STATE OF MICHIGAN

COURT OF APPEALS

PAMELA TUDOR,

Plaintiff-Appellant,

v

MACOMB COUNTY and BARBARA CASKEY,

Defendants-Appellees.

UNPUBLISHED
September 19, 2024

No. 362691
Macomb Circuit Court
LC No. 2019-000524-CD

Before: LETICA, P.J., and GARRETT and FEENEY, JJ.

PER CURIAM.

Plaintiff, Pamela Tudor, worked for defendant, Macomb County, as a pretrial specialist and defendant, Barbara Caskey, was her supervisor. According to Tudor, Caskey discriminated against her because of her age, and when she attempted to report Caskey's disparate treatment, Caskey and Macomb County retaliated against her and caused her constructive discharge. Tudor then filed this action alleging age discrimination and retaliation in violation of the Elliot-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq.*

In a previous appeal, this Court reversed the trial court's grant of summary disposition to Caskey and Macomb County and remanded for a trial on the merits. *Tudor v Macomb Co*, unpublished per curiam opinion of the Court of Appeals, issued May 20, 2021 (Docket No. 353221), pp 1, 9-14, 16. Tudor's jury trial resulted in a verdict of no cause for action. Tudor now appeals by right once more, arguing, among other things, that she is entitled to a new trial because the trial court permitted an expert to opine on whether Tudor's allegations constituted "discrimination." We agree that the trial court erroneously admitted this expert testimony and it is more probable than not that the error was outcome determinative. Accordingly, we reverse and remand for a new trial.

I. BACKGROUND

Tudor began working for Macomb County in 2003. When Caskey, who was eleven years younger than Tudor, became the director of community corrections and Tudor's supervisor in 2013, Tudor was 46 years old and working as a pretrial specialist. Tudor soon noticed that Caskey treated her differently than her younger colleagues. According to Tudor, Caskey asked younger,

less experienced employees for assistance with tasks instead of Tudor. Tudor also maintained that, at staff meetings, Caskey would reject her suggestions but was very receptive to ideas from younger workers. Caskey also frequently sided with a younger employee, Taylor Hartz, who was in her late 20s at the time, when Tudor and Hartz had workplace conflicts. Tudor recalled that, during a March 2015 meeting to address an issue between Tudor and Hartz, Hartz and Caskey smiled at one another as though they knew something that Tudor did not. But when Tudor asked what was going on, Caskey yelled at her. Tudor also claimed that Caskey reassigned the end-of-month report, which helped her keep up with her work, to Hartz. When Hartz did not share the report at the end of the month as was routine, Tudor asked Caskey about it, and Caskey told her that "if there was something I needed to be aware of, she would let me know." Caskey also moved Tudor to an office at the other side of the building, which isolated her from other members of the department.

In January 2015, Caskey put Tudor on a performance improvement plan (PIP) for six months because Tudor did not adhere to workplace policies or properly maintain her files. Tudor testified that she and Caskey were supposed to meet once a month to review Tudor's progress on the plan, but Caskey did not schedule follow-up meetings with her. However, Tudor met with Caskey during the last few months of the PIP and eventually completed the plan successfully. Tudor testified that her younger colleagues also struggled to properly maintain their files, but were not subject to discipline.

In July 2016, Tudor received a letter from Caskey that cited various areas of Tudor's deficient performance at work and invited Tudor to a *Loudermill*[1] hearing. According to Tudor, before she received the letter, she had no notice that she was failing in her job duties. Tudor attended the *Loudermill* hearing, accepted responsibility for her job performance, and received a two-day suspension. Tudor returned to the office but, in October 2016, she slipped on a ramp at work and took six weeks off work to recover. Tudor returned to work in December 2016 and found that her files had not been properly upkept in her absence—the same type of mismanagement that Caskey cited in previous disciplinary actions against Tudor. Tudor believed that Caskey, Hartz, and Elizabeth Verville, another colleague in her early 20s, managed her cases while she was away.

During this time, Hartz and Tudor both applied for a position as pretrial manager. Caskey requested approval to add this position to her department, and Caskey and Jennifer Bruzzese, a human resources representative, interviewed Tudor. Prior to the interview, an independent contractor generated a list of qualified applicants who were selected for interviews. Caskey and

[1] See *Cleveland Bd of Ed v Loudermill*, 470 US 532; 105 S Ct 1487; 84 L Ed 2d 494 (1985). In *Loudermill*, the United States Supreme Court held that due process requires an employer to provide public employees with an opportunity to respond to allegations before the employee is terminated. *Id.* at 545-546. The purpose of a *Loudermill* hearing "is not to definitively resolve the propriety of the discharge [but to provide] an initial check against mistaken decisions—essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action." *Plymouth-Canton Community Sch v State Tenure Comm*, 435 Mich 76, 78-79; 457 NW2d 656 (1990) (cleaned up).

Bruzzese asked all applicants the same questions and scored their answers. Hartz was selected for the position but, according to Tudor, Hartz was less qualified. Caskey, however, testified that Hartz received the highest score out of all the applicants. Tudor testified that, when she asked Caskey why she did not get the job, Caskey responded that she was surprised Tudor even applied for the position and "that she had no idea that I would want to go up in the department."

The situation escalated on March 22, 2017, when Tudor and her colleague, Dorothy Harmon, a clinician in community corrections who was 47 at the time, called human resources to discuss their concerns regarding Caskey's treatment of older employees compared to younger employees in the office. Caskey was not Harmon's direct supervisor, but Caskey interacted with Harmon as the director of community corrections. The next day, Caskey and an armed command sergeant from the Macomb County Jail escorted Tudor out of the office building. Caskey handed Tudor a letter that stated she was "being placed on paid administrative leave pending an investigation." About a week later, Tudor received a letter from Caskey, raising several allegations about Tudor's deficient work performance and inviting her to another *Loudermill* hearing. But Tudor resigned after her attorney learned from Macomb County that they planned to terminate Tudor after the hearing. Tudor testified that she was forced to resign or face ongoing harassment, discrimination, and retaliation at work because of her age. Following her resignation, Tudor filed this lawsuit. After the jury verdict, Tudor filed a motion for a new trial, which the trial court denied, and this appeal followed.

II. CONFLICT OF INTEREST AND JUDICIAL BIAS

Tudor first argues that the trial court erred by denying her motion for new trial because the trial judge had a conflict of interest which required him to recuse himself and he was biased against Tudor.

A. STANDARD OF REVIEW

We review a trial court's denial of a motion for a new trial for an abuse of discretion. *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001). In a claim of judicial bias, we also review the trial court's factual findings and ultimate ruling for an abuse of discretion. *Kern v Kern-Koskela*, 320 Mich App 212, 231; 905 NW2d 453 (2017). See also *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996) (recognizing that in the context of a motion to disqualify a judge, the chief judge's factual findings are reviewed for an abuse of discretion). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *AFP Specialties, Inc v Vereyken*, 303 Mich App 497, 517; 844 NW2d 470 (2014).

B. ANALYSIS

Tudor asserts that the trial judge should have recused himself because he presided over the case while sitting on the Macomb County Community Corrections Advisory Board, an entity that oversees the department where Tudor worked. But, at the hearing on Tudor's motion for a new trial, evidence showed that the trial judge was not on the advisory board during Tudor's trial. In

response, Tudor's counsel conceded that the trial court had no conflict of interest. Accordingly, this issue has been waived and we need not consider it.[2]

On her claim of judicial bias, Tudor argues that the trial judge gave defense counsel free reign to question witnesses throughout the trial, but cites multiple instances when the judge ruled against Tudor's objections. Tudor also highlights exchanges in which the trial judge questioned witnesses or interjected himself into the proceedings. According to Tudor, these examples demonstrate that the trial judge "repeatedly protected" defendants and influenced the jury against her.

We are not persuaded by Tudor's examples that the trial court showed any bias against her. Under our rules of evidence, the trial judge has the authority to "exercise reasonable control" over the questioning of witnesses during trial to ensure the ascertainment of the truth, to make effective use of judicial resources, and to protect witnesses from harassment or embarrassment. MRE 611(a).[3] The trial judge's comments to counsel were not hostile or critical, but reflected the judge's concern for maintaining efficient proceedings while allowing both parties the opportunity to present their cases. *TT v KL*, 334 Mich App 413, 432-433; 965 NW2d 101 (2020). The record also shows that the judge carried out his duties with integrity, competence, and impartiality. *Kern*, 320 Mich App at 232.

Tudor further contends that the trial judge displayed inappropriate behavior toward her counsel by raising his voice at him in the presence of the jury, and then declining to give the jury a curative instruction immediately afterwards. This issue arose when Tudor's counsel raised an objection to Caskey reviewing her personal notes during her testimony when defense counsel failed to provide them to Tudor during discovery. Rather than showing bias against Tudor, the judge initially sided with her counsel and admonished defense counsel for failing to produce Caskey's notes. It was only when Tudor's counsel continued to press the issue in front of the jury that the judge raised his voice at Tudor's counsel. In another exchange, the judge excluded statements from Caskey's deposition testimony and Tudor's counsel continued to argue the issue in front of the jury. When Tudor's counsel later took exception to the judge's actions, the trial judge admitted he raised his voice, but was also clear with Tudor's counsel that his comments to both attorneys were meant to move the case along. In any event, in its final instructions, the trial court instructed the jury as follows:

> [W]hen I make a comment or give an instruction, I'm not trying to influence your vote or express a personal opinion about this case. If you believe that I have an opinion about how you should decide this case, you must pay no attention to that

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[2] See *Bates Assoc, LLC v 132 Assoc, LLC*, 290 Mich App 52, 64; 799 NW2d 177 (2010) ("A party may not claim as error on appeal an issue that the party deemed proper in the trial court because doing so would permit the party to harbor error as an appellate parachute.").

[3] The Michigan Rules of Evidence were substantially amended on September 20, 2023, effective January 1, 2024. See 512 Mich lxiii (2023). All evidentiary rules cited in this opinion refer to the version in effect at the time of trial.

> opinion. You are the only judges of the facts and you should decide this case from the evidence.

Jurors are presumed to follow their instructions, *Pugno v Blue Harvest Farms, LLC*, 326 Mich App 1, 26; 930 NW2d 393 (2018), and Tudor has failed to show judicial bias.

III. EXPERT WITNESS

Tudor argues that the trial court should not have allowed defense witness, Karen Bathanti, to testify about her opinion of Tudor's age discrimination and retaliation claims as the former director of human resources and labor relations for Macomb County.

A. STANDARD OF REVIEW

We review for an abuse of discretion a trial court's determination regarding the admission of evidence. *Lockridge v Oakwood Hosp*, 285 Mich App 678, 689; 777 NW2d 511 (2009). A trial court abuses its discretion when the trial court's decision falls outside the range of reasonable and principled outcomes or when it makes an error of law. *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 552, 886 NW2d 113 (2016).

B. INVADING PROVINCE OF THE JURY

At trial, defense counsel offered Bathanti as an expert witness because of her training and experience in human relations, civil rights, and employment rights. Over Tudor's objection, the trial court declared Bathanti an expert in labor relations. Bathanti testified that she helped create Macomb County's hiring policy after studying federal and state discrimination laws. Bathanti also testified extensively about her knowledge of discrimination and Tudor's allegations in the following exchanges with defense counsel:

> *Q*. And I think I asked this with regard to claims of, employee claims that another employee has been treated differently. Does that in and of itself create evidence of discrimination?
>
> *A*. No.
>
> *Q*. The fact that Ms. Tudor may have been much older 11 years older than Ms. Caskey does the fact that Ms. Caskey, Ms. Caskey made a decision to, for example, discipline this employee. Is that evidence of age discrimination?
>
> *A*. No.
>
> *Q*. Is the fact that the county had a position where we hired a younger manager to deal with employees that may be older, is that any red flags of what we should be doing?
>
> That is, it's a bad deal we have to work out for Ms. Caskey because there is an older employee.

A. No.

* * *

Q. . . . Looking at her record, one of the complaints that has been that she was treated—

That Ms. Caskey smiled at other employees and joked with them and didn't do that with her. Is that evidence of age discrimination[?]

A. It is not.

Q. Is there any evidence in [sic] age discrimination in being dismissive of an employee who has perhaps wants to make a statement and "just be quiet, I have heard it[?]" Something like that?

A. No.

Q. Certainly there is nothing in the discrimination statute or regulation and the like that limits the—

Deals with the relationship of employees of one another and with management based solely on personal preference, is that correct[?]

A. That is correct.

Q. That the age discrimination is to protect people from having adverse actions taken against them because of their age?

So if I were, if I'm a correct, and I have three employees. One is Ms. Tudor and two other employees. And the record reflects from time to time once a month or once every other month that Ms. Caskey would review randomly all the employee[']s files.

And following that review Ms. Caskey makes a determination based upon this investigation that Ms. Tudor's work performance was not where it should be. Is that evidence of age discrimination[?]

A. No it is not.

Tudor asserts that Bathanti's opinions regarding the existence of discrimination in this case were impermissible legal conclusions that invaded on the province of the jury. "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." MRE 704. However, there are limitations on the authority of an expert to testify regarding an opinion that also touches on an ultimate issue in the case, as the Court explained in *People v McFarlane*, 325 Mich App 507, 519; 926 NW2d 339 (2018), quoting *People v Drossart*, 99 Mich App 66, 75; 297 NW2d 863 (1980):

> Although the ultimate issue rule no longer stands in the way of expert testimony stating opinions on crucial questions to be decided by the trier of fact, *it is important that the expert witness not be permitted to testify about the requirements of law which apply to the particular facts in the case or to phrase his opinion in terms of a legal conclusion*. In the former case, the claim is that the province of the judge is invaded, while in the latter, the contention is that the province of the jury is invaded. [Quotation marks omitted; emphasis added.]

The rationale for this rule is that an expert's opinion on legal matters are not necessary when the trial court "can determine the matter equally well." *Drossart*, 99 Mich App at 76. Likewise, an expert witness may not tell a jury how to decide a case. *Id.* at 79. In *Drossart*, this Court explained that an expert witness may not give an opinion on the ultimate disposition of a case:

> When a standard, or a measure, or a capacity has been fixed by law, no witness whether expert or non-expert (sic), nor however qualified, is permitted to express an opinion as to whether or not the person or the conduct in question measures up to that standard. On that question the court must instruct the jury as to the law, and the jury must draw its own conclusion from the evidence. [*Id*. (Quotation marks and citation omitted).]

Accordingly, an expert witness may not give an opinion on whether a party (1) was negligent, (2) had capacity to execute a deed or will, or (3) was criminally responsible, regardless of guilt or innocence. *Carson Fischer Potts & Hyman v Hyman*, 220 Mich App 116, 123; 559 NW2d 54, (1996), citing *Drossart*, 99 Mich App at 79-80. "[I]t is error to permit a witness to give the witness' own opinion or interpretation of the facts because doing so would invade the province of the jury." *Id*.

We agree with Tudor that the trial court should not have admitted the challenged portions of Bathanti's testimony at trial. Defendants' characterization of Bathanti's testimony as merely "her understanding of the county and state rules concerning age discrimination" is inaccurate. Rather than outlining relevant policies, Bathanti gave testimony about whether certain alleged exchanges between Tudor and Caskey constituted discrimination, and this testimony was repeatedly offered in the form of a legal conclusion. See *Torres v Cnty of Oakland*, 758 F2d 147, 151 (CA 6, 1985) (holding that asking whether an individual "had been discriminated against because of her national origin" impermissibly called for an improper legal conclusion). Bathanti's conclusions required her to interpret the same facts that the jury was tasked with determining, i.e., whether Tudor's claims of specific instances of disparate treatment constituted age discrimination. Accordingly, Bathanti's testimony impermissibly invaded the province of the jury. See *Hyman*, 220 Mich App at 123. For these reasons, we conclude Bathanti's challenged testimony went beyond the scope of permissible testimony and the trial court abused its discretion by admitting it. See *Berry*, 329 Mich App at 151; *McFarlane*, 325 Mich at 519

C. WAS THE ADMISSION OF BATHANTI'S TESTIMONY HARMLESS ERROR?

For Tudor to show that this error requires reversal, she must demonstrate that "it was more probable than not that the alleged error was outcome determinative," or not harmless. *Barnett v*

Hidalgo, 478 Mich 151, 172; 732 NW2d 432 (2007).[4] See also *Nahshal v Fremont Ins Co*, 324 Mich App 696, 717; 922 NW2d 622 (2018). An evidentiary error is outcome determinative when it undermines the reliability of the verdict. *People v Denson*, 500 Mich 385, 409; 902 NW2d 306 (2017). In reviewing this issue, we must "focus on the nature of the error and assess its effect in light of the weight and strength of the untainted evidence." *Id*. at 409-410 (quotation marks, citation, and alternations omitted).

1. AGE DISCRIMINATION AND RETALIATION CLAIMS

Tudor raised claims of both age discrimination and retaliation under the CRA. An employer shall not "[f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, *age*, sex, height, weight, or marital status." MCL 37.2202(1)(a), as amended by 2009 PA 190 (emphasis added). In a discrimination lawsuit, if a plaintiff cannot provide direct evidence of "impermissible bias," she may use the framework set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 92 S Ct 1817; 36 L Ed 2d 668 (1973), to present a rebuttable, prima facie case of age discrimination, from which the factfinder is able to draw an inference that the plaintiff was the victim of unlawful discrimination. *Hazle v Ford Motor Co*, 464 Mich 456, 462-463; 628 NW2d 515 (2001); *Town v Mich Bell Telephone Co*, 455 Mich 688, 695; 568 NW2d 64 (1997). The *McDonnell Douglas* prima facie approach requires an employee to establish that she was (1) a member of a protected class, (2) subject to an adverse employment action, (3) qualified for the position, and (4) that others, similarly situated, and outside of the protected class, were unaffected by the employer's adverse conduct. *Town*, 455 Mich at 695. The prima facie test eliminates the most common, nondiscriminatory reasons for the actions taken by the employee, such as alleged poor employee performance, and forces the employer to set forth a nondiscriminatory reason for the employee's discharge. *Id*.

Once the defendant articulates a satisfactory explanation for the adverse employment action, this will destroy any inference of discrimination arising from the plaintiff's initial evidence. *Id*. at 696. However, the trier of fact may consider the plaintiff's evidence as part of the prima facie case when determining whether the employer's reason for the adverse employment action was pretextual. *Id*. It is the plaintiff who carries "the ultimate burden of proving discrimination." *Id*. To successfully prevail in an age discrimination lawsuit, the plaintiff must submit admissible evidence to establish that the employer's nondiscriminatory reason "was not the true reason for

[4] MCR 2.613(A) provides, in pertinent part:

> An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

the discharge," and instead, "that the plaintiff's age was a motivating factor in the employer's decision." *Id*. at 697.

A plaintiff may establish pretext "(1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision." *Debano-Griffin v Lake Co*, 493 Mich 167, 180; 828 NW2d 634 (2013) (quotation marks and citation omitted). "A constructive discharge occurs when an employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation or, stated differently, when working conditions become so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign." *Jewett v Mesick Consol Sch Dist*, 332 Mich App 462, 471-472; 957 NW2d 377 (2020) (quotation marks and citation omitted).

Under MCL 37.2701(a), a person shall not "[r]etaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act." For a plaintiff to successfully prevail on a claim of retaliation under the CRA, she must present proof of the following elements:

> (1) that [s]he engaged in a protected activity; (2) that this was known by the defendant[s]; (3) that the defendant[s] took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*DeFlaviss v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).]

2. DISCUSSION

At trial, Tudor presented ample evidence from which the trier of fact could determine that she was a member of a protected class; that she was subjected to an adverse employment action; that she was qualified for her position; and that others similarly situated, outside of the protected class—in this case, younger than Tudor—were not subject to the same adverse conduct by the employer.

Tudor testified that, when Caskey became a supervisor, she showed animosity toward and bias against older employees in the office. Tudor described Caskey's attitude toward her as frequently "dismissive" and that, in contrast, Caskey was attentive and friendly to younger employees in the office. Moreover, Tudor testified that Caskey did not discipline other, younger employees, even though they made the same or similar mistakes. Two of Tudor's colleagues, Harmon and Julie Szymanski, who were around the same age as Tudor, testified that they also had troublesome interactions with Caskey. According to Harmon, when an older employee asked Caskey an intelligent question, "it would seem like you were burdening" her. Harmon described Caskey's interactions with Tudor as "cold, brief, direct, and at times dismissive in staff meetings," and she attributed this treatment to Tudor's age because she also saw Szymanski treated in the same manner.

Both Tudor and her husband testified that Tudor was miserable at work and felt isolated from her team. This reached a critical point when Caskey and an armed law enforcement officer escorted Tudor out of the building the day after Tudor and Harmon contacted human resources to express concerns about Caskey's age discrimination. Tutor testified that she never saw this happen to anyone else placed on leave. According to Tudor, she felt humiliated by this experience and she ultimately felt forced to resign because Caskey's treatment of her in the office was intolerable.

This evidence was sufficient for Tudor to meet her burden of production under the *McDonnell Douglas* framework. The evidence showed that defendants subjected her to an adverse employment action because of her age and that they did not subject others outside of the protected class the same way. This evidence was also sufficient to establish a CRA retaliation claim. See *West v Gen Motors Corp*, 469 Mich 177, 186; 665 NW2d 468 (2003).

In response, defendants presented evidence from other employees who did not see Caskey treating employees differently on the basis of their age. Defendants also emphasized that Caskey explained in the letter she gave Tudor that she placed her on administrative leave because of various problems with her job performance. Caskey testified that she began to investigate Tudor's files two weeks before she placed her on leave because a vendor contacted her to complain that they were unable to reach Tudor. Caskey also claimed that, a few days later, a supervisor in the Michigan Department of Corrections called her to also complain that she could not reach Tudor while Tudor was at work. According to Caskey, these calls showed that she needed to take immediate action to address Tudor's work issues. Caskey also stated that other employees did not have the same number of performance problems as Tudor. Further, Bathanti testified that, contrary to the information from Tudor's attorney, her fate at the *Loudermill* hearing was not predetermined and that, even if it resulted in some adverse action, Tudor could have also taken the matter to arbitration.

Even so, Caskey had Tudor removed from the building the day after Tudor and Harmon lodged a complaint about age discrimination to human resources and Caskey only raised her alleged performance deficiencies a week later. Tudor testified that no one brought the specific allegations of deficient performance to her attention before she received Caskey's letter. Tudor further disputed the factual basis for many of the alleged performance problems and asserted that, during this time, she was "overload[ed]" with work and covering for colleagues who were out of the office and helping to train new staff members. The trier of fact was free to consider this evidence as part of Tudor's prima facie case in deciding whether defendants' stated nondiscriminatory reason, i.e. performance issues, was the true reason for its adverse employment action. Considering the timing of these events and corroborating testimony of Caskey's disparate treatment, this evidence was enough to establish that the allegations of deficient performance were pretextual.

Because Tudor successfully established claims of age discrimination and retaliation under the CRA, we hold that Bathanti's opinion testimony in the form of a legal conclusion was more likely than not outcome-determinative and therefore not harmless. *Nahshal*, 324 Mich App at 717. Defense counsel presented Bathanti to the jury as an expert on laws governing discrimination and retaliation. This not only influenced the potential weight that the jury placed on her testimony, but also affected the jury's perspective on the facts of the case—facts that Bathanti also testified to as a firsthand witness. Moreover, although the court gave the jury oral instructions at the beginning

of trial, after the close of proofs, the trial court did not give the jury any oral instructions on the elements of age discrimination and retaliation. This compounded the error of admitting Bathanti's testimony and its impact on the jury. This is especially true considering that both sides presented a substantial amount of evidence disputing one another's versions of the events, which required the jury to decide the case by weighing the credibility of witnesses. See *People v Uribe*, 508 Mich 898, 962 NW2d 644, 646 (2021) ("In cases with no corroborating evidence, which boil down to credibility contests, a jury may credit an expert's opinion with enormous weight.) Bathanti's testimony implicated a fundamental question in the case, and relied on an interpretation of facts that was entirely within the province of the jury. Accordingly, we reverse the trial court's denial of Tudor's motion for a new trial.

Reversed and remanded for further proceedings consistent with this opinion.[5] We do not retain jurisdiction.

/s/ Anica Letica
/s/ Kristina Robinson Garrett
/s/ Kathleen A. Feeney

[5] Given our disposition of this issue, we need not address Tudor's remaining claims of error regarding the trial court's partial exclusion of Harmon's testimony and the failures of the recording equipment on appeal.