

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENICE MARIE CORNELIUS,

Defendant-Appellant.

UNPUBLISHED
February 15, 2002

No. 224782
Ingham Circuit Court
LC No. 99-074639-FH

Before: Gage, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Defendant appeals by right from her jury trial conviction for one count of obtaining a controlled substance by fraud, MCL 333.7407(1)(c). The trial court sentenced her to fifteen days in jail and twenty-four months' probation. We affirm.

Defendant, a licensed physician, first argues that she was denied due process when the trial court excluded testimony concerning her request for authorization for medication from two other physicians where she worked. Defendant desired to testify about statements made by the two physicians when they allegedly prescribed her the medication. We review for an abuse of discretion evidentiary decisions, including hearsay issues. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998); *People v Layher*, 238 Mich App 573, 582-584; 607 NW2d 91 (1999).

Because the statements that defendant desired to relate are hearsay, MRE 801, they are not generally admissible, MRE 802. Assuming that the testimony was admissible under the hearsay exception in MRE 803(3), any error was harmless. Defendant argues that the exclusion of this evidence prevented her from presenting to the jury her reasonable belief that she had authorization from the female physician to obtain pain medication, but a review of the record shows that defendant was able to present this claim to the jury through her own testimony of what she did and why she did it. Defendant testified that the female physician wrote out three prescriptions for her and that the receptionist called in the prescriptions. Because the jury considered her claim and rejected it, we find any error harmless. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Next, defendant argues that the trial court should have instructed the jury on the defense of authorization. Defense counsel agreed to the instructions as given, waiving this issue. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). Regardless, the jury instructions, read as a whole, fairly presented the issues to be tried and sufficiently protected

defendant's rights. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000); *People v Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996), quoting *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

Defendant next argues that the prosecutor interjected into the case the issue of drug abuse and that the trial court improperly limited defense evidence regarding defendant's medical condition. Because defendant failed to object to the prosecutor's questioning and closing argument on the former topic, defendant must demonstrate outcome-determinative plain error. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). No plain error occurred here because defendant's use or abuse of controlled substances was relevant to show motive, MRE 401, 402; see *People v Fisher*, 449 Mich 441, 451-453; 537 NW2d 577 (1995); *People v McConnell*, 124 Mich App 672, 681; 335 NW2d 226 (1983), nor was this evidence unduly prejudicial, MRE 403; see *Fisher, supra*; *McConnell, supra* at 681-682. To the extent that defendant argues that the trial court abused its discretion in limiting evidence of her medical condition, her argument is without merit because the proposed testimony regarding her medical condition was not competent evidence for her claim of an authorized prescription. See *People v Pegenau*, 447 Mich 278, 296; 523 NW2d 325 (1994) (Mallett, J.). We find no abuse of discretion. *Starr, supra*.

Finally, defendant argues that she was improperly convicted of an offense not presented in the criminal information because the evidence established that she submitted a prescription for, and obtained possession of, one controlled substance, but that the information referred to a different, albeit similar, controlled substance. Because the information sufficiently apprised defendant of the charges against her, there is no error requiring reversal. *People v Higuera*, 244 Mich App 429, 443-444; 625 NW2d 444 (2001), citing MCL 767.76 and *People v Stricklin*, 162 Mich App 623, 633; 413 NW2d 457 (1987).

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter