

20 A That there was money missing from certifications and that  
21 there was money missing from our change that's kept on the  
22 bottom.

23 Q That being the extra stuff that's kept away from the front  
24 desk?

25 A Yes.

1 Q The balance of that four hundred?

2 A Yes.

3 Q Now, you said he did nothing, but he did do something,  
4 didn't he in response to that?

5 A The next morning I came into work, Cathy and he were in his  
6 office with the door closed. They called me and he told  
7 Cathy that I had accused her of doing this.

8 MR. NICHOLS: Object. Again, that's hearsay.

9 THE COURT: Ms. Palumbo?

10 MS. PALUMBO: Your Honor, this is as it relates to  
11 what had had occurred and the statement that was made. She  
12 is testifying as to that she had made the allegation, this  
13 is simply what happened as it relates to the impact on Cathy  
14 and the actions that were taken based on these statements.  
15 Not for the truth of the matter asserted.

16 MR. NICHOLS: Well, none of this is related to the  
17 truth of the matter asserted. Mr. Shellenbarger is fewer  
18 than a hundred steps down the hall. He could come to court  
19 and testify as to what occurred in that meeting and what he  
20 said, if they want to get into it. Otherwise, its hearsay.

21 THE COURT: Sustained.

22 MS. PALUMBO: Your Honor, she was--it would be  
23 hearsay whether he said it or she said it, Your Honor.

24 THE COURT: No, he can say I told Bob to go fly a  
25 kite and that's not hearsay.

1 MS. PALUMBO: The--

2 THE COURT: If she says that he said Bob could go  
3 fly a kite, that's hearsay.

4 BY MS. PALUMBO:

5 Q The--as it relates to the cash box that morning, do you  
6 recall if that was counted? And, if so, who counted it?

7 A It was counted when I had came--come in and then later I  
8 check it.

9 Q Who counted it?

10 MR. NICHOLS: If she knows.

11 THE COURT: What morning are we talking about?

12 MS. PALUMBO: This morning after you relaying this  
13 information to Mr. Shellenbarger.

14 THE COURT: Back in 2008?

15 MS. PALUMBO: Yes.

16 THE WITNESS: It would have been Cathy that  
17 counted because it was either her or I that would do it.

18 BY MS. PALUMBO:

19 Q And, had you counted it before the evening before?

20 A No.

21 Q How did you know that the status of it was light, then?

22 A When I put the money away at night it was--the clipped money  
23 was short. But we don't count it at night, we count it in  
24 the morning.

25 MR. NICHOLS: I'm confused. She said Cathy



1 counted it in the morning, is that correct?

2 THE WITNESS: Yes.

3 MR. NICHOLS: Okay. Did she say that she counted  
4 it the night before or she did not count it the night  
5 before?

6 THE COURT: Ms. Palumbo, you going to clear that  
7 up?

8 BY MS. PALUMBO:

9 Q You said it was light.

10 A Right, you can see the money, the clipped money. Because  
11 you put it all back in the box and there was money out of  
12 the clipped change that we have was missing.

13 Q Okay.

14 MR. NICHOLS: So, if she didn't count it, I move  
15 to strike. I mean, just looking at it and saying its light  
16 because it looks like there is money missing.

17 THE COURT: Yeah, could you clear up how she knew  
18 that? Did she count it or did she just look at it, did she  
19 weigh it in her hand, or what did she do?

20 BY MS. PALUMBO:

21 Q Did you physically count the money?

22 A No.

23 Q Why did you believe it was light?

24 A Because there is ten tens, usually clipped, and I could see  
25 that there was like two or three tens, instead of ten.

1 Q So you didn't do a total count, but you visually observed  
2 missing tens?

3 A Correct.

4 Q Any other--

5 THE COURT: I'm going to sustain.

6 MR. NICHOLS: Thank you.

7 THE COURT: Go ahead.

8 BY MS. PALUMBO:

9 Q The nature of the--you said there was a meeting with you,  
10 Cathy, and Mr. Shellenbarger?

11 A Yes.

12 Q Is that correct?

13 A Yes.

14 Q And, what happened as a result? Physically, where did  
15 people go after that meeting?

16 A I went back to my desk. Elite and Cathy both left the  
17 office. I don't know where they went.

18 Q And what then happened, if anything?

19 A They--after they came back, the money was back to the, what  
20 should be clipped, the ten tens, twenty fives, and fifty  
21 ones were back.

22 MR. NICHOLS: Is there going to be a foundational  
23 questions about whether she counted the money?

24 THE COURT: I'm waiting for that.

25 BY MS. PALUMBO

1 Q At that point in time, did you count the money?  
2 A Yes, I did.  
3 Q And did you observe a difference between what it was before  
4 that morning and after they returned?  
5 A Yes.  
6 Q Just showing you what's been marked as People's proposed  
7 exhibit five. Do you recognize those documents?  
8 A Yes.  
9 Q And what are those documents?  
10 A That is a printout of the account number where we would  
11 receipt certifications and histories for three years.  
12 Q Certifications are what?  
13 A When the--when someone records a land contract or a warranty  
14 deed, we have to re--we have to look up and make sure there  
15 are no delinquent taxes for the last five years and if there  
16 is no delinquent taxes, we stamp the deed, we used to charge  
17 a dollar for a deed.  
18 Q And that's where those from the exhibits one--the hash marks  
19 were?  
20 A The left hand side.  
21 Q The left hand side. And what are tax histories?  
22 A If a customer asks for a copy of their taxes or they want us  
23 to look up any history of any parcel, we charge a dollar per  
24 page.  
25 Q And searches, tax searches?

1 A We charge a quarter per parcel.

2 Q And is those--are those all items of money coming in that  
3 would be recorded under this--these--this particular code  
4 number?

5 A Yes.

6 Q In reference to this People's proposed exhibit four, the  
7 check that indicates you showed to Elite that you thought  
8 was relevant, is that a item that should have been receipted  
9 into the code number as it relates to the screenshots from  
10 item five?

11 A Yes.

12 MS. PALUMBO: Would move to enter into evidence  
13 People's proposed exhibit four? I would note that there's  
14 some items at the top, identified items at the top of it as  
15 it is a copy. I just spoke with Mr. Nichols about this for  
16 purposes of today's preliminary exam, we're not redacting  
17 off. Is that correct, Mr. Nichols?

18 THE COURT: Objection, voir dire?

19 MR. NICHOLS: Voir dire and I think I'd like to  
20 both four and five. I'm inferring that the prosecutor has  
21 no further foundation on five? I haven't heard a motion for  
22 five but it sounds like they're related based on the  
23 testimony aggregated together.

24 MS. PALUMBO: They are probably, like all, you  
25 know, as far as all these things were related, we can do

1 four--four first too or combined or if there is--I can  
2 establish a--there's a couple more questions I would have  
3 to--

4 MR. NICHOLS: Lets go ahead on five and then--

5 BY MS. PALUMBO:

6 Q So, what years?

7 A 2007, 2008, and 2009.

8 Q And that would be--the print is small but I believe there is  
9 a date up in the corner?

10 A 12/17/2009.

11 Q And what would that indicate?

12 A The day I printed it.

13 Q Okay.

14 A At that point in time, 12/2009, had there been an internal  
15 audit done? To your knowledge?

16 MR. NICHOLS: I could just offer a friendly  
17 amendment, it was an external audit.

18 MS. PALUMBO: Actually, my question was for an  
19 internal audit.

20 THE COURT: Okay. Go ahead with your question.

21 THE WITNESS: No.

22 BY MS. PALUMBO:

23 Q To your knowledge, was there, as of that date, an external  
24 audit done?

25 A In 2009 or?

1 Q In, I'm sorry, December--okay, the December 12, 2008, excuse  
2 me, of 2008, had there been an internal audit?

3 A No.

4 Q In December 2008 had there been an external audit?

5 A The accountants come in December.

6 MR. NICHOLS: Object. It's not responsive, it's a  
7 yes or no.

8 THE COURT: Sustained.

9 BY MS. PALUMBO:

10 Q How about this question, in November of 2008 had there been  
11 an external audit done?

12 A No.

13 Q And you reported this information to Mr. Shellenbarger in  
14 May of 2008?

15 A Yes.

16 Q Okay. And you printed off these documents in December of  
17 2009, is that correct?

18 A Yes.

19 MS. PALUMBO: Okay. Move to enter into evidence  
20 People's proposed exhibit four and five.

21 THE COURT: Go ahead, voir dire.

22 VOIR DIRE

23 BY MR. NICHOLS:

24 Q I'm holding in my hand a three page proposed exhibits, not  
25 numbered, constitute as exhibit five and I saw you pointing,

1 saying this is one year and I'm looking at the first page in  
2 this unmarked packet, it says 12/2007, is that correct?

3 A Yes.

4 Q Okay, could you speak up?

5 A Yes.

6 Q Okay, and then this next page, you said was 2008?

7 A Yes.

8 Q Okay.

9 A That's 2009, I'm sorry.

10 Q Alright. This is out of-this is out of place. Can we  
11 staple these together, maybe? Would that be alright?

12 MS. PALUMBO: Yes, its intended to be, yeah--

13 MR. NICHOLS: It's in chronological? Is that  
14 right?

15 BY MR. NICHOLS:

16 Q Alright. So we've got a three page proposed exhibit, one is  
17 seven, two is eight, and three is nine, correct? Go ahead?

18 A Yes.

19 Q You testified that those are screenshots?

20 A Yes.

21 Q From a computer screen?

22 A Yes.

23 Q Your computer screen?

24 A Yes.

25 Q Okay. What does this represent?

1 A The money that was receipted in each month to that account  
2 number.  
3 Q And its broken down month by month?  
4 A Yes, one of 07, two of 07.  
5 Q And then I see just one entry for each month in the third  
6 column here and, for the record, I'm pointing to column  
7 three as an example on the 2007 page, page one. Am I right?  
8 A Yes.  
9 Q Okay. And then this exhibit four is a copy of a loan  
10 disbursement check?  
11 A No.  
12 Q Okay. It says loan disbursement check right there.  
13 A But in the memo it says delinquent tax search.  
14 Q Alright. So how did you get your hands on what's reflected  
15 in proposed exhibit four?  
16 A How did I get my hands on the copy?  
17 Q Yes.  
18 A I asked the bank for it.  
19 Q When?  
20 A April 27th of 26.  
21 Q April 27th of--  
22 A This year.  
23 Q This year, being 2016?  
24 A Yes.  
25 Q Which would be eight years, almost exactly from the date of



1 the check, right?

2 A Yes.

3 Q Okay. So, what I don't understand about these screen shots,  
4 is there's got to be more information than just what's  
5 reflected on these copies, am I right?

6 A Right.

7 Q There is a lot more data?

8 A Each receipt that would add up to these.

9 Q Like, for example, we might see an entry at, if we were to  
10 look through the software that produced these screenshots  
11 when this check in proposed four was actually deposited into  
12 the bank for the treasury department, right?

13 A Yes.

14 Q Okay. Did you, yourself, deposit this check?

15 A No.

16 Q Okay. Are you--at the time in question, I guess that would  
17 be April 2008, to the extent that that--for the timeframe in  
18 question, were YOU the person who did the deposits?

19 A Along with Cathy.

20 Q Okay. So on April 28, 2008, did you do the deposits that  
21 day, based on your independent recollection eight years  
22 later?

23 A No, I did not.

24 Q You didn't do the deposits that day?

25 A No.

1 Q Okay. So, we might see, if we broke down--so page two of  
2 exhibit five an entry for April 28th, 2008 which is on the  
3 deposit stamp on the bottom of this proposed exhibit on  
4 four, right, you see it there?

5 A Yes.

6 Q Okay. We could see if that actually was deposited on your  
7 screenshot on April 28, 2008.

8 A Right. I'm--it was deposited, it was not receipted.

9 Q Okay. Do--do you have, we don't--you didn't bring with you  
10 or give to the prosecutor all of the information from 2008,  
11 right? Just that screenshot that would be page two of  
12 proposed exhibit five?

13 A I gave her those, yes.

14 Q Oh, okay. But we can get our hands on all of that data,  
15 right?

16 A I would hope so.

17 Q So we can see when this check was actually receipted in?

18 A Yes.

19 Q To the extent that it matters, right?

20 A Yes.

21 Q Because I am asking you, when you were asked by the  
22 prosecutor about the external audit, this external audit  
23 magically found there is no money missing, right? Right?

24 A I don't know.

25 Q No, you don't know?

1 A I don't know.

2 Q Okay. Is that why you didn't go to the prosecutor in 2008?

3 A I went to my boss.

4 Q Okay. You testified that, right

5 A Yes. I went--

6 Q Okay. So, did you go to the prosecutor in 2008?

7 A No, I did not.

8 Q But you call detective Johnson, or, I'm sorry, detective  
9 Brown--

10 UNIDENTIFIED SPEAKER: Johnson. You had it right  
11 the first.

12 BY MR. NICHOLS:

13 Q --did you go to detective Johnson in 2008?

14 A No.

15 Q Did you go to any police officer in 2008?

16 A No.

17 Q Okay. And, did you find out that there was no money missing  
18 as a result of the external audit that the prosecutor asked  
19 you about?

20 A I did not find that out.

21 Q Okay. You didn't find out anything?

22 A Well, I believe there is money missing from 2008.

23 Q Okay. But you weren't curious about what the external audit  
24 showed?

25 A I don't have access to the audit.

1 Q You met with the auditors, right?

2 A In?

3 Q 2008?

4 A Yes.

5 Q You meet with them every year, right?

6 A Yes.

7 Q Met with them in 2009?

8 A Yes.

9 Q 2010?

10 A Uh-huh.

11 THE COURT: You need to speak up, please.

12 THE WITNESS: Yes.

13 BY MR. NICHOLS:

14 Q 2011 thru 2015, right?

15 A In 2015 I did not get to meet with them. Every other year,  
16 yes.

17 MR. NICHOLS: As to proposed exhibit four, Your  
18 Honor, there is a lack of authentication and under the rule  
19 of completeness, we really--the opponent of the evidence  
20 should have everything. Because we would probably be able  
21 to see when exhibit five was receipted in. Exhibit five is  
22 further without foundation. She didn't do the deposit that  
23 day and it's not relevant at all.

24 THE COURT: Ms. Palumbo?

25 MS. PALUMBO: As it relates to exhibit four, which

1 is the check, she testified that that was the check that she  
2 brought to the attention, that it was a copy of the check,  
3 that she brought to the attention of Mr. Shellenbarger and  
4 that it was to be deposited into the--into the account. So  
5 that is relevant. The account itself, while the screenshots  
6 that she has are erased on a monthly basis, it is a  
7 complete--it is complete as it relates to all of the  
8 deposits that should have been made in April. And so to the  
9 extent that the check was indicated that it was deposited in  
10 April and the account that it should have been screenshotted  
11 (sp) in, reflects that in that month that there was no money  
12 receipted in. It is complete and there is not anything that  
13 is incomplete in regards to that--even though, if the--if  
14 there had been deposits, they would have been broken down  
15 individually. The fact that that particular month does not  
16 have any breakdown, the record is complete. There is  
17 nothing--there is no deposits that were reflected to this  
18 account. Therefore, there is nothing that is incomplete.

19 MR. NICHOLS: I think for the prosecutor's  
20 edification, Your Honor, the rule of completeness at MRE  
21 106, "When a writing or recorded statement or part thereof  
22 is introduced by a party, an adverse party may require the  
23 introduction at that time of any other part or any other  
24 writing or recorded statement which ought, in fairness, to  
25 be considered contemporaneously, right now, with it" and my

1 point is, we could see what the software at the Treasurer's  
2 Department shows about when all these checks were deposited  
3 and receipted, which I think is her point. We've got the  
4 ability to get that data, yet we just have these  
5 screenshots, which still haven't satisfied foundation. And,  
6 secondly, as to five, I thought I heard the witness say she  
7 got that copy of the check April 27, 2016.

8 THE COURT: That's what I understand.

9 MS. PALUMBO: Your Honor, as we testified--as we  
10 indicated, this was the date that was written on this copy  
11 of this top part. This is a copy of the check that she had  
12 brought to the attention of Mr. Shellenbarger. So, that is  
13 the--

14 THE COURT: Back in 2008.

15 MS. PALUMBO: 2008, yes.

16 THE COURT: But she got the copy of it from the  
17 bank in 2016?

18 MS. PALUMBO: Yes.

19 THE COURT: I'm going to accept them for what  
20 limited value they have. Ms. Palumbo, refresh my memory,  
21 why we're still talking about 2008 when the alleged offenses  
22 occurred in 2011.

23 ( At 5:03 p.m., PX4 & 5 accepted)

24 MS. PALUMBO: Your Honor, as it relates to the  
25 statement of what Mr. Shellenbarger did and the conversation

1 of what was in response to this information being brought to  
2 his attention and the instructions that were given to the  
3 defendant regarding these monies and these money boxes.

4 THE COURT: How do we know what instructions were  
5 given? Did she give the instructions?

6 MS. PALUMBO: No, Ms.--Ms. Anderson told the  
7 police officer the instructions that she received from Mr.  
8 Shellenbarger.

9 THE COURT: Are we going to get there then?

10 MS. PALUMBO: Yes.

11 THE COURT: Because so far, I'm not hearing  
12 anything from this witness that's of any value, at least not  
13 that I'm able to ascertain. So, I'd really like to jump up  
14 here in time to where this witness has some relevant  
15 testimony if she, in fact, does. Because an easy thing to  
16 do, would be to put Mr. Shellenbarger on and say, "Mr.  
17 Shellenbarger, what did you tell her back in 2006,7,8,9,  
18 whenever about how to handle money in the office. She can't  
19 say what Mr. Shellenbarger said because that would be  
20 hearsay.

21 MS. PALUMBO: I understand, Your Honor.

22 THE COURT: So--

23 MS. PALUMBO: So I just want to make sure that  
24 we're laying the relevant information as it relates to the  
25 next course of action.

1 THE COURT: I don't know if you are or not because  
2 I haven't seen anything relevant yet, that I'm able to  
3 ascertain. But, let's move quickly along here.

4 BY MS. PALUMBO:

5 Q Was there a--there was talk of this external audit. So you  
6 mentioned that, at some point in time, you relayed there was  
7 an external audit done?

8 A Yes.

9 Q And that's something that's done yearly?

10 A Yes.

11 Q And, as part of that external audit--let me go back and ask  
12 one question. Was it your understanding that in May that  
13 Mr. Shellenbarger did go speak with Mr. Rapp?

14 A Yes.

15 Q Okay. The prosecuting attorney?

16 A Yes.

17 Q And so, when Mr. Nichols was asking you questions about did  
18 you go here, did you go there, it was your understanding  
19 that it was--that Mr. Rapp was consulted, the prosecuting  
20 attorney?

21 A Yes.

22 Q And, in the--and that was in or about May of 2008?

23 A Yes.

24 Q When was the audit, the external audit, about? December,  
25 January?



1 A They come in in December and do a pre-audit and they  
2 actually do the audit in February of the following year.

3 Q Okay. So, in that process, did you raise any issues?

4 A Yes.

5 Q And what did you raise?

6 A They asked each employee if you know of any known fraud  
7 throughout the year and I answered yes and told them what I  
8 had found with the certifications and the borrowed money  
9 from the bottom of the box.

10 Q Okay.

11 MR. NICHOLS: That is part--that is 2008?

12 THE COURT: That's what I understand.

13 MR. NICHOLS: Okay. Alright.

14 BY MS. PALUMBO:

15 Q Was there a change, was there anything that happened as a  
16 result of that audit?

17 A The auditors changed the way we receipted in the  
18 certifications--

19 MR. NICHOLS: Wait a second. I thought she said  
20 she didn't know the result of the audit. Now she's saying  
21 they changed the way the certifications are receipted in?

22 MS. PALUMBO: He asked her if she knew--he asked  
23 if she knew the auditors could show that there was no money  
24 missing and she said no that she did not know that to be the  
25 truth.

1 THE COURT: That's what I understand.

2 MR. NICHOLS: So, maybe, we could have some  
3 foundation about how she knows what she is testifying to?

4 BY MS. PALUMBO:

5 Q You're an employee of the Treasurer's office, correct?

6 A Yes.

7 Q And, when an audit is done and there are--is there--are  
8 there recommendations that are made?

9 A Yes.

10 Q I'm showing you what's been marked as exhibit--as proposed  
11 exhibit number three. Do you recognize that?

12 (At 5:08 p.m., PX3 marked)

13 A Yes.

14 Q And what is that?

15 A That is the audit.

16 Q For what year?

17 A Its written 2008 at the top, so I'm assuming 2008.

18 Q As it relates to their findings, were you made aware of  
19 their findings as an employee?

20 A Yes.

21 Q And, as it related to the matter that you brought to their  
22 attention, were there findings?

23 A Yes.

24 Q And what were those findings?

25 MR. NICHOLS: I object. She has not laid the

1 foundation for the admissibility of that proposed exhibit.

2 MS. PALUMBO: I have not--

3 MR. NICHOLS: And, if she wants to get into part  
4 of the proposed exhibit, she has to get into all of the  
5 proposed exhibit, MRE 106.

6 MS. PALUMBO: I haven't--I have not asked to admit  
7 into that. I asked that if she was aware that there was an  
8 audit, if she participated in the audit. I asked, as an  
9 employee, if she was made aware of the findings and she  
10 indicated yes and I asked her what were--what were the  
11 findings.

12 THE COURT: You said as it relates to that  
13 specific item.

14 MS. PALUMBO: As it relates to the matter that she  
15 brought to the attention of the auditors.

16 THE COURT: Then why does she have that in her  
17 hand? You're the one that gave it to her, not him.

18 BY MS. PALUMBO:

19 Q As it relates to the audit, was their--was their finding  
20 based on the matters that you brought to their attention?

21 A Yes.

22 Q Okay. And were there changes in your office procedure as a  
23 result of that?

24 A Yes.

25 Q And what were those changes?

1 A They did away with the handwritten tally sheets and we  
2 started receipting in every single tax history, every dollar  
3 got receipted in instead of doing the handwritten.

4 Q The--did you notice any money missing after 2009?

5 A Yes.

6 Q When was the first time after 2009 that you noticed missing  
7 money?

8 A I don't know exactly when. It was a couple of years after  
9 that, 2011, 2012.

10 Q Okay. And what monies did you notice were missing.

11 A The money out of the four hundred dollars that is kept in  
12 the cash box.

13 Q Was--did you have a reason to--at that point in time, who  
14 had access to that money?

15 A Myself and Cathy--

16 MR. NICHOLS: Your talking 2011 and 2012?

17 THE COURT: Yes.

18 MR. NICHOLS: Okay.

19 THE WITNESS: Myself, Cathy Anderson, and Melissa  
20 Beebe.

21 BY MS. PALUMBO:

22 Q And whose responsibility was it to count that money?

23 A At that time, anyone of us could have cashed out. We were  
24 all responsible.

25 Q Okay. And, so there was--so at some point in time in 2011-

1 2012 you noticed money missing?

2 A Yes.

3 Q What did you do when you noticed that there was money  
4 missing?

5 A I talked to Melissa and we did nothing at that time.

6 Q Okay. Did there come a point in time where money was  
7 returned?

8 A Yes.

9 Q How many times did money go missing?

10 A I would say two--at least two, three times a week.

11 Q Two or three times a week? Every week?

12 A Maybe not every single week, but quite frequently.

13 Q Okay. And how much money would be missing at any given  
14 time?

15 A Anywhere from twenty to eighty, hundred dollars.

16 MR. NICHOLS: It's not marked. I'm also going to  
17 move to strike this testimony. There is no foundation about  
18 how she knows any money was missing, even though we're  
19 closer in time now to 2011.

20 THE COURT: Well, I'll let you get to that at  
21 cross-examination.

22 MR. NICHOLS: Okay.

23 BY MS. PALUMBO:

24 Q I'm showing you what's been marked as People's proposed  
25 exhibit six. Do you recognize that? And this is a

1 photocopy?

2 (At 5:14 p.m., PX6 marked)

3 A Yes.

4 Q As it relates to the amount of money that should be in the  
5 cash box on any given day, is there a means--was there a  
6 means in 2011 to match up this and the four hundred dollar  
7 base?

8 A Yes.

9 Q And it was--you're instructed it was your responsibility to  
10 do that balancing, correct?

11 A Mine and Melissa or--

12 Q Did you do it together?

13 A No.

14 Q So you might do it one day and she may do it another day?

15 A Correct?

16 Q Okay. So when it was your responsibility to do that balance  
17 and you would--and you would be balancing the receipts to  
18 the cash that was on hand, correct?

19 A Yes.

20 Q And when you did that you discovered that there was money  
21 missing, correct?

22 A Yes.

23 Q And that was something that would happen two to three times  
24 a week?

25 A Yes.

1 Q Did you come to have a reason to know where that money was?

2 A At one point the--

3 Q I'm showing you what's been marked as proposed exhibit six.  
4 What--what is that?

5 A That's a copy of a sticky note.

6 Q Okay. And it was a sticky note and where did you--is this a  
7 sticky note that you made a copy of?

8 A Yes.

9 Q Okay. And where did you--where did that sticky note come  
10 from?

11 A I took it out of the garbage.

12 Q Okay. Did you ever see a sticky note with the cash box?

13 A Yes.

14 Q Okay. And what would the sticky note consist of?

15 A That would consist of the money that was missing that date,  
16 like that day there was one ten and six fives missing.

17 Q Okay.

18 THE COURT: That's PX, excuse me, plaintiff's  
19 exhibit what?

20 MS. PALUMBO: Six.

21 THE COURT: Six. And what was missing?

22 THE WITNESS: One ten and six fives.

23 BY MS. PALUMBO:

24 Q Was there always a sticky note when there was money missing?

25 A No.

1 Q How many times do you think a sticky note was there?  
2 A Twenty to thirty.  
3 Q You mentioned that this began in about 2011, how long did it  
4 continue?  
5 A Probably about six to eight months. Melissa and I talked,  
6 we finally we were just so uncomfortable with it.  
7 Q Okay. So what--okay--what did you--what did you do?  
8 A I talked to Cathy's friend and another employee of Iosco  
9 County and asked her to please talk to Cathy and ask her  
10 stop.  
11 Q Stop what?  
12 A Stop taking the money from the bottom of the box.  
13 MS. PALUMBO: At this point in time, I would move  
14 to enter into evidence, People's proposed exhibit six.  
15 THE COURT: Voir dire?  
16 MR. NICHOLS: Yes.  
17 THE COURT: Objection?  
18 MR. NICHOLS: Voir dire.  
19 VOIR DIRE  
20 BY MR. NICHOLS:  
21 Q Do I understand, ma'am, that your testimony on foundational  
22 questions about proposed exhibit is that one ten, as in  
23 dollar bill?  
24 A Yes.  
25 Q Six fives, as in six five dollar bills?



1 A Yes.

2 Q Okay. Were not in the cash box and in their place was a  
3 sticky note that has been copied here?

4 A Yes.

5 Q This is in reference to one specific day?

6 A Yes.

7 Q Did you count the money on that specific day?

8 A Yes.

9 Q Four hundred dollars was supposed to be there?

10 A Yes.

11 Q Is it your testimony that it was four hundred minus one ten  
12 and six fives, which by my math would be forty bucks?

13 A Yes.

14 Q And in place was a note?

15 A Yes.

16 Q Okay. When did you pull this note out of the trash?

17 A After that money was replaced.

18 Q After that money was replaced?

19 A Yeah. She would take the sticky note and throw it away  
20 because she had put the money back.

21 Q Okay. Because she had put the money back? Is she Cathy  
22 Anderson?

23 A Yes.

24 Q Did you see her do that?

25 A No.

1 Q So, if I understand your explanation about the relevancy of  
2 these sticky notes is that the sticky notes would go in,  
3 corresponding money would come out, right?

4 A Yes.

5 Q And the sticky notes would get thrown away when the  
6 corresponding money got put back in?

7 A Yes.

8 Q Would you agree on that?

9 A Yes.

10 Q Okay. The prosecutor asked you about a number of times that  
11 that occurred, right?

12 A Yes.

13 Q And you said several times a week?

14 A Two to three times sometimes.

15 Q And I also understand you to say that not every time there  
16 was a sticky note?

17 A Correct.

18 Q Did there come a point in time when the sticky note or a  
19 sticky note pattern started to emerge, ma'am?

20 A Yes. She started putting the sticky note in at a certain  
21 point.

22 Q Okay. If you know, do you know why?

23 A No.

24 Q This is not dated, you don't remember the date that you  
25 pulled the sticky note out of the trash, right?

1 A No.

2 Q Okay. Do you remember in relation to when you observed the  
3 forty bucks missing or the three hundred and sixty buck from  
4 the cash box? How much time separated the missing forty  
5 bucks and the sticky note in the trash?

6 A No.

7 Q Okay.

8 A Do I remember what day?

9 Q Do you remember how many days?

10 A No, I don't.

11 Q Could have been one?

12 A It could have been one.

13 Q It could have been two?

14 A Yes.

15 Q Your testimony is you went to Cathy Anderson's friend,  
16 right?

17 A Yes.

18 Q That's Pam?

19 A Mary Gill.

20 Q I'm sorry, Mary. I keep screwing up that woman's name.  
21 Mary Gill?

22 A Yes.

23 Q She works for IT?

24 A Yes.

25 Q Okay. Did you have more than one conversation with Mary or

1 just the one?

2 A Just one.

3 Q Okay. You didn't watch Cathy Anderson fill out the sticky  
4 note that that purports to be a copy of?

5 A I'm sorry?

6 Q You didn't watch Cathy Anderson fill out the sticky note  
7 that that purports to be a copy of?

8 A No.

9 MR. NICHOLS: I object to lack of foundation.

10 MS. PALUMBO: May I ask a question? She  
11 previously testified recognizes the handwriting of Cathy.

12 THE COURT: I don't think she testified to that  
13 with regards to this. If she did, I missed it.

14 MS. PALUMBO: She didn't. I was going to ask her  
15 that question.

16 BY MS. PALUMBO:

17 Q Do you recognize that handwriting?

18 A Yes.

19 Q And who's handwriting do you recognize that to be?

20 A Cathy Anderson.

21 THE COURT: Alright. I'll accept it as an  
22 exhibit. That is exhibit six, correct?

23 (At 5:21 p.m., PX6 accepted)

24 UNIDENTIFIED SPEAKER: Yes.

25 BY MS. PALUMBO:

1 Q You indicated that it was as much as two to three times a  
2 week and for approximately--how many months, did you say?

3 A I would say six to eight months.

4 Q And do you recall--do you have an estimate as to how to how  
5 much money overall had gone missing?

6 A No.

7 Q On average, how much money would be missing on any of those  
8 given times?

9 A I would say on the average, forty dollars.

10 Q And on average, you said it wasn't every week, but on  
11 average how many times a week over those six to eight weeks?

12 A On average, two to three times.

13 Q Okay. So, you're talking on average, even at the minimum,  
14 if it was two times a week, a hundred and sixty dollars a  
15 week for six months? Is that correct?

16 A Or eighty dollars, if it was two times forty dollars a week.

17 Q Sorry, thank you. Eighty dollars--multiplied the eighty,  
18 sorry. Eighty dollars a week for six to eight months.

19 Okay. You said you went and spoke to Mary Gill.

20 A Yes.

21 Q And you asked her to ask Cathy to stop?

22 A Yes.

23 Q And after you had that confirm--conversation with Mary Gill,  
24 did you notice any more money missing?

25 A No, it stopped after that.

1 Q After you reported the matter to the auditors, did you  
2 notice any more money missing from the tax certification and  
3 tax histories?

4 MR. NICHOLS: Object as to form. Reported to the  
5 auditor, when? Because we have 2008, are we back to that?

6 THE COURT: Yeah, because we just talked about the  
7 tax search here and so are you back at the 2008 tax search?

8 MS. PALUMBO: Yes, back to the 2008 tax search,  
9 after she reported to the auditors--

10 BY MS. PALUMBO:

11 Q After you reported to the auditors that you believed Cathy  
12 was taking money from the tax certifications, did you notice  
13 any more money missing from the tax certifications or tax  
14 histories?

15 A No.

16 Q And, in fact, the screenshots that you have that are in  
17 exhibit four--five.

18 THE COURT: Are we back to 2008 again?

19 MS. PALUMBO: It was.

20 MR. NICHOLS: I object, I mean its covered.

21 THE COURT: Is there a reason to go back to 2008?

22 MS. PALUMBO: Just showing that the history of  
23 when the intervention was made and when a system was  
24 frustrated that--that the missing money, that money was no  
25 longer missing.

1 MR. NICHOLS: But the problem, and I'm happy to  
2 have the prosecutor help me, that doesn't do anything to  
3 show an element of the offense. It only shows, it doesn't  
4 show anything to show the element of the offense.

5 THE COURT: Relevance?

6 MS. PALUMBO: As it relates to her belief that  
7 Cathy was taking money--

8 THE COURT: So we're back to the 404B stuff?

9 MS. PALUMBO: Yes.

10 MR. NICHOLS: Well, we still haven't shown that  
11 Cathy took any money in 2008, Cathy Anderson, the person  
12 accused.

13 THE COURT: Well, again, I'll--you can cover that  
14 on cross. Go ahead, but--

15 MS. PALUMBO: And when she reported it to the  
16 auditors that she, being Ms.--

17 THE COURT: You're asking questions of her now?

18 MS. PALUMBO: Oh, okay. I'm sorry, I--

19 BY MS. PALUMBO:

20 Q --that there began to be in 2009, then regular deposits?

21 A Yes.

22 Q When there was not in 2007 and the beginning parts of 2008?

23 A Yes, correct.

24 Q And, what was--what was Ms. Anderson's position in 2011-2012  
25 time period?

1 A Deputy Treasurer.

2 Q And that's Deputy Treasurer of Iosco County?

3 A Yes.

4 Q Okay. Which is a public position, correct?

5 A Yes.

6 MS. PALUMBO: I have no further questions of this  
7 witness?

8 THE COURT: Cross?

9 CROSS EXAMINATION

10 BY MR. NICHOLS:

11 Q The organizational chart that the prosecutor just asked you  
12 about, who is the Treasurer of Iosco County right now?

13 A Elite Shellenbarger.

14 Q I'm going to ask you a couple of questions as it relates to  
15 witness bias, okay? Please don't take offense. You filed to  
16 run for treasurer against Elite Shellenbarger, correct?

17 A Yes.

18 Q And the filing date was April 26th of 2016?

19 A April 19th.

20 Q April 19th, thought it was one day. Eight days before you  
21 went to the Huron Community Bank and pulled the copies of  
22 those checks, right?

23 A I--yeah.

24 Q April 19th to April 26th, eight days. I mean, I'm not a  
25 treasurer, by any account. Okay. And then you went to Ms.



1 Palumbo with your concerns, when?

2 A I don't know what day I went to her.

3 Q April 2016?

4 A I'm not sure.

5 Q May 2016?

6 A I don't know.

7 Q Its kind of a big deal to go to the prosecutor, right?

8 A Yes.

9 Q Because it sounds like you had these conversations with  
10 Melissa in the office about the post-it notes and you were  
11 so concerned, you didn't go to the Treasurer of Iosco  
12 County, did you?

13 A Not at that time.

14 Q I mean, wouldn't he be Ms. Anderson's superior on the  
15 organizational chart?

16 A I went to him in 2008 and nothing happened. She--

17 Q Wait, hold on. I thought something did happen. Because you  
18 testified that you are aware of the change that was made at  
19 the end of 2008 after that external audit about the way you  
20 calculated the tax certification receipts.

21 A That was after I talked to the auditors.

22 Q Okay. And then all that happened as a result of your  
23 conversation with Elite?

24 A No, it happens every year.

25 Q It happens every year. Good point. Okay, so you covered

1 that you've talked to the auditors in 2011, right?

2 A Yes.

3 Q And you're asked at the beginning of the pre-audit  
4 interview, are you aware of any fraud going on in your  
5 office, right?

6 A Yes.

7 Q Right? You're asked that question?

8 A Yes.

9 Q What's your position at this time, 2011? What's your  
10 position?

11 A How I answered them?

12 Q No, what's your job?

13 A Oh, senior tax specialist.

14 Q Senior tax specialist. A public employee.

15 A Yes.

16 Q You hold the public trust, right?

17 A Yes.

18 Q You're seeking to hold office, an even greater public trust,  
19 if I run for treasurer, right?

20 A Yes.

21 MS. PALUMBO: Your Honor, I'm sorry to interrupt--

22 MR. NICHOLS: You've got a duty to tell the  
23 auditor--

24 THE COURT: Did you--

25 MS. PALUMBO: I'm going to interject for a moment,

1 if I may, he is asking questions regarding her--regarding  
2 witness bias as relates to her filing for treasurer and I  
3 don't know if we're still on that line of questioning, but  
4 otherwise--

5 THE COURT: I presume so. Is my presumption  
6 correct?

7 MR. NICHOLS: Yes.

8 MS. PALUMBO: Okay.

9 THE COURT: He's questioning regarding her bias.

10 MS. PALUMBO: Yes.

11 THE COURT: Go ahead.

12 BY MR. NICHOLS:

13 Q You interview with the auditors during the pre-audit  
14 interview, right?

15 A Yes.

16 Q 2011?

17 A Yes.

18 Q Right? You've got a duty to disclose fraud, right?

19 A Yes.

20 Q You didn't disclose any fraud in 2011.

21 A Correct.

22 Q And the next year is 2012, right?

23 A Yes.

24 Q That's an election year, are you running--

25 A No.

1 Q --in 2012? Okay. Same circumstances, did you disclose any  
2 fraud during the pre-audit interview?  
3 A In 2012?  
4 Q Correct.  
5 A No.  
6 Q 2013?  
7 A No.  
8 Q Are you still a tax specialist?  
9 A Yes.  
10 Q In fact, a senior tax specialist?  
11 A Yes.  
12 Q A senior tax specialist holding a position of public trust  
13 yourself?  
14 A Yes.  
15 Q Okay. And, no, you didn't disclose any fraud in 2013?  
16 A No.  
17 Q The next year is 2014. Did you disclose any fraud?  
18 A No.  
19 Q The next year is 2015. Did you say you weren't able to talk  
20 with them?  
21 A They did not ask me in 2015.  
22 Q Did they interview you or just didn't ask you that question?  
23 A They did not have a chance to interview me.  
24 Q Okay. Were you out of the office?  
25 A I was alone in the office working.

1 Q You were alone working?

2 A When they attempted to ask me, I had to wait on a customer,  
3 answer the phone, and--

4 Q Okay, so they attempted to ask you--

5 A Yes.

6 Q --correct? And you said--

7 A They said, "Do you have a minute" and I had to go wait on  
8 customers.

9 Q So it's one of those, "Hey, I'll be right with you. Give me  
10 a minute, I've got to wait on somebody."

11 A No.

12 Q Okay When you went to wait on somebody in that situation,  
13 how long did that take?

14 A I don't recall.

15 Q Five minutes?

16 A More than likely.

17 Q Do you remember what it was?

18 A No.

19 Q Now, you testified about this conversation with Mary Gill,  
20 right?

21 A Yes.

22 Q Where is Mary Gill in the organizational chart in the  
23 Treasurer's Office?

24 A I believe Elite is her boss. I know she answers to him as  
25 far as vacations, but she is in our IT department.

1 Q She is our IT, county's IT department. Okay.  
2 A Yes.  
3 Q She is not your boss?  
4 A No.  
5 Q She is not Cathy's boss?  
6 A No.  
7 Q The only superior to Cathy in the office is Elite?  
8 A Yes.  
9 Q Was she always the deputy treasurer?  
10 A No.  
11 Q Okay. Cathy Anderson, I mean?  
12 A No.  
13 Q When was she promoted?  
14 A June of 2008.  
15 Q June of 2008. Right before you went to Elite Shellenbarger  
16 with your concerns.  
17 A That was right after. I went to him in May of '08.  
18 Q Okay. You testified you had this one conversation with Mary  
19 Gill and, whether it was 2011 or 2012, you're not clear,  
20 right?  
21 A Correct.  
22 Q Okay. Did you say to her, "Its all fixed when if Cathy  
23 needs to borrow some money, she puts the ticket in. It says  
24 what she's taken and I know." Did you make that statement  
25 to Mary?

1 A No.

2 Q Is there a reason why somebody would have said you made that  
3 statement?

4 A I don't know.

5 Q You don't know?

6 A I don't know if there's a reason.

7 Q Okay. Under MRE 613, I may recall this witness if we put on  
8 a case subject to extrinsic impeachment. Okay, do you recall  
9 that you gave an interview to Detective Johnson about this  
10 matter?

11 A Yes.

12 Q Okay. You gave Detective Johnson more than one interview,  
13 do you recall that?

14 A Yes.

15 Q Do you recall when you met with Detective Johnson?

16 A I believe it was the end of May 2016.

17 Q Was that within a couple of weeks of when you went to Ms.  
18 Palumbo with your concerns?

19 A Yes.

20 Q So, we can now sort of feel the timeline of when you met  
21 with the prosecutor of early May 2016.

22 A Yes.

23 Q The first interview with Detective Johnson, was it recorded,  
24 ma'am?

25 A I believe it was.

1 Q And you tried to tell him everything that you knew?

2 A Yes.

3 Q Relevant to this case?

4 A Yes.

5 Q Did you tell him about the interview, I'm sorry, the  
6 conversation with Mary Gill that you've testified to here  
7 today?

8 A I don't know.

9 Q If he says that you didn't, would there be a reason why?

10 A No.

11 Q And you recall that you had a second interview with  
12 Detective Johnson about a month later?

13 A Yes.

14 Q June of 2016.

15 A I believe so.

16 Q And part of that interview concerned your conversation with  
17 Mary Gill, correct?

18 A I guess I did at one point, I must have told him, yes. I'm  
19 not sure if it was the first interview or the second one.

20 Q Okay. We'll come to that. Did he explain to you why he  
21 wanted to interview you a second time?

22 A No.

23 Q Is that a no?

24 A No.

25 Q Do you recall telling him that you went and met with, at



1           that time an attorney named Chris Martin, about your  
2           concerns?

3   A       At one point I did.

4   Q       When did you meet with Chris Martin?

5   A       I met with him the day I told Elite back in May of 08.

6   Q       Okay. Have you had any subsequent meetings with Chris  
7           Martin?

8   A       No.

9   Q       And, did he give you advice? Don't tell me what it was.  
10          Just a yes or a now.

11   A       Yes.

12   Q       Is there an attorney/client privilege between the two of  
13          you, to your understanding?

14   A       I don't know.

15   Q       Do you remember if you paid him money?

16   A       I did not pay him money.

17   Q       Now you testified that at some point you get trained on how  
18          to do these tax certification entries? Right?

19   A       Yes.

20   Q       I'm just going to cover this briefly because I frankly don't  
21          think its relevant, but let me just ask you a couple of  
22          questions about it, alright? Is there one right way and one  
23          wrong way to do it before the change as a result of the 2008  
24          audit?

25   A       I'm not sure of the question.

1 Q Is there a standardized way?

2 A To do a tax certification? Yes.

3 Q And what is that standardized way?

4 A You look at the deed or the land contract, look up the  
5 properties, see if there's delinquent taxes. If there's  
6 not, then you would stamp it and put the dollar on the tally  
7 sheet.

8 Q How do you record the dollar?

9 A In 2007 and 2008, it went on that little sheet on Monday  
10 through Friday.

11 Q Just make a mark?

12 A Yes. And put the dollar in the box.

13 Q And then four with a cross out is five dollars?

14 A Yes.

15 Q So, how did that change again in 2009?

16 A I told the auditors about Cathy taking the money from the  
17 certifications so they said we're not going to do it the  
18 hand written anymore and they had us start receipting in  
19 every single dollar.

20 Q Okay. Receipting in what? You write out a receipt and--

21 A No, you put it right into the, or no, at that time it would  
22 go on a sheet, like a--I'm trying to think. There was a  
23 receipt, you would actually do a receipt into the computer  
24 system.

25 Q Did you get new software?

1 A In 2013.

2 MS. PALUMBO: I'm sorry, I didn't hear the answer.

3 MR. NICHOLS: 2013.

4 MS. PALUMBO: I just needed clarification on that.  
5 Was she saying that that was entering into the computer  
6 system in 2009 but that there was new system in 2013.

7 THE WITNESS: We got new software in 2013.

8 MR. NICHOLS: Yeah, something changed between 2008  
9 and 2009 after that audit and you've testified to it on  
10 direct, I was just trying to understand it.

11 MS. PALUMBO: And I wasn't understanding the  
12 answer, was it that it was then the individual receipts  
13 entered into the computer?

14 THE WITNESS: Yes.

15 BY MR NICHOLS:

16 Q I'm going to hand you what's been marked as Defense proposed  
17 exhibit three. So just for clarity of some of your answers  
18 to me earlier, have you read that document before today,  
19 ma'am?

20 (At 5:45 p.m. DX3 marked)

21 A Yes.

22 Q You have?

23 A Yes.

24 Q When did you read that document before today?

25 A Earlier this year.

1 Q Earlier when?

2 A Probably around May.

3 Q You mean when you went to the prosecutor?

4 A Yes.

5 Q Why did you read that document?

6 A I was curious as to what the audit had said regarding 2008.

7 Q Okay. How did you get your hands on that document?

8 A Its on State of Michigan's website.

9 Q Its a public document?

10 A Yes.

11 Q Publically available?

12 A Yes.

13 Q And you went on the website you found the State of Michigan  
14 and it had the seal on it, right?

15 A Michigan dot gov.

16 Q Okay. And accepted it as, at least, authentic for purposes  
17 of being a public document for the Iosco County Treasurer's  
18 Office?

19 A Yes.

20 Q Okay. So, when you answered my questions, you were telling  
21 the truth, right?

22 A Yes.

23 Q You weren't lying to me?

24 A No.

25 Q So, why did you tell me that you didn't know the result of

1 the audit?

2 MS. PALUMBO: Your Honor, I'm going to object  
3 again. The question that he said he asked her was, "Did she  
4 know that--whether or not the audit showed that there was  
5 money missing" and she said that's not what she believed it  
6 showed. Not that she didn't know the result of the audit.  
7 She testified that she did know the result of the audit,  
8 that they had changes that were implemented.

9 THE COURT: I guess we could have a transcript  
10 done, but my recollection was she said she didn't know what  
11 the result of the audit was. That there was some changes  
12 made, that she knew that.

13 MR. NICHOLS: And, as it turns out, she actually  
14 read--

15 THE COURT: Continue.

16 BY MR. NICHOLS:

17 Q I'm holding in my had the result of that 2008 document,  
18 right?

19 A Yes.

20 Q The document that you read in May, right?

21 A And I don't see, it doesn't say that there's no money  
22 missing.

23 Q "We have also noted various items we feel can improve your  
24 internal controls or operating efficiencies These items are  
25 not considered sufficient deficiencies or material

1 weaknesses, but are presented for your consideration." Is  
2 that what it says?

3 A I was concerned with this paragraph.

4 Q Well, okay, but what does it say at the top? Did I recite it  
5 accurately?

6 A Yes.

7 Q Okay. You're the tax specialist, right?

8 A Yes.

9 Q High school education?

10 A Yes.

11 Q College?

12 A Some college.

13 Q So you understand what that means, right?

14 A Yes.

15 Q And you've been a tax specialist for ten plus years?

16 A Yes.

17 Q Okay. So, as a tax specialist, what does that mean to you?

18 MS. PALUMBO: I'm sorry, I didn't hear that  
19 question.

20 BY MR. NICHOLS:

21 Q What does that mean as a tax specialist?

22 A That they didn't find significant deficiencies or material  
23 weakness but are presented for your consideration.

24 Q Okay. Some improvements can be made.

25 A I did not read the entire audit. I read under cash

1 receipts.

2 Q And, does it say in the cash receipts, money is missing?

3 A No.

4 Q And I know you talked earlier on in the afternoon about not  
5 knowing what happened as a result of the audit, but we can  
6 agree, four people work in the treasurer's office, right?

7 A Yes.

8 Q Nobody got charged, right?

9 MR. NICHOLS: Can I consult with my client?

10 THE COURT: Are you moving to admit that, or not?

11 MR. NICHOLS: I don't think at this point I need  
12 to.

13 THE COURT: Okay.

14 MR. NICHOLS: And I don't want to screw up the  
15 record because I want to maintain my 2008 objection.

16 BY MR. NICHOLS:

17 Q And, just so the record is clear, if I understand your  
18 testimony and if you need to clarify it or change it again,  
19 let me know, okay?

20 A Okay.

21 Q Alright. You never saw Cathy Anderson take any money in  
22 2008, right?

23 A I saw her act strangely when--

24 Q The answer to my question is yes or no.

25 A No.

1 Q Okay. And, you never saw her take any money in 2011, right?

2 A No.

3 Q Is that why you told the auditors, "No, I haven't seen any  
4 fraud or anything like that in our office in 2011"?

5 A No.

6 MR. NICHOLS: Nothing further.

7 THE COURT: Re-direct?

8 RE-DIRECT EXAMINATION

9 BY MS. PALUMBO:

10 Q Have you had an opportunity to review the accounts and now  
11 have you had an opportunity to review the accounts regarding  
12 the tallies of tax certifications and tax histories and tax  
13 searches.

14 A Yes.

15 Q As it--

16 MR. NICHOLS: In what time--

17 MS. PALUMBO: I was just to--

18 MR. NICHOLS: I' sorry.

19 BY MS. PALUMBO:

20 Q As it relates to 2007, 2008 time period?

21 A Yes.

22 Q Was there money missing?

23 A Yes.

24 THE COURT: Pardon?

25 THE WITNESS: Yes.



1 MS. PALUMBO: I have no further questions at this  
2 time, Your Honor.

3 RE-CROSS EXAMINATION

4 BY MR. NICHOLS:

5 Q When you say there was money missing, who did you tell that  
6 to?

7 A Mr. Shellenbarger.

8 Q Wait, I thought you said you never went to him after 2008.

9 A Oh, I thought that's what you were referring to.

10 Q Okay. I thought the prosecutor was asking you about  
11 recently. Have you reviewed them recently?

12 A Well, I thought she said 2007.

13 Q Okay. So we're talking about 2007 2008 again? Is that what  
14 you understood her to ask you?

15 A Yes.

16 Q You just agree with external auditors?

17 A Yes.

18 Q Okay. You say you have some college?

19 A Yes.

20 Q Did you graduate from college?

21 A No.

22 Q What was your major?

23 A Accounting.

24 MR. NICHOLS: Okay. Thank you.

25 THE COURT: Ms. Palumbo, did you have a follow-up

1 on that?

2 MS. PALUMBO: I do.

3 BY MS. PALUMBO:

4 Q Other than what you have been--what was in the audit that  
5 you observed that was posted on-line, do you have direct  
6 knowledge of what the auditor's found?

7 A No.

8 Q Okay. So, when Mr. Nichols just asked you if you disagree  
9 with the auditors, do you know what the auditors found?

10 A What they said in there was money was receipted in  
11 irregularly.

12 MR. NICHOLS: Wait, I thought she said she didn't  
13 have direct knowledge.

14 MS. PALUMBO: That's what I'm trying to ask--he  
15 just asked her if she--if he disagreed with the auditors,  
16 but she's actually also said she doesn't know what the  
17 auditors had actually found as it related to missing money.

18 THE COURT: Well, the way I understood it, was  
19 that he was basically saying if the auditors said there was  
20 no money missing, do you agree or disagree with that and she  
21 said she disagrees.

22 MS. PALUMBO: If that's what the auditor's said. I  
23 just want to clarify that she--that we have nothing on the  
24 basis to say that the auditors have not--that the auditors  
25 have said that there is nothing--that there was no money

1 missing.

2 THE COURT: Okay. Anything further of this  
3 witness?

4 MR. NICHOLS: No.

5 THE COURT: Anything further of this witness?

6 MS. PALUMBO: No further questions of this  
7 witness.

8 THE COURT: You may step down, thank you. Any  
9 objection to Ms. Hackborn being released from subpoena?

10 (At 5:45 p.m., witness excused)

11 MR. NICHOLS: No objection, other than what I  
12 raised on my 613 issue.

13 THE COURT: Ms. Palumbo? Any objection?

14 MS. PALUMBO: Sorry, no, no objection, Your Honor.

15 THE COURT: Okay. You are released from subpoena,  
16 Ms. Hackborn. You are free to stay and observe or free to  
17 leave. Are we calling the good sergeant here?

18 MS. PALUMBO: Sergeant Johnson.

19 THE COURT: Do you solemnly swear or affirm that  
20 the testimony you're about to give is the truth, the whole  
21 truth, and nothing but the truth under the penalty of  
22 perjury?

23 CRAIG JOHNSON: Yes, sir, I do.

24 THE COURT: Go ahead and have a seat, thank you.

25 THE WITNESS: Detective Sergeant Craig Johnson

1 with the Michigan Department of State Police currently  
2 assigned to the West Branch post.

3 CRAIG JOHNSON

4 Called as a witness at 5:50 p.m., testified as follows

5 DIRECT EXAMINATION

6 BY MS. PALUMBO:

7 Q And, in the course of that employment, did you become aware  
8 of an investigation, or did you conduct an investigation as  
9 it relates to the Treasurer's office in Iosco County?

10 A Yes, ma'am.

11 Q And, how did that come to be?

12 A I was contacted by the prosecuting attorney for Iosco  
13 County, who advised me that she had what she believed to be  
14 a criminal complaint brought to her office and she asked  
15 that I look into that matter.

16 Q Okay. And, as part of that criminal complaint, did you  
17 conduct an investigation?

18 A Yes, ma'am.

19 Q And, did you interview Jane Hackborn?

20 A Yes ma'am.

21 Q Okay. Who else did you interview?

22 A Ms. Hackborn, Ms. Anderson, Mrs. Gill, Mr. Shellenbarger,  
23 Melissa Beebe, the CPA, the accountants at Stephenson &  
24 Gracik, there were three of them that were on a conference  
25 call with me. I think I'm missing somebody, but I can't

1 recall it right now. Oh, Mr. Rapp, sorry. Thank you.

2 Q Why did you interview Mr. Rapp?

3 A It was indicated to me throughout the course of the  
4 investigation that in--as it related to the 2011-2012  
5 investigation, that there was previous allegations that were  
6 brought forth from 2007 and 2008 that were brought to Mr.  
7 Rapp's attention. At the time he was the Iosco County  
8 prosecutor and I just wanted to verify, if indeed, he had  
9 any recollection of those possible--the allegations were  
10 brought to his attention, if he had any recollection of  
11 them.

12 Q And did he?

13 MR. NICHOLS: Relevance. I object.

14 THE COURT: Relevance as to whether Mr. Rapp?

15 MS. PALUMBO: As it relates to the course of  
16 events, the statements of Ms. Hackborn, Mr. Nichols raised  
17 the issue of bias, the matter--in the course of what she did  
18 or didn't do and what she did or didn't do in 2011 and 12.  
19 It is relevant as to the, and it was her understanding that  
20 the matter had, in 2008, been brought to the attention to  
21 Mr. Rapp as the prosecuting attorney.

22 THE COURT: By Mr. Shellenbarger. Sustained.  
23 Continue.

24 MS. PALUMBO: As it relates to bias, to claim bias  
25 of that witness, Your Honor.

1 THE COURT: Yeah, I don't think this has anything  
2 to do with that witness, so continue.

3 MS. PALUMBO: Okay.

4 BY MS. PALUMBO:

5 Q In the course of your investigation, did you interview Ms.  
6 Anderson?

7 A Yes, ma'am, I did.

8 Q And why did you interview Ms. Anderson?

9 A It was brought to my attention through previous interviews  
10 that Ms. Anderson was believed to be the responsible party  
11 for a possible embezzlement within the Iosco County  
12 Treasurer's Office.

13 Q And the--what was the nature of the--of the believed  
14 embezzlement?

15 A The scope of my investigation that we're here for today  
16 involved allegations that Ms. Anderson was removing money  
17 from the till in the Treasurer's office and leaving a note  
18 to, well, in some cases, leaving notes to advise other  
19 personnel in the office what she had taken from that till.

20 Q And that was the same till as it relates to 2008 as well,  
21 correct?

22 A Yes, ma'am.

23 Q Okay. And there were allegations in 2008 regarding monies  
24 being removed from that cash till, correct?

25 A Yes, there's two tills in the office, but when combined the

1 balance totals the four hundred dollars that we referred to  
2 earlier in the hearing. But those two tills are what are in  
3 question. The first, in 2008 or 2007 2008 there is the  
4 focus of the missing monies in the front till. The latter  
5 allegations in 11 and 12 or 12 and 13, 11 and 12, were from  
6 the till where the change is made up from and the larger  
7 bills are kept if they need additional bills in the front  
8 till.

9 Q And, did you ask Ms. Anderson if she removed money from the  
10 till?

11 MR. NICHOLS: Your Honor, I object. People Vs.  
12 Meyer, 46 Mich App 357 a 1973 case, the prosecution--the  
13 prosecutor has to show elements, in other words, the corpus  
14 delicti of the crime before eliciting a statement of  
15 confession of the accused. They are missing about four  
16 elements right now on this count.

17 THE COURT: Alright, let's go through them.

18 MS. PALUMBO: Element number one, Your Honor, the  
19 defendant held public office or was an agent or servant of  
20 the public office. The testimony of--

21 THE COURT: Let's just go through the elements,  
22 first.

23 MS. PALUMBO: Okay. Do you want me to just read  
24 the next element, is that was you're saying?

25 THE COURT: Yeah.

1 MS. PALUMBO: Okay, so first the defendant either  
2 held public office or was an agent or servant of a public  
3 official, that's one. Two, the defendant received money,  
4 property, in his or her official capacity or official  
5 position. Third, that the defendant knew the money was  
6 public money. Fourth, that the defendant used the money for  
7 unauthorized purpose. It goes on to say it is charged in  
8 this case the defendant used the money for maybe personal  
9 purposes. Such use of public money is unauthorized. And,  
10 fifth, the property was worth fifty dollars or more.

11 THE COURT: Okay. That's your four elements?

12 MS. PALUMBO: Five.

13 THE COURT: Five is what?

14 UNIDENTIFIED SPEAKER: Value.

15 THE COURT: Value, okay. Thank you. Alright,  
16 first off, I guess. Mr. Nichols do you agree or disagree  
17 with those elements?

18 MR. NICHOLS: I agree that those are the elements.

19 THE COURT: What's she missing?

20 MR NICHOLS: Element number four. The defendant  
21 used the money for an unauthorized purpose. I suppose you  
22 could, on element number one, draw a reasonable inference  
23 for purposes of a pre-lim that she was an agent or servant  
24 of the treasurer bases on the testimony from the first  
25 witness. And, they haven't shown that this person took any



1 money and the testimony is devoid, this record is absolutely  
2 devoid, that any money is missing.

3 THE COURT: I haven't heard that yet, certainly.  
4 I'm going to take the objection under advisement, allow her  
5 to continue, do your cross and, you know, we can wrap  
6 everything up at the end, depending on what the testimony  
7 is. Go ahead.

8 THE WITNESS: Would you repeat the question?

9 BY MS. PALUMBO:

10 Q Did you ask Ms. Anderson if she removed money from the cash  
11 box?

12 A Yes, ma'am, I did.

13 Q And what did she tell you?

14 A She admitted that she had removed money from the cash box on  
15 occasion.

16 Q And, in fact, indicated that she spent it on a doctor's  
17 appointment, correct?

18 A She gave me a couple of examples of what she had used that  
19 money for, yes ma'am.

20 Q And were they personal use?

21 A Yes, ma'am.

22 Q Did she make any statement to you regarding her  
23 understanding as to whether or not she was permitted to take  
24 that money?

25 A Yes, ma'am.

1 Q What did she tell you?

2 A Ms. Anderson advised me that she had been previously  
3 instructed by her boss that she was--it was forbidden for  
4 her to remove money from that till.

5 MR. NICHOLS: Sorry, I just want to make sure the  
6 record is clear, this is hearsay within hearsay, if we're  
7 getting into what the accused said her boss told her.

8 MS. PALUMBO: Your Honor, this is a matter of a  
9 statement of the defendant and it's a matter of whether or  
10 not she was told and whether or not, specifically, had any  
11 specific information--

12 THE COURT: It has to do with her knowledge of  
13 whether she was or wasn't supposed to do that. I'll accept  
14 it.

15 MS. PALUMBO: Thank you.

16 THE WITNESS: She was instructed by her boss, Mr.  
17 Shellenbarger, not to remove money from that till. He also  
18 instructed her that, in the future, if she needed the money,  
19 she was to come to him and he would loan her the money,  
20 personally.

21 BY MS. PALUMBO:

22 Q Was it your understanding that that was the result of the  
23 2008 complaint filed by Jane?

24 A Yes, ma'am.

25 Q Okay. And, did she state to you whether or not she

1 continued to take that money after that instruction?

2 A She did tell me that it occurred after she was instructed  
3 not to take the money.

4 Q And did she make any statements to you whether or not she  
5 thought that she had permission to do?

6 A She knew that she did not have permission to take that  
7 money.

8 Q Did she tell you if she ever stopped taking the money?

9 A She did.

10 Q And did she tell you what caused her to stop taking the  
11 money?

12 A She did, yes.

13 Q And what was that?

14 A A conversation that she had with her friend and co-worker,  
15 Mary Gill, who confronted her and was unwittingly involved  
16 in the matter but asked if she was, and she believed at the  
17 time she was, to stop. And it was Ms. Anderson's statement  
18 and Ms. Gill's statement that it did stop after that  
19 conversation with Ms. Gill.

20 Q And that time frame?

21 A Two thousand and twelve, I believe.

22 Q And, from a dollar standpoint, did Ms. Anderson admit to you  
23 whether or not that the amount taken was over fifty dollars?

24 A She estimated, I asked her if she had taken money more than  
25 forty or fifty times? She said no. I said less than ten

1 times? And she said, yeah, no more than ten times and she  
2 estimated somewhere between somewhere twenty and forty  
3 dollars on each of those occasions.

4 Q In fact, when you first asked her about it, do you recall  
5 the dollar amount that she told you she had taken for the  
6 doctor's visit?

7 A I believe it was forty dollars.

8 Q If your police report indicates it was--that she told you  
9 twenty, initially?

10 A I wrote that police report with a lot fresher memory than I  
11 have months later, so.

12 MR. NICHOLS: Can we have proper foundation of  
13 refreshing recollection than just telling him what his  
14 police report says?

15 THE COURT: Yeah, she can show him the report to  
16 reflect--to refresh his recollection if she needs to, but--

17 MS. PALUMBO: I apologize, this police report is  
18 over seventy pages long here.

19 MR. NICHOLS: Can I have a page please?

20 THE WITNESS: Seventy-six. I don't know that  
21 that's a direct reflection on the event that the single  
22 instance that you're referring to, but the report in that  
23 instance, Ms. Anderson indicates that she did on one  
24 occasion take twenty dollars.

25 BY MS. PALUMBO:

1 Q And then, at some point, did you confront her with the  
2 sticky note?

3 A I don't have--I did, yes.

4 Q What's been marked as People's exhibit six.

5 (At 6:06 p.m., PX6 marked)

6 A Yes, the actual sticky note is in my property room but this  
7 is a copy of it, yes.

8 Q And, did she acknowledge that was her handwriting?

9 A She did.

10 Q And, what was her response when confronted--did she  
11 acknowledge that she would have taken--that that sticky note  
12 meant that she had taken forty dollars?

13 A Forty dollars.

14 Q And, so her estimate at that point in time, was how many  
15 times had she removed money?

16 A She advised me no more than ten, is what she told me.

17 Q And varied between--

18 A Twenty and forty dollars per each event.

19 MS. PALUMBO: I have no further questions.

20 THE COURT: Cross?

21 MR. NICHOLS: Thank you.

22 CROSS EXAMINATION

23 BY MR. NICHOLS:

24 Q So, you start by interviewing--your investigation in this  
25 matter, by interviewing Elite Shellenbarger, right?

1 A Well, it started with contacting and interviewing Ms.  
2 Hackborn to get the facts of the case.

3 Q Okay. So that's your first interview, right?

4 A Yes.

5 Q Okay. Did you record that one?

6 A It was done, I believe, in the prosecutor's office and I  
7 would have to check. I have all of the files saved. I  
8 believe you have copies of those.

9 Q Yeah, I'm asking that because I listened to them all and I  
10 hear it.

11 A I don't believe I recorded that interview because it was  
12 done in her office?

13 Q Her, meaning Ms. Palumbo?

14 A That's correct, sir, I'm sorry.

15 Q Okay and did you talk to her in early May of this year, sir?

16 A Yes, sir.

17 Q You interview Hackborn and then you go talk to  
18 Shellenbarger, right?

19 A Yes.

20 Q And then you go talk to Anderson on the same day, right?

21 A Correct.

22 Q Because you're there and, even though you've got Lake Huron  
23 and the shoreline, you want to come all the way from West  
24 Branch, right?

25 A Its beautiful over here, but not enough I want to come back

1 every day for the next couple of weeks. Yes, sir.

2 Q You got a lot of stuff going on, right?

3 A Yes, sir. Yes.

4 Q Okay. And you tell Mr. Shellenbarger that, right?

5 A Yes, sir.

6 Q Okay. And you ask him to help you set up the interview with  
7 Cathy Anderson, his employee, right?

8 A If he was okay with that, yes, sir.

9 Q And he was?

10 A He was. Very helpful.

11 Q So, when you interview Shellenbarger first that day, right,  
12 he's got the county attorney with him, right?

13 A Mr. Huck. Tom, I believe it was Tom Huck. And it was at  
14 Mr. Huck's office where that interview took place.

15 Q Okay. Did Cathy Anderson have an attorney with her?

16 A She did not.

17 Q Okay. Shellenbarger is recorded with Huck in Huck's office,  
18 just the three of you, right?

19 A Correct.

20 Q Did you talk to Ms. Palumbo about the manner of conducting  
21 that interview? Whether you were going to record it or not?

22 A No, I don't believe I passed that by her, no.

23 Q Okay. And you didn't tell any of these gentleman you were  
24 recording, right?

25 A I think the recorder is right out for God and country to see

1 every time I do an interview.

2 Q You sure?

3 A In her case, it was sitting underneath my binder, but she  
4 saw it because I lifted my binder up several times.

5 Q Alright. So then you interview Cathy Anderson that day and  
6 then you do some other interviews, the interview with Mr.  
7 Rapp, right?

8 A That was much later but, yes.

9 Q Much later. The interview with Melissa Beebe.

10 A Still not even supplemented yet, but yes.

11 Q Alright. I was going to say, I don't have that yes.

12 A Its not typed yet, sir.

13 Q Okay. Did you record that?

14 A Yes.

15 Q Was there anything of value from that?

16 A Yes. Depending on what side of the aisle you're on, yes.

17 Q Okay. Drama side note there. I will wait for the supp.  
18 Okay, so then you go interview Jane Hackborn again, right?

19 A Long before Mr. Rapp and Ms. Beebe. When I talked to Ms.  
20 Anderson she had made an allegation against Ms. Hackborn  
21 and, not to leave any stone unturned or trying to do the  
22 best job, I felt it fair to question Ms. Hackborn as well.

23 Q That day? It was later in time, right?

24 A I believe it was, yes.

25 Q And there was another reason to interview Ms. Hackborn,



1 right?

2 MS. PALUMBO: I'm going to object as to the  
3 statement. I don't understand the nature of the question.  
4 If it's another reason he's indicating he interviewed her  
5 again, he received a statement from--

6 THE COURT: Can you clear that up?

7 BY MR. NICHOLS:

8 Q Was there another reason to interview Ms. Hackborn than what  
9 you testified to?

10 A The reason I went and interview Ms. Hackborn was because she  
11 was now implicated as a possible suspect for conducting the  
12 same type of behavior.

13 Q And let's get into why, right? Because you, at this point,  
14 you've talked to Shellenbarger, Hackborn once, Anderson, and  
15 Gill in terms of the major players, right?

16 A Actually, just to be clear, Ms. Hackborn made a trip to the  
17 State Police post to bring the evidence that is listed in  
18 that police report and dropped it off to us. So there was  
19 actually a third conversation, I wouldn't call it an  
20 interview, it was just to bring some of the evidence.

21 Q Okay. Now, before the second interview with Hackborn, did  
22 you talk to the accountants?

23 A Again, it's all noted in my police report, what the date and  
24 time of the interview. I think my interview with Ms.  
25 Hackborn would have been prior to my conference call with

1 the accountants but it's all listed in the very first couple  
2 of sentences of the narratives.

3 Q In my one hundred and ten pages of discovery I have your--I  
4 have the external audit reports, right?

5 A Yes, sir.

6 Q Is that from you? Did you get that from the accountants?

7 A The ones that were introduced here earlier?

8 Q Yes.

9 A No, Mr. Shellenbarger provided those to me.

10 Q Okay. Did you get any audit reports from the auditors?

11 A No, sir.

12 Q Did they give you any evidence that money was missing? Did  
13 they give you ledgers?

14 A No, sir.

15 Q Did they give you receipts?

16 A No, sir.

17 Q Did they give you bank accounts?

18 A No, sir.

19 Q Did they give you hand written documents from anybody?

20 A The auditors, no, sir.

21 Q Okay. So you have no evidence from the auditors that money  
22 is missing, correct?

23 A I have no evidence, correct, I'll bow to that. Yes, sir.

24 Q Now, when you go interview Ms. Hackborn the second time and  
25 its recorded, right?

1 A Yes.

2 Q That is, the material portion is record, the reason is  
3 because you've got this information that you want to take to  
4 her that there's this implication that there is an agreement  
5 between Ms. Anderson and Ms. Hackborn where Ms. Anderson can  
6 put the sticky note in the cash box when she takes one ten  
7 and six fives out of there, for example, right?

8 A I did have that information at hand now that you bring it  
9 up, yes, sir.

10 Q Okay. That's what I'm getting at.

11 A Okay, yep.

12 Q She denies that, right?

13 A She does, yes.

14 Q She also denies that she herself does the same thing?

15 A She does, denies.

16 Q Now, your interview with Ms. Anderson was actually  
17 transcribed, right?

18 A Correct, sir, by my secretary.

19 Q The transcription starts at page 72 and goes through page  
20 108 of your police report.

21 A If you say so, sir.

22 Q Its a really long interview, right?

23 A Shorter than Mr. Shellenbargers. I felt sorry for my  
24 secretary either way, but that's--

25 Q Its a pretty long interview?

1 A Yes, sir.

2 Q During the course of the interview--how long have you been a  
3 detective as of late May of 2016?

4 A Trooper for nineteen years, eighteen years, sergeant for  
5 four, detective for--since January, sir.

6 Q You obviously got training on how to conduct an interview?

7 A Yes.

8 Q And you want to try to pin down somebody to a specific  
9 number of times they may have committed an act, right?

10 A Correct.

11 Q And, during the course of this interview that, on  
12 transcription, is 28 plus 8, 36 pages, you drilled down with  
13 her how many times she may have taken money from the cash  
14 box, right?

15 A I'm trying to establish the elements of the crime. Trying  
16 to meet dollar amounts and if that has to be done by  
17 aggregating the acts, then that's what--

18 Q So, the answer to my question is?

19 A Yes.

20 Q How many times do you think you asked her to give you the  
21 number of times that this practice of putting a sticky note  
22 in and taking out of the cash box?

23 A How many times didn't she give me an answer or how many  
24 times did I ask?

25 Q How many times did you ask?

1 A Four, probably. Estimated.

2 Q Okay. And you start with, do you think it was forty or  
3 more?

4 A As alleged by the complainant is how I think I qualified it  
5 was, its not as many as she says, right?

6 Q Right.

7 A And it was no, it's not that many.

8 Q And she says two to three.

9 A Initially?

10 Q Yes.

11 A Correct.

12 Q She comes back later on and says two to three again, right?

13 A I remember two to three, I couldn't tell you how many times  
14 she says to me.

15 Q And you are trying to use ten as a benchmark, basically.  
16 More than ten, less than ten, right?

17 A That was my question, sir. Was it ten, was it less than  
18 ten. No more than ten was her answer, as I said earlier.

19 Q Now, the physical evidence that you have is the sticky note,  
20 right.

21 A Correct, sir.

22 Q One sticky note, right?

23 A Correct.

24 Q Which would be physical evidence of one occurrence by  
25 somebody putting a sticky note if there was a corresponding

1 number of dollar bills missing, right?

2 A Yes.

3 Q And, then your interviews with Mary Gill, Cathy Anderson,  
4 and Jane Hackborn, right?

5 A Yes.

6 Q Their numbers are all over the board, right?

7 A As far as number of occurrences?

8 Q Yes.

9 A Yes.

10 Q And, the understanding that you develop is, well, it sounds  
11 like there was some sort of understanding that this was okay  
12 until Mary Gill talks to Cathy Anderson, right?

13 A I, yes, that was noted to me by one of the parties that  
14 there was an agreement in place.

15 Q That was Mary Gill?

16 A I should say two of the parties because Ms. Anderson didn't  
17 call it an agreement. She didn't acquiesce to that--

18 Q An understanding.

19 A --it was an understanding.

20 Q In fact, Mary Gill, gave you that quote. You were here when  
21 Ms. Hackborn testified, right?

22 A Yes.

23 Q Mary Gill gave you that quote that I read to her on the  
24 record, right?

25 A Yes, sir.

1 Q Your secretary transcribed it?

2 A Yes.

3 Q Did you review it?

4 A Yes.

5 Q Do you think the transcription is pretty accurate?

6 A Accurate.

7 Q Okay. And that came from Mary Gill, right?

8 A Yes, sir.

9 Q Okay. And so, what you're trying to figure out is, we have  
10 something that might be an understanding by Ms. Anderson,  
11 that is, until Mary Gill talks to Ms. Anderson and tells her  
12 don't do it, it stops, right?

13 A When Mary Gill approached Ms. Anderson, by all accounts,  
14 that stopped. Yes, sir

15 Q All accounts, meaning Hackborn, Gill, Anderson, right?

16 A Yes.

17 Q And that's certainly not contradicted by any physical  
18 evidence, right?

19 A No, sir.

20 Q No additional sticky notes, right?

21 A Correct.

22 Q Nothing from the auditors, correct?

23 A No, sir.

24 Q By the way, did you ask the auditors about the 2015 site  
25 visit?

1 A Fifteen?

2 Q Two thousand fifteen. One five.

3 A During the conversation that I had with them on the phone  
4 they mentioned that, and I'm not going to speak specifically  
5 to fifteen, but I didn't ask them specifically about fifteen  
6 but they said from time to time they'll ask employees, but  
7 they don't always get all of them.

8 Q Did you get any other documents from the auditors?

9 A I did not.

10 Q Do you know if somebody did?

11 A I have some other documents that were provided to the  
12 prosecutor's office by the--that I've seen, that I made  
13 copies of so that I can review them.

14 Q By? And they were provided by Hackborn?

15 A Some of these were provided by the office of Stephenson &  
16 Gracik.

17 Q Okay.

18 A And I just read these in today, so--

19 Q You just read them today?

20 A Yes, sir.

21 Q Okay. And now you have heard me ask about money missing.  
22 Based on what you've read today, your answer to my question  
23 doesn't change, does it?

24 A No, sir.

25 Q Okay. You'd tell me that, right?



1 A Yes, sir.

2 MR. NICHOLS: May I have a moment, Your Honor.

3 BY MR. NICHOLS:

4 Q You have indicated in a supplemental that there is a  
5 transcript of a meeting between Mr. Shellenbarger, Ms.  
6 Hackborn, and somebody else. A third party.

7 A There is a transcript of it in there?

8 Q Yeah, transcript, or minutes of a meeting.

9 A I was provided, from Ms. Hackborn, and it had to do with her  
10 union. Basically, she was--they were attempting to  
11 discipline her as a result of the chaos that was being  
12 created within the office and she provided me a copy of, I  
13 don't believe they were minutes that were recorded, and  
14 maybe this is a question best directed for her.

15 Q Sure.

16 A Because she is the one that provided me that document.

17 Q If that's the case, don't worry about it. I didn't mean to  
18 drag you down the path of becoming a shop steward. I did  
19 that job myself, it's--have you done any other investigation  
20 on the practice of IOU writing in exchange for, well, let's  
21 say borrowing or exchanging cash from cash boxes in Iosco  
22 County this month?

23 A You're calling it an IOU and I don't know that anything says  
24 IOU on it. But, if you're referring to a sticky note that  
25 says I took this amount of money from the till, yes, I'm

1 doing an investigation.

2 Q Why?

3 A Currently have an open investigation at other offices within  
4 this building.

5 Q Why?

6 A Because it was brought to the attention of the prosecuting  
7 attorney that this is alleged to be beyond. In one office  
8 it involves something similar. And, again, this is an  
9 ongoing investigation, so I have to tread lightly here with  
10 what I'm willing to say.

11 MS. PALUMBO: I'm guess I'm going to object as far  
12 as relevance to this particular case.

13 MR. NICHOLS: Oh, it's very relevant because under  
14 People versus King, the court can consider defenses and if  
15 the defense is, she thought it was okay to do, that's fair  
16 game for a pre-lim.

17 THE COURT: Overruled.

18 BY MR. NICHOLS:

19 Q Go ahead.

20 A In one of the offices, it was alleged that there were checks  
21 being cashed. Somebody--one of the employees would write an  
22 office a check to that office and the check would provide  
23 them money. That's a negotiable instrument. Its legal  
24 tender. Not my business. In the other office, it was  
25 asserted that perhaps there were IOU's being written.

1 Apologize to the Court but this is an ongoing investigation,  
2 so I'm trying to be discreet. My findings thus far show  
3 that the monies or the notes were exchanged for money from,  
4 we'll call it an IOU if you will, were not public monies.  
5 They were owned by the employees in that particular office.  
6 Like a coffee fund.

7 Q Like a lock box.

8 A Correct.

9 Q Okay. Gotcha. Now, you're saying you would not call a  
10 post-it an IOU. Now, I understand your testimony, and I'm  
11 not going to argue with you about that but, in the course of  
12 not just being a detective but twenty plus years in the  
13 departments, when there's a property crime, the person who  
14 things they are committing a crime, usually doesn't write  
15 their name on it, do they?

16 A To be fair, no, sir.

17 Q You specifically asked and got an example from Cathy  
18 Anderson during your interview with her and I listened to  
19 again on the way up here, it's like almost thirty minutes,  
20 would you agree with that?

21 A That's a good estimate, sir.

22 Q Did you every clarify with her that the sticky note that  
23 came into your possession from the trash via Ms. Jane  
24 Hackborn was the same sticky note reflective of the twenty  
25 dollars for the doctor visit that she told you about?

1 A I don't.

2 Q Okay.

3 A I don't believe that to be the case, no.

4 Q We don't know what year that's from, that sticky note, in  
5 other words?

6 A Only what Ms. Hackborn tells me--or had told the Court  
7 earlier.

8 Q Gotcha. Okay, now you testified about the other departments  
9 and the checks that are legal tender, right?

10 A Correct.

11 Q Not your business if its legal tender, right?

12 A Its a negotiable instrument--

13 Q Unless its--

14 A --you walk into a bank and, I'm sorry, go ahead.

15 Q Unless its nonsufficient funds and the person writing it  
16 knows its nonsufficient funds?

17 A Correct and there was no allegations of that.

18 Q Okay.

19 A And, in checking with her, I'm not going to say which  
20 office, but in checking with that office, that has never  
21 been the case.

22 Q You found no money missing?

23 A I have found nothing missing.

24 Q Just like you found no money missing in the Iosco County  
25 Treasurer's Office, correct?

1 A Not sure we want to go down that road because that takes me  
2 back to 2008 2009, which I have a bunch of documentation on,  
3 but as it involves the 2012--

4 Q Can I jump in and ask a question about that? I don't want  
5 to go down that road either, but you talked to the auditors  
6 about it, right?

7 A I did. There was poor accounting where they can't account  
8 for a lot of the monies that weren't receipted in and it  
9 gets really confusing. But, there was tax certifications  
10 and, I don't want to go back to 2008 2009 here, but--

11 Q Poor accounting.

12 A Poor accounting.

13 Q Sloppy.

14 A And they can't account for missing monies but they also  
15 can't explain why there is an overage but because there is  
16 an overage, and its only this much, maybe--

17 Q That's what I wanted to ask you, they ended up with more  
18 money than they thought they should have?

19 A They didn't end up with what they were supposed to end up  
20 with, but they ended up with more than what should have, by  
21 receipts, by what should have been.

22 Q More than what's receipted in.

23 A Yes, sir.

24 Q Poor accounting. What, I'm a poor accountant too. I can't  
25 tell whether my wife took my twenty or my kids took my

1 twenty, agree?

2 A Probably both in my case.

3 Q And I can't accuse anybody of stealing, right? You never  
4 know, right?

5 A Correct.

6 MR. NICHOLS: Nothing further.

7 THE COURT: You said no more questions?

8 MR. NICHOLS: No more questions.

9 THE COURT: Re-direct?

10 RE-DIRECT EXAMINATION

11 BY MS. PALUMBO:

12 Q As it relates to the question that Mr. Nichols just asked  
13 you regarding whether there was--whether you--the  
14 information you reviewed, whether there was money missing  
15 from 2008 2009 and you talked about tax histories and tax  
16 certifications.

17 A Yes, ma'am.

18 Q And it was a combination into the--the exhibits of two thou-

19 -

20 THE COURT: Don't we have a six year statute of  
21 limitations?

22 MR. NICHOLS: We absolutely do.

23 THE COURT: So, whatever happened in 2007,8,9 is  
24 beyond the statute of limitations. If money was stolen,  
25 nobody can be charged for it anyway, correct?

1 MR. NICHOLS: Right.

2 MS. PALUMBO: Well--

3 THE COURT: Correct?

4 MS. PALUMBO: Not necessarily. Not necessarily,  
5 Your Honor.

6 THE COURT: Okay. How can somebody be charged when  
7 its beyond the statute of limitations.

8 MS. PALUMBO: The statute of limitations is a--is-  
9 -is, I understand as a defense, it's not a charging--it's  
10 not a charging requirement, it is a defense that would be  
11 raised and--

12 MR. NICHOLS: Okay.

13 MS. PALUMBO: --there are--

14 THE COURT: And, presumably, if you charge  
15 somebody with a 2007 2008 offense, they are going to say  
16 it's beyond the six year statute of limitations.

17 MR. NICHOLS: I think we call that  
18 jurisdictional.

19 MS. PALUMBO: Likely--you asked if someone could  
20 be charged.

21 THE COURT: Okay, so can we stick to the charged  
22 offenses here?

23 MS. PALUMBO: Understood, Your Honor, I was simply  
24 doing a re-direct on the question that Mr. Nichols raised,  
25 which was he asked if there was--if after he reviewed the

1 information that he had reviewed, if there was any money  
2 missing? And I simply want to clarify that and, he seemed  
3 hesitant to ask that question, whether or not, from what  
4 he's seen, was there money missing? It's a yes or no  
5 question.

6 THE COURT: Go ahead.

7 THE WITNESS: Yes, there is money missing from  
8 2008 2009 as well as what we can see from the sticky notes  
9 and the confession of 2012. Eleven twelve.

10 MS. PALUMBO: Thank you.

11 THE COURT: Mr. Nichols.

12 RE-CROSS EXAMINATION

13 BY MR. NICHOLS:

14 Q Didn't you say that there was, didn't he say if there is  
15 more than what they should have, according to their  
16 receipts?

17 A I guess I don't--can I say that there was more than--

18 Q More cash counted out by the people who go to school to do  
19 these things, we call them accountants, than what's been  
20 receipted in by the Iosco County Treasurer's Office.

21 A From what you have in your dossier from Stevenson & Gracik,  
22 there was more money that they found.

23 Q Okay.

24 A Than what was receipted for.

25 Q Okay. Back in 2008 you were still in the department but you



1 weren't working here in Iosco County. I mean you don't have  
2 any idea if money was actually missing.

3 A I was assigned to the West Branch post and Iosco County was  
4 one hiccup away, but you are correct, I do not know.

5 MR. NICHOLS: I do not know.

6 MS. PALUMBO: If I may?

7 THE COURT: Go ahead.

8 RE-DIRECT EXAMINATION

9 BY MS. PALUMBO:

10 Q The three hundred and six dollar check, was that receipted  
11 in?

12 A No, ma'am.

13 THE COURT: That was in 2008?

14 MS. PALUMBO: 2008.

15 MR. NICHOLS: That's exhibit five, right?

16 MS. PALUMBO: Exhibit five.

17 BY MS. PALUMBO:

18 Q And, just to be clear, they compared the tax certifications,  
19 there is a verifiable number of tax certifications by the  
20 Register of Deeds, correct?

21 THE COURT: Are we asking for a bind over on 2007  
22 2008 stuff or 2011 stuff?

23 MS. PALUMBO: No, Your Honor, but as it relates to  
24 the information that we are presenting to the Court and the  
25 question is a follow-up question--

1 THE COURT: I'm still wondering why we presented a  
2 whole bunch of irrelevant stuff to the Court.

3 MS. PALUMBO: Well, as Mr. Nichols has indicated  
4 that they intend to raise as a defense that she thought it  
5 was okay to take the money. All of that information, as I  
6 indicated earlier, is relevant to what the facts and  
7 circumstances were as to her knowledge and belief and as to  
8 whether or not it was appropriate to take the public monies  
9 for personal use.

10 MR. NICHOLS: Your Honor, they have to show that  
11 it was unauthorized. It was an element. Its people--I  
12 mean, it's like a hundred year old case. It's People versus  
13 Hoefle 576 Mich 428 1936, the witness who could show the  
14 elements or not is a hundred steps down the hall and it's  
15 the Treasurer of Iosco County.

16 THE COURT: I'm not sure if he's there now or not,  
17 I'm guessing not.

18 MS. PALUMBO: Your Honor--

19 THE COURT: Go ahead.

20 MS. PALUMBO: As it relates to whether or not Mr.  
21 Shellenbarger, as the treasurer, does not have the authority  
22 to give the deputy treasurer permission to take public  
23 monies.

24 MR. NICHOLS: Now we're back to the principal  
25 agent issue.

1 THE COURT: Any other questions? Ms. Palumbo?

2 MS. PALUMBO: I have no other questions, Your  
3 Honor.

4 THE COURT: Mr. Nichols?

5 MR. NICHOLS: No other questions.

6 THE COURT: Sergeant Johnson, during your  
7 conversations with the auditors, did they give you any  
8 indication that during their audit of the 2010 calendar year  
9 they found any money missing in Iosco County--

10 THE WITNESS: No, sir.

11 THE COURT: --at the Treasurer's Office?

12 THE WITNESS: No, sir.

13 THE COURT: Two thousand and eleven?

14 THE WITNESS: No, sir.

15 THE COURT: Two thousand twelve?

16 THE WITNESS: No, sir.

17 THE COURT: Two thousand thirteen?

18 THE WITNESS: No, sir.

19 THE COURT: Two thousand fourteen?

20 THE WITNESS: No, sir.

21 THE COURT: Two thousand fifteen?

22 THE WITNESS: No, sir.

23 THE COURT: Now, I am not an auditor, I did not  
24 major in accounting, but it is my understanding that  
25 auditors are the people who go through all of your books and

1 decide whether or not money is missing. Is that fair to  
2 say, as far as you understand?

3 THE WITNESS: It's a fair assessment.

4 THE COURT: So, as far as we know, there is no  
5 money missing from Iosco County Treasurer's Office in 2011  
6 and 2012 and 2013 and 2014, correct?

7 THE WITNESS: Money taken, but not missing,  
8 correct.

9 THE COURT: So, if money was taken but not missing  
10 that must mean, logically, that money was put back?

11 THE WITNESS: Correct, sir.

12 THE COURT: Any questions in light of my  
13 questions?

14 MR. NICHOLS: No.

15 RE-DIRECT EXAMINATION

16 BY MS. PALUMBO:

17 Q To clarify, you had documentation that money was taken in  
18 2011 2012, correct?

19 A Documentation, confession, if you'll call it that, yes.

20 Q An admission by the defendant that she took the money,  
21 correct?

22 A Yes.

23 Q And that she spent it on personal use, correct?

24 A Yes.

25 THE COURT: Anybody?

1 MS. PALUMBO: Nothing further.

2 THE COURT: You may step down, thank you.

3 (At 6:33 p.m., witness excused)

4 THE COURT: Any further witnesses?

5 MS. PALUMBO: No further witnesses at this time,  
6 Your Honor.

7 MR. NICHOLS: After consulting with my client, we  
8 are not going to call any witnesses for purposes of the  
9 exam.

10 THE COURT: Ms. Palumbo? I'm assuming you'll move  
11 to bind over.

12 MS. PALUMBO: I'm moving to bind over, Your  
13 Honor. Also, would like to cite People versus Jones, it's a  
14 1990 Court of Appeals decision 182 Mich App 668.

15 THE COURT: What's that again?

16 MS. PALUMBO: People versus Jones and its 182 Mich  
17 App 668 from 1990.

18 THE COURT: One eighty two Mich App 668?

19 MS. PALUMBO: Six, six eight, yes, Your Honor.

20 THE COURT: Nineteen ninety?

21 MS. PALUMBO: Nineteen ninety.

22 THE COURT: Okay.

23 MS. PALUMBO: In specific reference to the statute  
24 under which the charge has been made in this matter and  
25 specifically citing the fact that, the fact that monies are

1 returned does not allow an individual to escape prosecution  
2 and conviction or he can be prosecuted under the first  
3 paragraph of the statute without aid of the presumption.  
4 There is some issues of presumption. It further goes on, it  
5 states earlier, the attention of the statute was to prevent  
6 any public official from using money or property coming to  
7 him in his official capacity for any other purpose than the  
8 purpose for which it came to him. He does knowingly use it  
9 or permit others to do so for other purposes than for the  
10 one for which it was entrusted to him, then he comes within  
11 the provisions of the statute and the return of the money  
12 does not allow the individual to escape the prosecution and  
13 conviction.

14 THE COURT: Was there a time frame on that return  
15 of money?

16 MS. PALUMBO: No, there is not.

17 THE COURT: Alright. Is that argument?

18 MS. PALUMBO: Your Honor, in this matter, there--  
19 the elements of the charge are that the defendant held a  
20 public office, which has been clearly established that she  
21 was the deputy treasurer and that in that capacity she had  
22 access and had money in her--had access to money, that being  
23 the cash box in the treasurer's office, which was public  
24 money. That she knew that that was public money and that  
25 she, herself, admitted that the money--that she had used

1 that money for personal purposes and that the value was over  
2 fifty dollars. We have a co-worker who observed the money  
3 being taken and the money was missing and eventually  
4 confronted through a third party, the defendant, to ask her  
5 to stop taking the public money at which point she did stop  
6 taking the public money. The crime was committed when she  
7 took the money and used it for personal purposes. The fact  
8 that she stopped doing it, does not excuse her of her  
9 criminal behavior.

10 The testimony of Ms. Hackborn establishes all of  
11 the elements of the crime and, as well as, in combination  
12 with the testimony of the sergeant and the admissions of the  
13 defendant that by a standard of probable cause that a crime  
14 has been committed and that the defendant was the individual  
15 who has committed that crime.

16 THE COURT: So what level of intent does this  
17 statute require?

18 MS. PALUMBO: That she know--that she knew--

19 THE COURT: Specific, general, strict liability?

20 MS. PALUMBO: Strict liability in the sense that  
21 she has to know that the money was public money and that she  
22 knowingly took it and she used it for a purpose not--not for  
23 a public purpose. But by doing that, returning the money,  
24 whether she thought she was borrowing it or having an  
25 intention to borrow it, and that goes back to as it relates

1 to a 1901 case where it talks about, "It is true the  
2 respondent said he intended to return the money, but that  
3 does not do away with the offense, its doubtless true that  
4 nearly every employee who misappropriates funds, intends to  
5 return them to his employer and to do this before the  
6 misappropriation is discovered but the intention does not  
7 prevent the act from becoming a crime. The crime consists  
8 in the intentional appropriation of the money by the  
9 employee of the employer."

10 THE COURT: Now, in looking at the--

11 MS. PALUMBO: And that's People versus Butts.

12 THE COURT: Let's see, Gillespie 2nd Edition,  
13 Michigan Criminal Law and Procedure in section 5.402  
14 elements of embezzlement, its listing of elements of  
15 embezzlement and one of the statutes listed there is  
16 750.175, I believe that's our statute here, correct?

17 MS. PALUMBO: I believe so.

18 MR. NICHOLS: Yes.

19 MS. PALUMBO: Yes, 750.175, yes.

20 THE COURT: At any rate, Gillespie's, and I  
21 understand they are not the Supreme Court or the Court of  
22 Appeals, but they're generally considered a pretty accurate  
23 treaty as far as the criminal law goes, indicates that of  
24 the elements, the defendant wrongfully converted or  
25 appropriated the property or money with the intent to



1 defraud. So your belief is there is no intent to defraud?

2 MS. PALUMBO: It is the elements of--under the--  
3 under the, our standard jury instructions, Your Honor, does  
4 not include the intent to defraud as it relates to 750.175.

5 THE COURT: Does 750.175 have a specific jury  
6 instruction attached to it?

7 MS. PALUMBO: It does, Your Honor.

8 THE COURT: What is it? Or, do you have a copy of  
9 it there?

10 MS. PALUMBO: I do have a copy.

11 THE COURT: That would be easier than me going to  
12 grab it.

13 MS. PALUMBO: That's what I was reading from  
14 earlier. Its 27.3.

15 THE COURT: So, under this, if a clerk got a  
16 specific twenty dollar bill that they thought was pretty  
17 cool, maybe it had a specific date of birth in the serial  
18 number or something like that, that's a bill that they  
19 received in their official position, its public property  
20 obviously because they received it in their official  
21 position, so if they just change that out, that would be a  
22 violation of this crime.

23 MS. PALUMBO: Your Honor, I haven't researched  
24 that issue, that's not what the circumstances that we have  
25 here today.

1 THE COURT: Well, I understand, but its close.

2 MS. PALUMBO: I don't believe that it is the  
3 same, Your Honor.

4 THE COURT: I'm taking this twenty out and putting  
5 this twenty in, in the morning. Isn't that similar to I'm  
6 taking this twenty out and putting this twenty in right now?

7 MS. PALUMBO: Your Honor, as is indicated and as  
8 was presented today, it was specifically admitted that the  
9 money was used for personal use and that--

10 THE COURT: Well, presumably if somebody has a  
11 really cool twenty dollar bill that they like the serial  
12 number on and they exchange it, that's for personal use,  
13 whether they frame it and put it on the wall, or, you know,  
14 give it to their favorite niece or nephew or buy beer with  
15 it, where are we that different?

16 MS. PALUMBO: Where are we different from if  
17 someone were to, you're posing a question as to if someone  
18 were to see a twenty dollar--

19 THE COURT: Was there a time frame that that--

20 MS. PALUMBO: Your Honor, there is not a time  
21 frame. You are looking at the elements, you look at the  
22 elements that it's for a use that is not permitted under--

23 THE COURT: Taking money out and replacing it with  
24 other money is, your saying, is not a use permitted,  
25 correct?

1 MS. PALUMBO: With element four, I've just given  
2 you my only copy there.

3 THE COURT: Says four, that the defendant used the  
4 money for an unauthorized purpose?

5 MS. PALUMBO: Right?

6 THE COURT: I mean, there is no money missing  
7 here, so it's not like--

8 MS. PALUMBO: I'm sorry, there is money missing,  
9 Your Honor. There was testimony by Ms. Hackborn that she  
10 would come into work and the cash box would be light.

11 THE COURT: There is also testimony from Sergeant  
12 Johnson that he had conversation real live accountants who  
13 said that there was no money missing from Iosco County for  
14 those calendar years. That means that if there was money  
15 taken out, there was money put back in. Or the accountants  
16 don't know what the heck they're doing either, that's a  
17 possibility too. But, if we take the accountants at their  
18 word, that there is no money missing, that means that if  
19 somebody took a twenty out, a twenty got put back in. Or  
20 maybe it was a ten and two fives. Money out, money back in.  
21 So, I'm just asking you, is there--

22 MS. PALUMBO: The fact that the monies are  
23 returned, does not--

24 THE COURT: I get that, so what I'm asking you is,  
25 if somebody sees a really cool twenty dollar bill and takes

1 it out because that was the twenty that was taken in, if  
2 they take that twenty out and put a ten and two fives in, is  
3 that a violation of the statute?

4 MS. PALUMBO: If there was an investigation--

5 THE COURT: It would seem to be.

6 MS. PALUMBO: --if you believe that that's the  
7 case, then certainly you would find that there was probable  
8 cause to believe a crime has been committed or--

9 THE COURT: I'm not asking--I'm asking what you  
10 believe. Do you believe that?

11 MS. PALUMBO: Is that relevant to the evidence  
12 that we presented today?

13 THE COURT: It could be, yeah. In my mind, maybe,  
14 and I guess my mind is the one that counts here right now.

15 MS. PALUMBO: I would agree with that, Your Honor.

16 THE COURT: If somebody takes this particular  
17 twenty out and puts another twenty in, is that a violation  
18 of the statute?

19 MS. PALUMBO: That appears to lack the--one of the  
20 elements of an unauthorized use of funds.

21 THE COURT: Which element? Are they authorized to  
22 take the twenty out that's really cool and put two tens back  
23 in? Who has the authority to authorize that? I thought a  
24 few minutes ago you told me that Mr. Shellenbarger didn't  
25 have the authority to authorize this type of behavior.

1 MS. PALUMBO: He certainly doesn't have the  
2 authority and I believe that we presented evidence today,  
3 Your Honor, that he specifically instructed Ms. Anderson  
4 that she was not to remove money from the cash box and that  
5 she admitted that she, despite those instructions, knowingly  
6 removed the money from the cash box and used for her  
7 personal use.

8 THE COURT: So he does have the authority, though,  
9 to say we could do that?

10 MS. PALUMBO: As the treasurer who is aware or  
11 made aware that there are allegations of theft in his office  
12 to instruct his staff not to steal from his office--

13 THE COURT: But, again, aren't we--

14 MS. PALUMBO: --I would see that that would--

15 THE COURT: --getting back to what is stealing?  
16 Does stealing mean an intent to permanently deprive? Or an  
17 intent to defraud?

18 MS. PALUMBO: The embezzlement as related to this  
19 charge here, Your Honor, the embezzlement that--

20 THE COURT: You're saying is specific intent, it  
21 requires no intent to steal or to permanently deprive?

22 MS. PALUMBO: It does not require to intent to  
23 permanent deprive.

24 THE COURT: So, if the really cool twenty comes in  
25 and the clerk takes it out and replaces it, they could be

1 charged then with--well, let's call it a fifty because we  
2 want to make it a felony.

3 MS. PALUMBO: Your Honor, I haven't had an  
4 opportunity to review all of those facts and circumstances  
5 because that's not--

6 THE COURT: Well, just based on your review of the  
7 statute up to now, what do you--

8 MS. PALUMBO: Is there money missing, is there--

9 THE COURT: Is there money missing here?

10 MS. PALUMBO: Yes, there is money missing here.

11 THE COURT: I missed the accountant testifying to  
12 that. I heard Sergeant Johnson say there was no money  
13 missing.

14 MS. PALUMBO: He did not say there was no money  
15 missing, Your Honor. He said that there was money missing.

16 THE COURT: Sergeant Johnson said that there might  
17 have been some money missing in 2007 2008, except that on  
18 cross examination he had to acknowledge that the auditors  
19 found more money than what was receipted and in 2011 and 12  
20 in the time period in question, any money that was taken  
21 out, had to have been replaced because his testimony was,  
22 that according to the auditors, there was no money missing.  
23 Am I missing something there? Is that not an accurate?

24 MR. PALUMBO: The part that your missing is that  
25 he further testified that based on what he's observed from

1 the checks that were not receipted, that there was  
2 absolutely money that was missing--

3 THE COURT: What checks were these?

4 MS. PALUMBO: That was the three hundred and six  
5 dollar check.

6 THE COURT: That was from 2008.

7 MS. PALUMBO: Correct.

8 THE COURT: That's not charged.

9 MS. PALUMBO: Correct. When you were talking  
10 about that and you were asking if you had missed anything, I  
11 was just pointing out that the check for three hundred and  
12 six dollars--

13 THE COURT: And, again, he is not an auditor and I  
14 don't believe he did an audit of the entire set of books.  
15 At least not that he testified to. So, again, we have no  
16 money missing, right?

17 MS. PALUMBO: During what time period?

18 THE COURT: The only time period that matters, the  
19 charges, 2011, 2012, 2013, and 2014.

20 MS. PALUMBO: So, when the auditors did their  
21 audit, at that point in time, the money had been returned,  
22 which was the testimony of Ms. Hackborn, which was the  
23 testimony of--

24 THE COURT: Who brought this up, about the time  
25 she filed to run against Mr. Shellenbarger.

1 MS. PALUMBO: Correct.

2 THE COURT: Okay.

3 MS. PALUMBO: And, as it relates to the fact that  
4 the money was returned and, as admitted by Ms. Anderson,  
5 that she took the money and spent the money on a personal  
6 matter and then later returned the money.

7 THE COURT: But we don't know how much later.

8 MS. PALUMBO: And that time element is irrelevant.

9 THE COURT: Right, which is back to my, if the  
10 cool fifty comes in and somebody takes it out and  
11 immediately replaces, since the time factor doesn't matter,  
12 they're subject to being charged with embezzlement, right?

13 MR. PALUMBO: If the audit was done when that  
14 fifty dollars was removed, even though they returned the  
15 fifty dollars, and it was discovered that that money was  
16 missing. If the money is missing, the money is missing.

17 THE COURT: Okay, but in this case, there is no  
18 money missing.

19 MS. PALUMBO: There was money missing, as observed  
20 by Ms. Hackborn and as admitted by Ms. Anderson.

21 THE COURT: Mr. Nichols?

22 MR. NICHOLS: The Court cited from the Gillespie  
23 book, People versus Collins 239 Mich App 125, 1999 which  
24 happens to be one of the cases that is cited in, or cites,  
25 People versus Hearst, which is all the way back to 1886. We



1 have had this jurisprudence that you have to have some  
2 intent when it comes to a property crime of this nature.  
3 From Hearst, "Before the offense can be made out, it must  
4 distinctly appear that the respondent, which is what they  
5 called the defendant back then, has acted with a felonious  
6 intent and made an unintentionally wrong disposal indicating  
7 a design to cheat and deceive the owner." What this record  
8 reflects, and its missing two witnesses, what this record  
9 reflects is serious dilatory practices and changes in the  
10 treasurer's office. Some people who do not like each other  
11 and go behind each other's back. Ms. Hackborn, now running  
12 against the treasurer, and; who knows if it's because she  
13 doesn't like him, because he didn't do anything in 2008, or  
14 because he promoted Ms. Anderson, who she is now accusing of  
15 embezzlement. Who knows? Mr. Shellenbarger is the one who  
16 can give us two important things. What the prosecutor  
17 missed in her colloquy with the Court, is she is charged  
18 under MCL 750.175, public official or servant or agent.  
19 This person is not the one who got the votes. Mr.  
20 Shellenbarger is the public official who ran for office and  
21 got the votes. The only theory can be that she is his agent  
22 or servant and, if they want to get a bind over or show  
23 probable cause, they've got to have him come in and say, she  
24 is my agent or servant, she didn't have the authority to use  
25 the funds this way. What the testimony reflects today,

1 there was some sort of agreement, maybe it's not an  
2 agreement, maybe it's an understanding, maybe its implicit;  
3 an implicit agreement is acceptable under common law,  
4 agent/principal authority going back to England and the  
5 Magna Carta. So, what we have is a record that shows  
6 perhaps there was a sticky note that replaced some dollars  
7 and the, without the corpus of the crime being shown, Ms.  
8 Anderson's statement, which then brought in Mr.  
9 Shellenbarger's statement, so then you've got hearsay within  
10 hearsay, along with what I assert is no showing of the  
11 corpus because they need Shellenbarger, the treasurer to  
12 come and say she didn't have permission to use it the way  
13 she used it between 2011 and 2014. Then you've got this  
14 detective sergeant trying to figure out whether there was an  
15 explicit agreement among these three or two, Anderson and  
16 Hackborn, that somehow, Gill, who is nobody's superior  
17 officer, comes in and says, "Cathy, stop it" and then,  
18 according to what everybody seems to agree and what the  
19 detective sergeant related to the Court, it stopped. So,  
20 we've go a belief of authority to use the money that way.  
21 Which, under People versus Hoefle, is not embezzlement.  
22 It's not embezzlement under common law principal agent  
23 authority and it's not embezzlement under MCL 750.175,  
24 embezzlement by a principal or an agent.

25 THE COURT: How did that apply if this is a strict

1 liability?

2 MR. NICHOLS: It's not a strict liability offense.  
3 This is, if there is no authority--

4 THE COURT: Well, I've never seen a larceny case  
5 of any kind that is strict liability, but that doesn't  
6 necessarily mean that there isn't one.

7 MR. NICHOLS: Well, the case that was cited by the  
8 prosecutor, People versus Jones, actually stands for the  
9 proposition that the prosecutor doesn't have to show that an  
10 embezzlement by a public official, the actual office holder  
11 in that case, the prosecutor doesn't have to show that there  
12 was a demand and a failure to pay on demand. Its head note  
13 one from the case in front of the Michigan Court of Appeals.  
14 It was a Muskegon county public official who is charged with  
15 embezzlement because he was an elected member of the  
16 Muskegon Heights City Council. The claim of error after his  
17 trial was, well, they never showed that they demanded the  
18 money back from me when I went on some conference and didn't  
19 repay some disallowed claim. They never made a demand of me  
20 and they didn't show they made a demand of me, therefore, I  
21 can't be prosecuted because they didn't show one of the  
22 elements of the offense. It is not opposite to this case,  
23 it is inapposite, completely. Here we have facts that show  
24 people who maybe don't get along and don't play well and no  
25 facts that show that the principal came in and said, you

1 can't use the money like that. None. I don't think the  
2 Court can bind over.

3 THE COURT: Response?

4 MS. PALUMBO: Yes, Your Honor, he seems to be  
5 relaying to Blass (sp) case and that is one of the elements  
6 as it relates to other embezzlement charge, not specifically  
7 as it relates to the public official, which--

8 THE COURT Well, the one I'm reading here, 5.404  
9 or 5--..402, specifically has 750.174.175.177.490 and it  
10 specifically indicates that with the intent to defraud.  
11 That leaves me to believe that there is some criminal intent  
12 required. And you're saying that there is no criminal  
13 intent required.

14 MS. PALUMBO: I'm going from our--our criminal  
15 jury instructions.

16 THE COURT: I understand.

17 MS. PALUMBO: And, as it relates to and,  
18 obviously, as the Court--

19 THE COURT: Well, then, how do we define  
20 unauthorized use, does unauthorized use require some  
21 criminal intent?

22 MS. PALUMBO: As its related here, it is the  
23 unauthorized use of that money is personal use and that is  
24 admitted in this particular case. There was testimony that  
25 she is the deputy treasurer and has been, which is part of

1 the record, which satisfied the fact that they either held  
2 the office or was an agent or service of a public official.  
3 There is nothing in regards to the elements of the charges  
4 that require any type of testimony--

5 THE COURT: Well, so what you're saying is, in  
6 short, it's a strict liability offense. Because if it's not  
7 a strict liability offense, there is no way you're ever  
8 going to get it bound over.

9 MS. PALUMBO: I believe that based on the  
10 elements, the charge, and based on the case law that's  
11 cited, Your Honor, that it is.

12 THE COURT: Well, again, I haven't read the--the  
13 cases, you know, anybody can cherry pick and I'm not saying  
14 you are and I'm not saying you're not.

15 MS. PALUMBO: Right. I'm going, it's simply--

16 THE COURT: Okay. Well, here's what I'm going to  
17 do. I don't believe for a minute that Ms. Anderson had any  
18 criminal intent. I don't think there's been any proof of  
19 that, not even a little tiny bit of proof that she had any  
20 criminal intent. But, if this a specific liability offense,  
21 then criminal intent is irrelevant.

22 MR. NICHOLS: You mean strict liability, correct?

23 THE COURT: Strict liability, yes, thank you.

24 MR. NICHOLS: Your welcome, Judge.

25 THE COURT: And there again, use the money for an

1 unauthorized purpose, does that imply some criminal intent.  
2 It might, it might not. I didn't write it. I'm not on the  
3 Supreme Court. Are there any other cases, Ms. Palumbo, that  
4 are recent that would tend to show that this is perhaps the  
5 only specific intent, larceny crime in the United States of  
6 America? Or, are you aware of any others?

7 MS. PALUMBO: Your Honor, I guess I pulled a 1990  
8 case that indicated that the, you know, returning the money  
9 does not allow and then the 1901 case. I'm sure that there  
10 are others, I just pulled two that clearly stated that--

11 THE COURT: Mr. Nichols, you believe that this a  
12 general intent, at least, offense, that requires some  
13 criminal intent.

14 MR. NICHOLS: And, moreover, the Court can  
15 consider the defense of belief by the servant that she had  
16 the right to do what she did. That she had permissive use.  
17 People versus King allows the Court to consider that defense  
18 at a pre-lim, as well the credibility of the witnesses,  
19 especially where it is as, shall we say, stark as we have in  
20 this record.

21 THE COURT: I'm going to let both sides brief this  
22 with the issue of strict liability and the issue of belief  
23 that they had the authority or the permission to do that.

24 MS. PALUMBO: Your Honor--

25 THE COURT: As far as the proofs show, I don't

1 doubt that Ms. Anderson is a deputy clerk for Iosco County  
2 Treasurer's office, that she receives money in her official  
3 capacity, that the money that she receives in her official  
4 capacity from the general public is public money. I don't  
5 doubt that. Whether the used money for unauthorized purpose  
6 is, you know, creates a strict liability. Like I said, if  
7 it's a strict liability, it's the only larceny type statute  
8 that I've ever seen or heard of that is a strict liability.  
9 You know, we usually don't make strict liability offenses,  
10 felony offenses. It is part of our jurisprudence history,  
11 typically. I don't think that we do that. And, you know,  
12 the information that I've received or seen today is with  
13 regards to a forty dollar sticky note that purports to be,  
14 or appears to be, in the handwriting of Ms. Anderson. So,  
15 with that said, couple weeks?

16 MR. NICHOLS: September 6th?

17 MS. PALUMBO: If I may have, Your Honor, given the  
18 fact that I have two other briefs--

19 THE COURT: Yeah, I want to talk to you and Mr.  
20 Rapp but it will clear up a little bit of what I'm looking  
21 for on one of those.

22 MS. PALUMBO: Okay. If I may have three weeks?

23 THE COURT: That would be fine. Absolutely.

24 MS. PALUMBO: And, as it relates to Mr. Nichols  
25 assertion that there was any evidence stated that the

1 defendant had permission to use that money, there was no  
2 testimony presented that she had permission to use that  
3 money and so the testimony that was presented is that she  
4 was specifically told that she did not have permission to  
5 use that money.

6 THE COURT: Well, if you're using that as a lack  
7 of authority, then you're missing one of the elements and  
8 you don't have evidence of each of the elements of the  
9 corpus of the crime.

10 MS. PALUMBO: Not following your train of thought  
11 there, Your Honor.

12 THE COURT: Well, you're saying that they can't  
13 essentially use--

14 MS. PALUMBO: No, I'm saying he indicated he said  
15 she believed it was okay that she took that money and my  
16 statement was that that may be what--

17 THE COURT: That there was evidence that she was  
18 told not, but that evidence came from her and until you  
19 present evidence on each of the elements, you haven't met  
20 the corpus of the crime, unless I'm missing something there.

21 MR. NICHOLS: No, the Court is correct and so--

22 THE COURT: You can't have it both ways, if they  
23 can't argue that she had some perceived permission, then  
24 you're short one element.

25 MS. PALUMBO: Your Honor, I would--I would,



1 respectfully, indicate that I don't believe that its  
2 necessary for the treasurer or any elected public official  
3 to tell people in their office to not take money from the  
4 petty cash, that that is--while that did happen in this  
5 case, is not a required element.

6 THE COURT: The--well, unauthorized purpose.

7 MS. PALUMBO: An unauthorized purpose is any  
8 purpose other than the public purpose, Your Honor, and as  
9 the deputy treasurer, if she doesn't understand personal use  
10 is not authorized.

11 THE COURT: Well, I guess you can include that in  
12 your brief.

13 MS. PALUMBO: Okay. Thank you.

14 MR. NICHOLS: I would note, Your Honor, a couple of  
15 points. First, something I just realized from the jury  
16 instructions that, I guess if we're going to brief it, I'd  
17 like to see the prosecutor start here, People versus Glazier  
18 which specifically cites to the elements and says, "If he is  
19 able to account for the public funds at the proper time, he  
20 incurs no criminal responsibility under the statute, however  
21 bad his motives. But can only be--

22 THE COURT: Even if he had criminal intent?

23 MR. NICHOLS: Right. And I think that's critical,  
24 especially in light of what we know from the auditors. I'm  
25 assuming there is a reason why the auditors aren't here

1 today and what we heard came from the detective sergeant. I  
2 have one more point, totally non-related.

3 MS. PALUMBO: I'm sorry, to suggest that there is  
4 a reason that the auditors aren't here today, it's a  
5 preliminary examination that we're already here at seven  
6 o'clock at night. And to imply that the auditors aren't  
7 here for any reason other than it is a preliminary  
8 examination, it's a probable cause--

9 THE COURT: I always prefer logical witnesses at a  
10 preliminary examination. See the last two that we've had  
11 here. Your next point?

12 MR. NICHOLS: Your Honor, since this case is still  
13 pending, Ms. Anderson wanted me to point out and ask  
14 permission because she has a very expensive trip to see her  
15 daughter. It is apparently, literally out of the county in  
16 Seoul, that must mean Korea, correct? South Korea, I'm  
17 assuming.

18 THE COURT: I have no objection to her leaving the  
19 State of Michigan for the purpose of visiting her daughter.

20 MR. NICHOLS: Thank you.

21 THE COURT: We'll have to amend the bond. We know  
22 what we're briefing?

23 MS. PALUMBO: Yes.

24 THE COURT: We'll be at recess on this file.

25 (At 7:03 p.m., proceeding concluded)

1 STATE OF MICHIGAN )  
2 )  
3 COUNTY OF IOSCO )

4 I certify that this transcript, consisting of 131 pages, is  
5 a complete, true, and correct transcript of the proceedings and  
6 testimony taken in this case on August 23, 2016.

7 9/1/2016

8 Date

Carol Jurczyk

Signature

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