STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LINDA BOHL,

Defendant-Appellant.

UNPUBLISHED
August 30, 1996

No. 175439
LC No. 93-7502-FH

Before: Holbrook, P.J., and Taylor and W. J. Nykamp,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of welfare fraud over $500, MCL 400.61(1); MSA 16.460(1), and welfare fraud, failure to inform, $500 or more, MCL 400.60(2); MSA 16.460(2), for failing to report work income she received in 1990 and 1991. She was sentenced to six months' probation and required to pay back improperly received funds. She appeals as of right and we affirm.

Defendant first argues that there was insufficient evidence or that her convictions were against the great weight of the evidence. Defendant failed to preserve the latter argument for appeal because she did not move for a new trial. *People v Johnson*, 168 Mich App 581, 585; 425 NW2d 187 (1988). In reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201-1202 (1992).

The question presented to the jury in this case was essentially one of credibility. This Court does not interfere with the jury's role of determining the credibility of witnesses. *Id*. at 514. Defendant's caseworker, the recoupment specialist, and the fraud investigator presented testimony that supported the essential elements of the charged offenses. It showed that defendant made a false statement (her improper responses on the monthly eligibility form), to obtain relief of over $500 to which

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

she was not entitled and failed to inform DSS regarding income from employment. Although defendant's own testimony, as well as her boyfriend's, contradicted the testimony from the DSS workers, the jury decided which witnesses it believed. The jury also had the forms defendant had completed to review in deciding whether defendant's claim that the questions were unclear was credible. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Wolfe, supra* at 515.

Defendant next argues that the trial court's failure to give CJI2d 1.9, which explains presumption of innocence, burdens of proof and reasonable doubt, until part way into the testimony of the prosecution's first witness was error requiring reversal. While it is questionable whether failure to give CJI2d 1.9 before any evidence is presented would be error at all, because defendant failed to preserve the question by objecting at trial, reversal on this basis is clearly not indicated. *People v Grant*, 445 Mich 535, 551-553; 520 NW2d 123 (1994); *People v Figgures*, 451 Mich 390, 402; ___ NW2d ___ (1996).

Finally, defendant argues that the trial court abused its discretion by admitting evidence that she had allegedly failed to report baby-sitting income in 1992. Defendant's sole argument on appeal is that admission of this evidence violated MRE 403, which allows the trial court to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. *People v Mills*, 450 Mich 61, 74-77; 537 NW2d 909 (1995), amended 450 Mich 1212 (1995). We review a ruling under MRE 403 for an abuse of discretion, remembering that Rule 403 determinations are best left to a contemporaneous assessment of the presentation, credibility, and effect of the testimony by the trial judge. *People v Bahoda*, 448 Mich 261, 289-291; 531 NW2d 659 (1995). In order to find an abuse of discretion, the result must be so palpably and grossly violative of fact and logic that it evidences perversity of will, the defiance of judgment, and the exercise of passion or bias rather than reason. *Id.* at 289, n 57. After a review of the record, we are satisfied that the probative force of the challenged testimony was not substantially outweighed by the danger of unfair prejudice. *Mills, supra* at 78. Giving deference to the trial court's assessment, we cannot say that an abuse of discretion occurred.

Defendant has not argued on appeal that admission of evidence that she failed to report baby-sitting income in 1992 violated MRE 608(b). Nevertheless, the dissent finds that admission of this evidence violated MRE 608(b) and deprived defendant of a fair trial. We disagree as the dissent's analysis is flawed.

Before admitting the challenged evidence, the trial court specifically discussed *People v VanderVliet*, 444 Mich 52; 508 NW2d 338 (1993), which explained MRE 404(b). This rule of evidence and MCL 768.27; MSA 28.1050 allow for the admission of evidence of other crimes, wrongs or acts to show proof of such things as intent, scheme, plan knowledge or absence of mistake when the same is material. It is clear that the trial court found that the challenged evidence was admissible for one or more of the allowable purposes enumerated in MRE 404(b). MRE 608(b) forbids the introduction of extrinsic evidence to show specific instances of conduct of a witness for the purpose of attacking the

witness' credibility. The dissent claims that our failure to reverse in this case somehow eviscerates MRE 608(b). We disagree. On the contrary, the dissent fails to recognize that evidence that is admissible for one purpose, such as MRE 404(b) is not inadmissible because its use for a different purpose such as MRE 608(b) is precluded. MRE 105, *City of Westland v Okopski*, 208 Mich App 66, 71; 527 NW2d 789 (1994); *VanderVliet, supra* at 73.

Affirmed.

/s/ Clifford W. Taylor
/s/ Wesley J. Nykamp