

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DORECO ANTOINNE COPELAND,

Defendant-Appellant.

UNPUBLISHED

February 2, 1999

No. 203245

Muskegon Circuit Court

LC No. 96-1-40086-FH

Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and resisting and obstructing arrest, MCL 750.479; MSA 28.747. Defendant was sentenced to consecutive terms of five to forty years' imprisonment for the possession with intent to deliver cocaine and two to three years' imprisonment for resisting arrest as a second habitual offender. We affirm.

Defendant's first claim on appeal is that the trial court abused its discretion by allowing the prosecutor to impeach Joeritta Brown with her testimony that she failed to report defendant as part of her household while receiving government assistance. We disagree.

The admission of evidence is reviewed for abuse of discretion. *People v Hackney*, 183 Mich App 516, 520; 455 NW2d 358 (1990). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Impeachment with specific instances of conduct is governed by MRE 608(b), which provides:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or

untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

A prosecutor can properly question a witness, where the evidence elicited is relevant to a witness' credibility under MRE 608. *People v Messenger*, 221 Mich App 171, 180; 561 NW2d 463 (1997). In the present case, Brown testified that she received state assistance, yet failed to report defendant as living with her. We conclude that her testimony was probative of her character for truthfulness and relevant with regard to her credibility under MRE 608.

Defendant concedes that welfare fraud may be probative of a person's credibility but contends that the potential prejudice outweighed the probative value of Brown's testimony under MRE 403, which states in pertinent part:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Defendant was not unfairly prejudiced by Brown's testimony. Prejudice means more than simply damage to the opponent's case, because a party's case is always damaged by facts contrary to the party's contention. *People v Vasher*, 449 Mich 494, 501; 537 NW2d 168 (1995). "What is meant here is an undue tendency to move the tribunal to decide a case on an improper basis, commonly, though not always, an emotional one." *Id.* "It is only when the probative value is *substantially outweighed* by the danger of unfair prejudice that evidence is excluded." *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995). Brown was a minor witness. Her testimony did not contain graphic descriptions of welfare fraud to inflame the jury's emotions; rather, it was a brief admission that she withheld information from the state authorities in order to maintain her financial assistance. Accordingly, we hold that the trial court did not abuse its discretion when it admitted Brown's testimony.

Defendant's second claim on appeal is that the trial court improperly admitted evidence of his 1991 conviction for selling cocaine as evidence of prior bad acts under MRE 404(b). We disagree.

We find no merit in defendant's contention that his six-year-old conviction is too old to admit as evidence. The decision to admit evidence of other bad acts pursuant to MRE 404(b) is within the trial court's discretion and will only be reversed where there has been a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). MRE 404(b)(1) provides in pertinent part:

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or

acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

Because defendant denied his intent to deliver the crack cocaine which he possessed, evidence of his prior dealings is admissible under MRE 404(b)(1) to demonstrate that intent. See *People v Mouat*, 194 Mich App 482, 484; 487 NW2d 494 (1992). MRE 404(b) sets no limitation on age of bad acts admitted into evidence. Under the facts in this case, the prejudicial effect of admitting defendant's conviction into evidence did not outweigh the probative value of the conviction. Accordingly, we hold that the trial court did not err in admitting defendant's six-year-old conviction pursuant to MRE 404(b).

Affirmed.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs

/s/ E. Thomas Fitzgerald