

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VALERIE STARR GROSS,

Defendant-Appellant.

UNPUBLISHED

December 21, 2001

No. 224022

Berrien Circuit Court

LC No. 97-407844-FH

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from her bench trial conviction for welfare fraud – negligent failure to inform, in violation of MCL 400.60(2). Defendant had also been charged with willful welfare fraud over \$500 but was acquitted of this charge. In convicting defendant, the trial court found that she failed to inform the Michigan Family Independence Agency (FIA) that, while receiving public assistance benefits, she received a significant amount of money from the sale of property she jointly owned with her mother. We affirm.

I. Facts and Procedural History

From 1985 to 1995, defendant received public assistance benefits in the form of cash assistance, food stamps, and Medicaid. As a public assistance recipient, defendant was required to complete monthly eligibility reports and an annual redetermination application to verify continued eligibility for assistance. Defendant was aware that she was required to report any circumstances that may have affected her eligibility for benefits, including receipt of money.

Despite being aware of these requirements, defendant failed to inform the FIA that on June 15, 1994, defendant and her mother received a cashier's check in the amount of \$58,836.70 as final payment for property they sold by land contract on September 19, 1989, and that defendant had access to at least \$45,458 of the proceeds.¹

¹At trial, the issue of whether the FIA was aware of the land contract was hotly contested. The trial court found that the FIA became aware of the land contract sometime prior to 1991, but also found that the monthly payments of \$500 were paid exclusively to defendant's mother, not
(continued...)

According to defendant and her mother, defendant immediately deposited \$21,000 of the proceeds from the sale of the property into a bank account jointly held by defendant and her mother. Defendant testified that she then withdrew \$18,000 from the account in order to finance a pet shop business she was trying to open, to pay off credit card debt associated with the business and personal debt of her mother, and to pay some of defendant's personal expenses. Defendant also testified that she withdrew an additional \$3,000 to establish a new joint savings account with her mother. In addition to the \$21,000 immediately deposited and subsequently withdrawn, bank records established that in the same month defendant and her mother received the land contract payment, defendant deposited cash and several checks totaling \$24,458 into the joint bank account.² Both defendant and her mother testified that this money was a loan to defendant that she was expected to repay.³

Defendant testified that while she did not disclose the receipt of this money on her monthly or annual reports to the FIA, she informed the FIA of her receipt of the money by letter. Defendant asserted that she had an understanding with the FIA that she did not need to report business loans.

Defendant's FIA caseworker testified that defendant did not report these assets either in her monthly reports or orally, and that the FIA only became aware of the money after an FIA investigation discovered the bank account and the cashier's check for \$58,836.70. The FIA's investigator testified that defendant's case file did not contain any letter describing the sale of the property by land contract or that the proceeds of the sale were being used to pay off business debts. As a result of its investigation, the FIA concluded that defendant had been ineligible to receive cash assistance from January 1990 through April of 1995; food stamps from January 1990 through January 1995; and Medicaid from January 1990 through June 1990. Defendant was subsequently charged with violating MCL 400.60(1) and MCL 400.60(2).

The case was assigned to Judge Daniel Deja and proceeded to trial. At the conclusion of the proofs, Judge Deja took the matter under advisement pending completion of a state police examination of certain documentary evidence. Before this analysis was completed, Judge Deja was defeated in his bid for reelection. Thereafter, Judge Deja refused to render a decision in this case and the State Court Administrator's Office reassigned the case to Judge Gary J. Bruce.

Judge Bruce scheduled a pretrial conference at which he declared a mistrial in the case pursuant to MCR 6.440.⁴ In declaring the mistrial and ordering that defendant be retried, the trial court stated:

(...continued)

defendant.

² There is no specific finding as to whether this \$24,458 was a portion of the land contract payment or separate, unrelated funds.

³ Defendant also claimed that other money she had received from her mother and brother over the years were loans provided to her in an effort to start her business.

⁴ MCR 6.440 provides, in part:

(continued...)

. . . . I don't feel comfortable deciding your case. This is a very serious matter. It involves felony charges, it involves a lot of money. And I don't feel comfortable, and I don't think it's fair to any – either you or the Prosecution [sic], that I review transcripts where I did not observe the witness' testify. And for that reason, I can not [sic] certify, that I can become familiar or have become familiar with a record of a trial, including the testimony previously given.

For those reasons, Counsel, at this point I am declaring a mistrial, in this matter. And we will have to have the trial again. . . .

Defense counsel did not object to the trial court's ruling, and further indicated that while he "didn't have an objection," he wasn't sure an objection "would make a difference."

At the commencement of the new trial, defendant moved for the dismissal of the charges with prejudice, contending that this new trial violated the constitutional prohibition against double jeopardy. After first noting that defendant neither objected nor consented at the time of the mistrial declaration, the trial court held:

[B]ecause the case was not tried to a further – either an acquittal or a conviction, and a mistrial was properly declared after being manifestly necessary, that the double jeopardy provision in the constitution of the United States and the State of Michigan do not apply and Ms. Gross can be properly retried on this case, on both counts.

At the conclusion of the trial, the trial court made extensive findings of fact before concluding as a matter of law that defendant was guilty of negligently failing to inform FIA of her receipt of assets greater than \$500, but not guilty of willful fraud.

II. Analysis

(...continued)

(B) If a judge becomes disabled during a trial without a jury, another judge may be substituted for the disabled judge, but only if

(1) both parties consent in writing to the substitution, and

(2) the judge certifies having become familiar with the record of the trial, including the testimony previously given.

(C) If after a verdict is returned or findings of fact and conclusions of law are filed, the trial judge because of disability becomes unable to perform the remaining duties the court must perform, another judge regularly sitting or assigned to the court may perform those duties; but if that judge is not satisfied of an ability to perform those duties, because of not having presided at the trial or determines that it is appropriate for any other reason, the judge may grant the defendant a new trial.

A. Double Jeopardy Challenge

Defendant contends that her conviction violates the constitutional prohibition against double jeopardy. We disagree. As a constitutional question, we review defendant's double jeopardy challenge de novo. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001); *People v Peerenboom*, 224 Mich App 195, 199; 568 NW2d 153 (1997).

It is well settled that retrial is permissible under double jeopardy principles if there is a manifest necessity to declare a mistrial. *Herron, supra*; *People v Tracey*, 221 Mich App 321, 326; 561 NW2d 133 (1997). In determining whether manifest necessity exists to declare a mistrial, the court is to decide whether there are compelling circumstances present "that would otherwise deprive the defendant of a fair trial or make its completion impossible." *Id.*, quoting *People v Rutherford*, 208 Mich App 198, 202; 526 NW2d 620 (1994). Thus, when it becomes evident that an impartial verdict cannot be reached, or that a guilty verdict would not be sustainable on appeal, the trial court has discretion to declare a mistrial. *Rutherford, supra* at 202.

Here, the trial court properly found that because Judge Deja would not render a decision in the case after having lost his reelection bid, he (Judge Deja) was disabled within the meaning of MCR 6.440. The trial court also properly exercised his discretion in finding that because defendant's guilt or innocence largely hinged on the credibility of witnesses, such a determination could not and should not be made from review of the "cold trial transcript." In short, "compelling circumstances" illustrate that completion of defendant's trial was impossible and that manifest necessity required the trial court to declare a mistrial. *Tracey, supra*, citing *Rutherford, supra*.

Defendant also contends that the trial court erred by declaring a mistrial without receiving her consultation and consent. However, because the trial court found that manifest necessity required it to declare a mistrial, defendant's consent was not needed. *People v Clark*, 453 Mich 572, 581 n 6; 556 NW2d 820 (1996); *People v Echavarria*, 233 Mich App 356, 362-363; 592 NW2d 792 (1999); *Tracey, supra* at 326, 327 n 3.⁵

B. Inconsistent Verdicts

Defendant also argues that her conviction for failure to inform is inconsistent with her acquittal on the willful fraud count, and therefore must be set aside. We disagree.

⁵ Defendant also asserts that the trial court did not do everything possible in an effort to get Judge Deja to render a verdict in this case. However, this assertion is contradicted by the record. The record establishes that the efforts of both the chief judge of the trial court and the State Court Administrator's Office to encourage Judge Deja to render a decision in this case were futile. There is no evidence that the trial court could have done anything not already unsuccessfully attempted.

As the trial court indicated, for defendant to be found guilty of willful fraud the prosecutor was required to prove, among other things, that the defendant willfully made a false statement to the FIA with the intent of defrauding or cheating the FIA. See *People v Ramos*, 430 Mich 544, 588; 424 NW2d 509 (1988), citing MCL 400.60(1); see also CJI2d 34.1. However, the prosecution is not required to prove beyond a reasonable doubt that the defendant intended to defraud the FIA in order to prove defendant's guilt of failure to inform. Instead, "once a person has neglected or refused to provide the information, the crime is complete. . . ." *People v Vargo*, 139 Mich App 573, 577; 362 NW2d 840 (1984). See also MCL 400.60(2) and CJI2d 34.3. Here, the trial court specifically found that the prosecution had not proven beyond a reasonable doubt that defendant "intentionally refused to provide the information," but instead established "simply that she neglected in a careless manner to provide the information." The trial court also found that defendant did not intentionally fail to report the information "in order to obtain more assistance than that which she was entitled." Because these factual findings are not inconsistent and we are unable to find clear error in the court's factual findings, see *Featherston v Steinhoff*, 226 Mich App 584, 587; 575 N.W.2d 6 (1997), we conclude that the trial court properly convicted defendant of failure to inform even though it found her not guilty of willful fraud.

C. Insufficiency of the Evidence

Finally, defendant argues that the evidence was insufficient to convict her of failure to inform. Again, we disagree. This Court's review of a challenge to the sufficiency of the evidence in a bench trial is de novo in order to determine whether, when viewed in the light most favorable to the prosecution, the trial court could have found all the elements of the charged crime to have been proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000); *People v Ortiz-Kehoe*, 237 Mich App 508, 520; 603 NW2d 802 (1999). In addition, while we review de novo the trial court's determination that the elements were proven beyond a reasonable doubt, when dealing with credibility issues, we give the trial court's findings "special deference," *Sherman-Huffman, supra*; thus, we will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Reviewed in this light, the evidence presented by the prosecution was sufficient to support beyond a reasonable doubt the trial court's findings that, in June 1994, defendant received at least \$45,000 which was used, at least in part, to pay personal expenses. Giving appropriate deference to the trial court's determination in the credibility of witnesses, the evidence also clearly establishes beyond a reasonable doubt that defendant had an obligation to report this money to the FIA, that she was aware of this obligation, and that she failed to do so. Thus, the prosecution presented sufficient evidence of defendant's guilt.

III. Conclusion

We find that the trial court did not err when it declared a mistrial based on manifest necessity and retried defendant, that there was sufficient evidence to find defendant guilty beyond a reasonable doubt on the failure to inform count, and that defendant's acquittal on the willful fraud count and conviction on the failure to inform count does not constitute an inconsistent verdict.

Affirmed.

/s/ Janet T. Neff

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder