STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 3, 2009
v	No. 286017 Wayne Circuit Court
ERIC EUGENE COLEMAN, Defendant-Appellant.	LC No. 08-000307-FH

Before: Shapiro, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of embezzlement from the Department of Human Services (DHS) by an agent or trustee of more than $20,000, MCL 750.174(5)(a), and five counts of welfare fraud over $500 involving Andre Tucker, Barry Ross, Kelly Crenshaw, Tawanda Jones, and Terrence Motley, MCL 400.60(1)(b).[1] The trial court sentenced defendant to two to ten years in prison for the embezzlement conviction and one to four years in prison for each of the welfare fraud convictions. We affirm, but remand for resentencing of defendant's embezzlement conviction.

I

Defendant's first argument on appeal is that the trial court denied his due process right of confrontation by limiting his cross-examination of Tucker. We disagree. When the trial court sustained the prosecutor's objection to the cross-examination, defense counsel failed to make a Confrontation Clause objection. Therefore, this issue is unpreserved. See *People v Bauder*, 269 Mich App 174, 178-179; 712 NW2d 506 (2005). Defendant's unpreserved claim of constitutional error is reviewed for plain error affecting his substantial rights. *People v McRunels*, 237 Mich App 168, 171; 603 NW2d 95 (1999).

A defendant's constitutional right to confrontation, US Const, Am VI; Const 1963, art 1, § 20, is violated when limitations are placed on his ability to cross-examine a witness to bring out facts from which bias, prejudice, or lack of credibility might be inferred. *People v*

[1] The jury acquitted defendant of two counts of welfare fraud over $500 involving Aubrey White and Shannon Wright.

Cunningham, 215 Mich App 652, 657; 546 NW2d 715 (1996). A witness's motivation for testifying, such as a grant of immunity, "is always of undeniable relevance and a defendant is entitled to have the jury consider any fact that may have influenced the witness'[s] testimony." *People v Minor*, 213 Mich App 682, 684-685; 541 NW2d 576 (1995).

At trial, defense counsel questioned Tucker regarding his motivation for testifying. Ultimately, Tucker acknowledged that, in exchange for his testimony against defendant, the prosecutor dismissed an arrest warrant evolving from his cooperation with defendant's charged offenses. This exchange followed:

> *Defense Counsel*. It's important that you not be charged with any new offense because you are on parole, correct? Yes?
>
> *Tucker*. Yes.
>
> *Defense Counsel*. You [sic] been on parole since 2003, right?
>
> *Tucker*. Yes.
>
> *Prosecutor*. Your honor, that's improper impeachment.
>
> *Trial Court*. Sustained.

The jury could infer from Tucker's testimony that he was influenced to testify against defendant because he was given immunity for his actions involving defendant *and* it was "important that [he] not be charged with any new offense because [he was] on parole." It does not appear that the trial court excluded this testimony, and the jury presumably considered it. The trial court only excluded additional evidence regarding the length of Tucker's parole. This additional fact may have also influenced Tucker's decision to testify against defendant. A parolee near the end of his term may respond differently to an impending arrest warrant than a parolee just beginning his term. Consequently, the trial court arguably erred when it limited defendant's opportunity to further explore Tucker's interest in testifying. See *People v Bell*, 88 Mich App 345, 349-350; 276 NW2d 605 (1979).[2]

Even if the trial court erred, the error did not affect defendant's substantial rights. As the prosecutor notes, the jury was given an adequate opportunity to observe Tucker's demeanor and assess his credibility during direct and cross-examination. See *People v Pesquera*, 244 Mich App 305, 309; 625 NW2d 407 (2001). Defense counsel thoroughly cross-examined Tucker and

[2] The prosecutor argues that, unlike a prior conviction, which is admissible in limited circumstances under MRE 609, evidence regarding the length of a sentence is not generally admissible to attack credibility. See *People v Rappuhn*, 390 Mich 266, 273-274; 212 NW2d 205 (1973). Even if the length of Tucker's sentence was inadmissible for impeachment purposes, it could be admissible for other purposes, including a demonstration of bias, prejudice, or lack of credibility related to the decision to testify. See *People v McGhee*, 268 Mich App 600, 639; 709 NW2d 595 (2005).

demonstrated his potential bias. Again, Tucker admitted that he was influenced to testify because he was given immunity and it was "important that [he] not be charged with any new offense because [he was] on parole." In her closing argument, defense counsel emphasized both of these points, stating that Tucker "had a lot to gain by cooperating in an investigation against" defendant. Further cross-examination regarding the number of years that Tucker had been on parole would only have provided cumulative evidence of potential bias, prejudice or lack of credibility. Additionally, Tucker was not the star witness. Other witnesses corroborated his testimony and, absent his testimony, there was sufficient evidence to support defendant's conviction for welfare fraud over $500 involving Tucker. Defendant's argument fails because the trial court's error did not affect the outcome of the trial. See *McRunels*, *supra*.

II

Defendant next argues that the trial court erred when it scored ten points under offense variable (OV) 10 for his embezzlement conviction. We agree. The proper interpretation and application of the legislative sentencing guidelines are questions of law, which this Court reviews de novo. *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). This Court reviews preserved challenges to the scoring of the sentencing guidelines for an abuse of discretion. *People v Sexton*, 250 Mich App 211, 227; 646 NW2d 875 (2002). However, this Court reviews "for clear error the trial court's factual findings at sentencing." *People v Houston*, 261 Mich App 463, 471; 683 NW2d 192 (2004).

MCL 777.40 provides:

> (1) Offense variable 10 is exploitation of a vulnerable victim. Score offense variable 10 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
>
> (a) Predatory conduct was involved.... 15 points
>
> (b) The offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status.... 10 points
>
> (c) The offender exploited a victim by his or her difference in size or strength, or both, or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious.... 5 points
>
> (d) The offender did not exploit a victim's vulnerability.... 0 points
>
> (2) The mere existence of 1 or more factors described in subsection (1) does not automatically equate with victim vulnerability.
>
> (3) As used in this section:
>
> (a) "Predatory conduct" means preoffense conduct directed at a victim for the primary purpose of victimization.
>
> (b) "Exploit" means to manipulate a victim for selfish or unethical purposes.

> (c) "Vulnerability" means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.
>
> (d) "Abuse of authority status" means a victim was exploited out of fear or deference to an authority figure, including, but not limited to, a parent, physician, or teacher.

In *People v Cannon*, 481 Mich 152; 749 NW2d 257 (2008), the Supreme Court examined the proper interpretation and application of OV 10. It concluded that the exploitation of a vulnerable victim is central to the statute, and that "points should be assessed under OV 10 only when it is readily apparent that a victim was 'vulnerable,' i.e., was susceptible to injury, physical restraint, persuasion, or temptation." *Id*. at 157-158. It suggested the following factors to consider when deciding whether a victim is vulnerable:

> (1) the victim's physical disability, (2) the victim's mental disability, (3) the victim's youth or agedness, (4) the existence of a domestic relationship, (5) whether the offender abused his or her authority status, (6) whether the offender exploited a victim by his or her difference in size or strength or both, (7) whether the victim was intoxicated or under the influence of drugs, or (8) whether the victim was asleep or unconscious. [*Id*. at 158-159.]

Again, MCL 777.40(3)(d) defines "abuse of authority status" as meaning "a victim was exploited out of fear or deference to an authority figure, including, but not limited to, a parent, physician, or teacher."

Notwithstanding defendant's valid question whether the Legislature intended OV 10 to apply to an institutional victim, we find that the trial court erred when it concluded that defendant, an employee, could be classified as an authority figure over DHS, his employer, like a parent or physician could be classified as an authority figure over a child or patient. MCL 777.40(3)(d). Absent an abuse of authority status, the trial court abused its discretion when it scored ten points for OV 10.

Aside from DHS, the prosecutor argues that defendant exploited other vulnerable victims by abusing his authority status. Thus, the prosecutor maintains that the trial court properly scored ten points for OV 10. We disagree. DHS was the only victim of the offense being scored, embezzlement. See *People v Hindman*, 472 Mich 875, 876; 693 NW2d 384 (2005). Defendant's clients may have been exploited by his abuse of authority, but they were third parties to the embezzlement. Consequently, the trial court could not have considered them when it scored OV 10.[3]

Violation of MCL 750.174(5)(a) for embezzlement of more than $20,000 is a Class D offense. MCL 777.16i. Defendant was initially scored at OV level IV and prior record variable

[3] We are not persuaded by the prosecutor's reliance on *People v Albers*, 258 Mich App 578; 672 NW2d 336 (2003), wherein this Court interpreted the term "victim" for purposes of scoring OV 3. Moreover, we are constrained to follow the Supreme Court's holding in *Hindman*, *supra*.

(PRV) level D. For defendants scored at these levels, MCL 777.65 indicates a recommended minimum sentence range of 19 to 38 months. After subtracting ten points erroneously scored for OV 10, defendant's OV level is decreased from level IV to level III. With such change, defendant's recommended minimum sentence range is reduced to 10 to 23 months, MCL 777.65. Because the scoring error affects the applicable sentencing guidelines range and, in fact, defendant's minimum sentence is now outside the applicable guidelines range, he is entitled to be resentenced. *People v Francisco*, 474 Mich 82, 91-92; 711 NW2d 44 (2006).

III

Defendant's third argument on appeal is that the trial court erred when it ordered him to pay $49,230 in restitution to DHS for the embezzlement. Defendant claims that the amount of restitution should not include payments for his course of conduct involving White and Wright because the jury acquitted him of welfare fraud involving them. We disagree.

This Court reviews an order of restitution for an abuse of discretion. *In re McEvoy*, 267 Mich App 55, 59; 704 NW2d 78 (2005).

Pursuant to the Crime Victim's Rights Act, MCL 780.766(2), "when sentencing a defendant convicted of a crime, the court shall order . . . that the defendant make full restitution to any victim[4] of the defendant's course of conduct that gives rise to the conviction . . . ." In *People v Gahan*, 456 Mich 264, 271; 571 NW2d 503 (1997), the Supreme Court examined the language of MCL 780.766(2) and determined that "course of conduct," as used in the statute, should be given a broad construction. Citing *People v Seda-Ruiz*, 87 Mich App 100, 103; 273 NW2d 602 (1978), the Court held that "principles of justice require[] that the defendant 'pay back the entire amount obtained by his course of criminal conduct.'" *Id*. at 272. Thus, the Court concluded that a "defendant should compensate for all the losses attributable to the illegal scheme that culminated in his conviction, even though some of the losses were not the factual foundation of the charge that resulted in conviction." *Id*. MCL 780.767(4) provides that "[a]ny dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney." See *Gahan*, *supra* at 276. "Thus, the statute affords [a] defendant an evidentiary hearing when the amount of restitution is contested." *Id*.[5]

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[4] As used in MCL 780.766(2), "victim" includes a governmental entity. MCL 780.766(1).

[5] At sentencing, defendant objected to the $49,230 in restitution requested by the prosecution because it included payments for his course of conduct involving White and Wright. Defendant argued, as he does on appeal, that it was improper to order restitution on counts for which he was acquitted. The trial court, unpersuaded by defendant's argument, stated that it would assume the correct amount was $49,230, but that it would allow an evidentiary hearing on the issue if defendant so requested. Defendant requested an evidentiary hearing, but a hearing was never held. Defendant subsequently filed a claim of appeal in this Court. Approximately eight months later, he requested a remand for an evidentiary hearing to ensure that his challenge to the restitution amount was not deemed waived for his failure to schedule a hearing. A panel of this

(continued…)

In *Gahan*, the defendant embezzled monies through a consignment sales scheme, wherein he told his customers that their cars or trailers sold for less than the true amount of the sale price and he kept the difference for himself. *Id*. at 266-267. The defendant was charged with four counts of embezzlement, with each count relating to a different alleged victim, and bound over on two of those counts. *Id*. at 267. Pursuant to a motion to sever, the trial court ordered separate trials for each count. *Id*. The defendant was convicted on the first count.[6] *Id*. The presentence investigation report indicated that there were 48 counts against the defendant originally, and the probation officer had personally spoken with 16 individuals who claimed that the defendant had swindled them. *Id*. at 268. The probation officer recommended a restitution amount on the basis of his accounting of known victims, and requested that the court reserve the right to assess additional restitution in the future. *Id*. at 268. The trial court ordered restitution in an amount close to that recommended by the probation officer, i.e., "the amount recommended in the presentence report less an adjustment correcting an inaccuracy brought to the court's attention by one of defendant's other victims." *Id*. at 269. The defendant appealed. This Court vacated the order of restitution but the Supreme Court reinstated the trial court's ruling and determined that "the sentencing court did not exceed its statutory authority in ordering restitution intended to compensate victims who were defrauded by defendant's course of criminal conduct, even though these losses were not the specific factual predicate of the defendant's conviction." *Id*. at 269, 277.

Interpreting "course of conduct" in MCL 780.766(2) broadly, we conclude that the trial court did not abuse its discretion when it ordered $49,230 in restitution. Even though defendant's course of conduct involving White and Wright did not give rise to a conviction for welfare fraud,[7] wherein the standard of proof was "beyond a reasonable doubt," the trial court may have concluded that by a preponderance of the evidence the same course of conduct was part of defendant's elaborate scheme, involving clients and friends, to embezzle childcare benefits from DHS.[8]

(…continued)

Court denied the motion. Defendant has not renewed his request for an evidentiary hearing and does not challenge the amount of restitution, apart from his contention that, as a matter of law, he should not be required to pay restitution on counts for which he was acquitted. Because defendant does not challenge the factual basis for the $49,230 in restitution ordered by the trial court, only the court's statutory authority to order that amount, we find it unnecessary to remand for an evidentiary hearing.

[6] The defendant subsequently pled guilty to the second count. *Gahan*, *supra* at 267 n 3.

[7] The elements of welfare fraud over $500 are:

> (1) the defendant is an officer or employee of a county, city or district department of social welfare; (2) who authorized or recommended relief to a person or persons; (3) known to him to be ineligible or to have fraudulently created their eligibility; and (4) the amount involved, *i.e*., the difference between the lawful amount of assistance and the amount of assistance actually received, is over $500. [*People v DeGroot*, 116 Mich App 516, 519; 323 NW2d 465 (1982).]

[8] The elements of embezzlement by an agent are:

> (1) the money in question must belong to the principal, (2) the defendant must

(continued…)

Defendant's DHS client, Deidra Harris, did not apply for childcare benefits or identify White as her provider. Instead, Agent Karen Lewis testified that defendant inputted the information for White to receive benefits even though he was in jail. Moreover, White's checks were sent to Theresa White's home. Theresa denied knowing White, but an unidentified person subsequently cashed the checks. Although defendant claimed that his actions with respect to White were mistakes, the trial court could have found by a preponderance of the evidence that they were part of his scheme to dishonestly dispose of or convert DHS money for his own use and intentionally defraud or cheat DHS.

Similarly, defendant's DHS client, Alkesha Currie, denied that she applied for childcare benefits or identified Wright as her provider. Nevertheless, defendant approved Wright as Currie's provider and authorized payments to Wright for caring for Currie's children. Again, even though defendant told Currie that he would take care of the problem when she alerted him, the trial court could have found by a preponderance of the evidence that Wright was part of defendant's embezzlement scheme. The trial court did not abuse its discretion when it ordered defendant to pay $49,230 in restitution.

IV

Next, defendant argues that he was denied his constitutional right to cross-examination because the prosecutor allegedly suppressed Harris's, Currie's, Donna Nealis's, and Jones's case files until the first day of trial and defense counsel had little time to study the files and prepare to question applicable witnesses. On the first day of trial, defense counsel objected because she had not yet received the files. Later that day, the files were delivered. After a lunch recess, defense counsel advised the trial court that she had reviewed Harris's, Currie's, and Nealis's case files and affirmatively approved of the prosecutor's decision to call them on the first day of trial. The prosecutor called Jones to testify the next day and defense counsel did not object. Any challenge regarding the suppression or delayed receipt of Harris's, Currie's, or Nealis's case files is waived on appeal. *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). Defendant's unpreserved challenge to the suppression of Jones's case file is reviewed for plain error affecting his substantial rights. *McRunels, supra* at 171.

"A criminal defendant has a due process right of access to certain information possessed by the prosecution." *People v Lester*, 232 Mich App 262, 281; 591 NW2d 267 (1998), citing *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963). This right does not allow complete discovery of all of the prosecutor's files, but "the prosecutor is under a duty to disclose any information that would materially affect the credibility of his witnesses." *Id*. To establish a *Brady* violation, a defendant must prove:

(…continued)

> have a relationship of trust with the principal as an agent or employee, (3) the money must come into the defendant's possession because of the relationship of trust, (4) the defendant dishonestly disposed of or converted the money to his own use or secreted the money, (5) the act must be without the consent of the principal, and (6) at the time of conversion, the defendant intended to defraud or cheat the principal. [*People v Lueth*, 253 Mich App 670, 683; 660 NW2d 322 (2002).]

> (1) that the state possessed evidence favorable to the defendant; (2) that he did not possess the evidence nor could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*Id.* at 281-282.]

Despite the delayed receipt of Jones's case file, there is no evidence that the prosecutor actually suppressed favorable evidence in violation of *Brady*. Furthermore, defense counsel received Jones's case file on the first day of trial and was presumably able to review it before Jones testified on the second day of trial. The record shows that defense counsel thoroughly cross-examined Jones and relied on some information from the case file. Consequently, defendant fails to demonstrate that, absent the delay, "a reasonable probability exists that the outcome of the proceedings would have been different." See *People v Fox*, 232 Mich App 541, 549-550; 591 NW2d 384 (1998).

V

Defendant next argues that the trial court improperly admitted notes taken by Agent Maria Williams during his interview with Agent Williams and Agent Lewis because the notes constituted inadmissible hearsay. Defendant's preserved challenge to the admission of the evidence is reviewed for an abuse of discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). A preserved, evidentiary error is not a ground for reversal unless it is more probable than not that the trial court's error in admitting the evidence was outcome determinative. See *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). Even if these notes constituted hearsay under MRE 801(c), the trial court's error in admitting them was harmless. The notes were cumulative evidence. Agent Lewis testified first-hand regarding the interview and recalled defendant's responses to her questions. In accord with the notes, Agent Lewis testified that defendant denied knowing his friends, Ross, Tucker, and Crenshaw, and his DHS client, Joawia Bryant Christian. Furthermore, Agent Lewis summarized defendant's responses at the interview by stating, "Any question that I asked, he responded negatively." See MRE 801(d)(2) (stating that admissions by party-opponents are not hearsay).

VI

Defendant next argues that the trial court should have granted his motion for a directed verdict of the welfare fraud charges involving White, Wright, Ross, Jones, and Motley. We disagree. "When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *Aldrich*, *supra* at 122-123, citing *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999).

Defendant's arguments with respect to the motion for a directed verdict of the welfare fraud charges involving White and Wright are moot. *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004) ("An issue is moot when an event occurs that renders it impossible for the reviewing court to fashion a remedy to the controversy.") Even though the trial court denied defendant's motion for a directed verdict of the welfare fraud charges involving White

and Wright, the jury acquitted him of those charges and it is impossible for this Court to fashion a remedy with respect to defendant's motion for a directed verdict of the same charges.

In defendant's argument regarding the motion for a directed verdict of the welfare fraud charges involving Ross and Motley, he claims the prosecutor erred by failing to support these charges with evidence from endorsed witness, Deandre Thompson, and res gestae witness, Motley. In *People v Cook*, 266 Mich App 290, 294; 702 NW2d 613 (2005), this Court noted that MCL 767.40a formerly required a prosecutor to locate, list, and produce at trial all persons, known or unknown, who might be res gestae witnesses. Under that rule, if the prosecutor failed to produce the res gestae witnesses and failed to exercise due diligence to do so, the trial court was required to hold a post-trial hearing to determine the extent of any prejudice and provide an appropriate remedy for any prejudice caused by the failure to exercise due diligence. *Id.* at 294-295. In *Cook*, this Court concluded that a post-trial hearing is no longer required because the current version of MCL 767.40a only requires a prosecutor to "'provide notice of *known witnesses* and *reasonable assistance* to locate witnesses *on defendant's request.*'" *Id.* at 295 (emphasis added by *Cook*).

In this case, the prosecutor provided notice of Thompson to defendant on his witness list. Although Motley is not listed on the prosecutor's witness list, the prosecutor provided notice of him in the complaint. There is no evidence that defendant requested assistance in locating these witnesses or that the prosecutor failed to provide such assistance. Consequently, the prosecutor did not violate MCL 767.40a.

Furthermore, the trial court did not err in failing to direct a verdict of acquittal for the welfare fraud charges involving Ross and Motley. As a DHS employee, defendant approved checks, totaling $2,143, for Ross to care for Thompson's children. Even though Thompson did not testify at trial regarding her childcare provider, there is no evidence that Ross actually cared for Thompson's children. Rather, Ross only agreed to sign the checks to help defendant and to receive $125 per check. Further, Nealis testified that she did not apply for childcare benefits while defendant was her caseworker, she did not know Motley, and he did not provide childcare for her children. Nevertheless, defendant approved checks to Motley, totaling $5,800, for his care for Nealis's children. Defendant also urged Nealis to pretend that she knew Motley if anyone asked. These facts suggest that defendant knew Ross and Motley were not entitled to payment, but he approved payment to them anyway. Viewing these facts in the light most favorable to the prosecutor, a rational trier of fact could have found that the essential elements of welfare fraud over $500 involving Ross and Motley were proven beyond a reasonable doubt.

In addition, defendant argues that the trial court should have granted his motion for a directed verdict of the welfare fraud charge involving Jones. Deborah Bailey testified that she did not apply for childcare benefits in 2005 and in 2006, her application was denied. Jones testified that she never met Bailey or cared for Bailey's children. Nevertheless, defendant approved Jones as a provider for Bailey's children. When Bailey received notification of this approval and informed defendant that it was a mistake, defendant told her "don't worry about it." But, Bailey continued to receive notifications that Jones earned checks for caring for her children. Agent Lewis testified that defendant approved those checks, totaling $4,888. Defendant's knowledge that he had authorized payments to Jones, a person he knew was not entitled to payment, can further be inferred by defendant's request that Bailey play along if an investigator asked her about her relationship with Jones. As defendant notes, Jones testified that

she was the sole recipient of the payments and there is no evidence that she shared them with defendant. However, MCL 400.60(1)(b) does not require that a defendant personally benefit from the welfare fraud. Viewing these facts in the light most favorable to the prosecutor, a rational trier of fact could have found that the essential elements of welfare fraud over $500 involving Jones were proven beyond a reasonable doubt.

VII

Defendant also argues that the prosecutor committed misconduct by knowingly allowing Ross, Currie, Christian and Tucker to present perjured testimony. We disagree. Because the alleged error was not preserved by a contemporaneous objection and a request for a curative instruction, appellate review is for plain error. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

"The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial." *People v Rice (On Remand)*, 235 Mich App 429, 434; 597 NW2d 843 (1999). Prosecutors "may not knowingly use false testimony to obtain a conviction." *People v Lester*, 232 Mich App 262, 277; 591 NW2d 267 (1998). Prosecutors "have a constitutional obligation to report to the defendant and to the trial court whenever government witnesses lie under oath." *Id.* at 276. They also have a duty to correct false evidence. *Id.* at 277. But, a prosecutor's "failure to correct false testimony does not automatically require reversal." *Id.* at 280. Rather, a "new trial is required only if the false testimony could in any reasonable likelihood have affected the judgment of the jury." *Id.*

Defendant alleges errors in Ross's testimony. At the preliminary examination, Ross testified that he saw Crenshaw's name on his check stub. At trial, on direct examination, Ross testified that he received money for supposedly caring for Crenshaw's children. On cross-examination, Ross explained that he believed Crenshaw was involved because he saw her name on the check that was mailed to him. In contrast, the prosecutor subsequently elicited testimony from Agent Lewis that Ross received money for caring for Thompson's children. By eliciting Agent Lewis's conflicting testimony, the prosecutor fulfilled any duty he may have had to correct false testimony. See *id*. at 278. Consequently, the prosecutor did not commit misconduct with respect to Ross.

Defendant also alleges errors in Currie's testimony. On direct examination, she testified that she did not apply for childcare benefits in 2003, 2004, or 2005. On cross-examination, however, defense counsel showed Currie her 2005 application for several benefits, including childcare benefits. Currie explained that she did not need childcare benefits at that time because she had moved in with her father. She testified that the application should not have included a request for them. The 2005 application did not sufficiently establish that Currie lied. The jury could have reasonably inferred that, consistent with Currie's testimony, she did not apply for the childcare benefits on her 2005 application, but rather, defendant added the request to the application when he processed it. Thus, the prosecutor's duty to correct her testimony was not triggered. See *id.* In any event, defendant was not prejudiced by Currie's testimony at trial because it was offered to support the charge of welfare fraud over $500 involving Wright, and the jury acquitted defendant of that charge.

In addition, defendant alleges discrepancies between Christian's and Tucker's testimony. Defendant notes that Christian claimed that she never met Tucker. However, on cross-examination she admitted that Tucker had socialized with defendant and her before. Christian explained that she only knew Tucker as "D." When Tucker testified, he did not know Christian's name. However, he admitted that he may have seen her and Crenshaw at a bar with defendant. He further testified, "Me and my girl ain't conspired to do nothing." Again, the evidence did not sufficiently establish that Christian and Tucker lied, triggering the prosecutor's duty to correct. Rather, both Christian and Tucker ultimately admitted that they did not know the other's real name, but socialized with each other.

VIII

Defendant further argues that his felony complaint was invalid on several grounds, thereby divesting the trial court of jurisdiction to try his case and requiring reversal. We disagree. Defendant relies on *People v Hill*, 44 Mich App 308; 205 NW2d 267 (1973), overruled by *People v Mayberry*, 52 Mich App 450; 217 NW2d 420 (1974), for the proposition that an invalid complaint leading to an invalid arrest warrant ousts jurisdiction. However, in *Mayberry*, *supra* at 451, citing *People v Burrill*, 391 Mich 124; 214 NW2d 823 (1974), this Court explained that even if an arrest warrant is invalid, jurisdiction is not ousted. "The sole sanction imposed by the United States Supreme Court for the invalidity of an arrest warrant has been the suppression of evidence obtained from the person following his illegal arrest." *Burrill*, *supra* at 133. Thus, even if defendant's felony complaint was invalid and it resulted in an invalid arrest warrant, the trial court had jurisdiction.

Defendant also alleges that the complaint was entered on the register of actions on December 12, 2007, but the magistrate did not sign and issue it until December 17, 2007. However, this Court has stated:

> "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." [*People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001) (citation omitted).]

Because defendant fails to explain how the entry of the complaint on the register of actions and the trial court's subsequent issuance of that warrant constituted error, defendant's claim is abandoned on appeal.

IX

Defendant's last argument on appeal is that the prosecutor committed misconduct because he improperly provoked the passions and prejudices of the jury. We disagree.

During the prosecutor's closing argument, he stated, "[Defendant] took from all of you. Took from all of the taxpayers the amount of $49,000. He scamed [sic] the system. Thankfully, he finally got caught, and I ask you to hold him guilty for each and every one of those eight counts." Generally, prosecutors are afforded great latitude in their closing arguments. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). However, the prosecutor's appeal to the

jury's pocketbooks in this case was improper. See *People v American Medical Ctrs, Ltd*, 118 Mich App 135, 156; 324 NW2d 782 (1982). Nevertheless, it was isolated and the trial court instructed the jury that the prosecutor's opening statements and closing arguments were not evidence. This instruction was sufficient to cure any prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001).

We affirm defendant's convictions, but remand for resentencing of defendant's embezzlement conviction with respect to OV 10. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Jane M. Beckering