

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHELLE MAE MOREHEAD,

Defendant-Appellant.

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UNPUBLISHED

July 15, 2008

No. 277176

Muskegon Circuit Court

LC No. 06-053546-FC

Before: Murphy, P.J., and Bandstra and Beckering, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to manufacture, deliver, or possess with intent to deliver 1,000 grams or more of crack cocaine, MCL 750.157a and MCL 333.7401(2)(a)(i), and possession with intent to deliver 50 or more but less than 450 grams of a mixture containing crack cocaine, MCL 333.7401(2)(a)(iii). Defendant was sentenced to concurrent prison terms of 10 to 20 years for the conspiracy conviction and 5 to 20 years for the possession with intent to deliver conviction. Defendant appeals as of right. We affirm.

As a result of an undercover narcotics investigation, the police apprehended Charles “Mario” Malone on June 3, 2006. The police obtained and executed a search warrant on Malone’s residence, where defendant, Malone’s girlfriend, also resided. The search revealed extensive evidence of narcotics manufacturing and trafficking. Two days later, the police apprehended one of Malone’s subordinates, Kenyon Walker. After arresting Walker, the police learned of a storage unit used by Malone. Upon executing a search warrant for the storage unit, the police discovered an automobile that was registered to Malone. The automobile’s trunk contained an assault rifle, ammunition, evidence of narcotics trafficking, and 18, one-ounce packages of crack cocaine. During a second search of the home where Malone and defendant resided, the police discovered a “carry-on bag or large purse” that had an airlines identification tag on it with defendant’s name. Inside the bag was a small bottle containing crack cocaine. Defendant later admitted to the police that she knew Malone was a crack cocaine dealer, that she purchased items used to manufacture and distribute crack cocaine, that she assisted in the production of crack cocaine, and that she drove Malone when he delivered the crack cocaine. Walker testified against defendant and described occasions on which he personally observed defendant preparing, cutting, packaging, hiding, and delivering cocaine.

Defendant argues on appeal that defense counsel provided ineffective assistance of counsel for the following reasons: failure to impeach a police witness; failure to object to evidence that defendant's sister allegedly threatened a prosecution witness; and failure to impeach that witness with a past conviction. "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Findings of fact are reviewed for clear error, and questions of constitutional law are reviewed de novo. *Id.*

In *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001), our Supreme Court, addressing the basic principles involving a claim of ineffective assistance of counsel, stated:

To justify reversal under either the federal or state constitutions, a convicted defendant must satisfy the two-part test articulated by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the 'counsel' guaranteed by the Sixth Amendment." *Strickland, supra* at 687. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Id.* at 690. "Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* at 687. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

We will not substitute our judgment for that of counsel regarding matters of trial strategy, nor will we assess counsel's competence with the benefit of hindsight. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

First, defendant asserts on appeal that defense counsel was ineffective for failing to impeach Muskegon Heights Police Officer Christian Hanson on the basis of bias and motive to embellish his testimony to obtain favorable treatment in his own separate, criminal case. "[A] trial court may allow inquiry into prior arrests or charges for the purpose of establishing witness bias where, in its sound discretion, the trial court determines that the admission of evidence is consistent with the safeguards of the Michigan Rules of Evidence." *People v Layher*, 464 Mich 756, 758; 631 NW2d 281 (2001). The *Layher* Court, quoting *Hayes v Coleman*, 338 Mich 371, 381; 61 NW2d 634 (1953), stated that "[i]t is always permissible upon the cross-examination of an adverse witness to draw from him any fact or circumstance that may tend to show his relations with, feelings toward, bias or prejudice for or against, either party, or that may disclose a motive to injure the one party or to befriend or favor the other." *Layher, supra* at 768.

Here, Officer Hanson testified regarding his role in the undercover narcotics investigation, the subsequent arrests of Malone and Walker, and the corresponding searches of Malone's and defendant's residence and the storage unit. During the trial, Hanson was on administrative leave pending an unrelated arson charge. The prosecutor and defense counsel stipulated that the charge was not relevant to the instant case and that any impeachment regarding that charge was not admissible.

On appeal, defendant argues that defense counsel should not have conceded that point, asserting that Hanson "arguably" had motive to embellish his testimony in order to gain favorable treatment in his own proceeding. Defendant, however, merely speculates that the officer's pending charge may have given him motive to embellish his testimony. The record simply does not show that Hanson had feelings toward, bias or prejudice for or against, either party, nor does the record disclose evidence of a motive to injure defendant or to befriend or favor the prosecution. Defense counsel is not required to engage in meritless and objectionable cross-examination. See *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).

Furthermore, decisions about what evidence to present and which witnesses to call or question are presumed to be matters of trial strategy, and we shall not substitute our judgment for that of trial counsel on such matters. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). We conclude that the record does not warrant our interference with defense counsel's decision not to impeach Hanson as the decision constituted reasonable and sound trial strategy. Defendant made admissions to Hanson when the police executed the first search warrant on Malone's residence, and she later made admissions to Muskegon Heights Police Officer Calvin Mahan. Officer Mahan's testimony regarding defendant's admissions corroborated much of Officer Hanson's testimony regarding defendant's admissions, with one exception. Officer Hanson testified that defendant stated that she knew that Malone was a drug dealer, but she denied any involvement with Malone's narcotics operation. Conversely, Mahan testified that defendant admitted her role in manufacturing crack cocaine. Defense counsel could have reasonably decided not to undermine Hanson's credibility, where the case really turned on defendant's admissions. And, the jury could have accepted Hanson's testimony and rejected Mahan's testimony. Defendant has failed to overcome the strong presumption that defense counsel's decision not to impeach Officer Hanson constituted sound trial strategy.

Second, defendant contends that defense counsel was ineffective for failing to object to testimony by a prosecution witness regarding a purported threat made by defendant's sister. Generally, a defendant's threat against a witness is admissible to show consciousness of guilt. *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996). Additionally, the prosecution may elicit testimony that a defendant's family members threatened a witness, if that testimony explains a witness's prior inconsistent statement. *People v Clark*, 124 Mich App 410, 412; 335 NW2d 53 (1983). And evidence may be admitted to assist a jury's evaluation of a witness's credibility. *People v Mills*, 450 Mich 61, 72; 537 NW2d 909 (1995), mod on other grounds 450 Mich 1212 (1995).

At the instant trial, Monica Bonner testified that she and defendant were in a barroom brawl in February or March 2006, and later they were cellmates for approximately four months. Bonner testified that defendant's younger sister approached her and made the following threat:

“[defendant’s sister] told me if I got on the stand, she was going to beat me up.” Bonner also testified regarding statements by defendant, which spoke of defendant’s knowledge of the weight and price of narcotics, defendant’s opinion on how a female could be a drug dealer, and an opinion on why Walker was arrested. Bonner further testified that defendant denied any involvement in Malone’s narcotics operation and claimed that Walker set her up. Additionally, Bonner testified that defendant told her that defendant wanted a trial because she was innocent. Later at trial, Officer Mahan testified that he interviewed Bonner and that Bonner never told him that defendant denied any involvement in the narcotics operation, that defendant claimed that Walker was setting her up, or that defendant asserted her innocence.

We conclude that Bonner’s testimony regarding the threat was proper for purposes of explaining differences between Bonner’s statements to police and her trial testimony and judging Bonner’s overall credibility. Defense counsel need not make meritless objections. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). Moreover, for the reasons stated in the discussion of the next issue, even if defense counsel’s performance was deficient, defendant has failed to show the existence of a reasonable probability that, but for counsel’s assumed error, the result of the proceeding would have been different.

Third, defendant argues that defense counsel was ineffective for failing to impeach Bonner’s credibility with a past conviction. On appeal, defendant maintains that Bonner had a previous conviction for attempting to bribe or intimidate a witness. Assuming that Bonner had such a conviction, the record reflects that defense counsel impeached Bonner’s credibility with previous convictions for uttering and publishing. Further, defense counsel questioned Bonner regarding her barroom brawl with defendant in February or March 2006. This cross-examination sufficiently demonstrated Bonner’s bias against defendant or her motive to testify falsely.

Further, we cannot conclude on the record before us that there was a reasonable probability that the outcome at trial would have been different but for defense counsel’s alleged error. The instant trial boiled down to the jury’s evaluation of defendant’s admissions to officers Hanson and Mahan, as well as those made to Bonner, along with the jury’s assessment of Walker’s testimony. There was also the extensive evidence discovered in the home where defendant and Malone were residing, including the carry-on bag with defendant’s name on it containing crack cocaine, that reflected a major narcotics operation. It was undisputed that defendant resided with Malone, that she knew Malone was dealing crack cocaine, and that crack cocaine was being manufactured at the residence. While defendant initially denied any involvement in the narcotics operation to Officer Hanson, she admitted her participation in the manufacturing and distribution of crack cocaine to Officer Mahan. Moreover, Walker’s testimony corroborated defendant’s involvement. And the prosecution played recordings of jailhouse telephone conversations at trial containing defendant’s own statements, some of which were incriminating. Weighing the credibility of witnesses is within the province of the jury. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Defendant failed to demonstrate that, but for defense counsel’s conduct, there is a reasonable probability that the outcome of the proceeding would have been different.

And, in reaching our conclusion, we note that the record also evidences that Bonner’s testimony was not altogether damaging for defendant. As noted previously, Bonner testified that

defendant denied any involvement in the narcotics operation, claimed that Walker was setting her up, and asserted her innocence. Thus, defense counsel's decision not to impeach Bonner further may have constituted sound trial strategy.<sup>1</sup>

Affirmed.

/s/ William B. Murphy  
/s/ Richard A. Bandstra  
/s/ Jane M. Beckering

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<sup>1</sup> Defendant's sentencing issue relative to jail credit was addressed in an earlier order issued by this Court. *People v Morehead*, unpublished order of the Court of Appeals, entered February 4, 2008 (Docket No. 277176).