

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY LEE HOLLINS,

Defendant-Appellant.

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UNPUBLISHED

April 29, 2008

No. 272181

Kent Circuit Court

LC No. 05-011444-FC

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

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(f). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, and as an habitual criminal sexual offender, second offense, MCL 750.520f, to 22 years and six months' to 60 years' imprisonment. We affirm.

I

Defendant's conviction arose out of an incident that occurred in Grand Rapids in 2005. Defendant and the victim had an ongoing consensual sexual relationship, and defendant occasionally stayed overnight with the victim in her apartment. During the weekend of October 30, defendant unexpectedly arrived at the victim's home with all of his clothes. The victim did not want defendant to move in with her, but she allowed him to stay with her temporarily. The same weekend, the victim expressed to defendant that she wanted their romantic relationship to end. Defendant became upset, and the victim was so nervous about having him in her house that she called her daughter, who lives in another state. The victim told her daughter defendant's name, in case anything happened to the victim. Saturday night, defendant pressured the victim to have sexual intercourse, and according to the victim, he eventually held down her arms and proceeded to penetrate her without her permission. The victim was unable to call the police until the next morning. When defendant heard the victim on the telephone, he attacked her. A struggle ensued and lasted until the police arrived. When the police finally arrived and kicked down the door, they saw defendant kneeling over the victim on the floor, with one hand on her throat and the other hand on her hair.

The police handcuffed defendant, and the victim yelled that defendant had raped her. Defendant apologized to the victim. Defendant was subsequently escorted to a police vehicle,

where he made spontaneous statements to an officer for 45 minutes. He denied the rape, but admitted that he assaulted the victim.

## II

After defendant's trial began, an essential witness became temporarily unavailable, and the trial was postponed. During this period, defendant mailed a letter to the judge presiding over the case. In the letter, defendant went into an extensive analysis indicating that a prior CSC conviction he had was based on lies. He also stated that he told the victim about the prior conviction because he wanted to be "strate [sic, straight] with [her]." Defendant stated, "I new [sic] I never should have put my hand on [her -] that was wrong." He stated that on the day in question he "lost [his] cool" and "we went at Fighting . . ." He then stated that "she new [sic] I went to prison for a CSC case and she new [sic] all she had to do was say I [r]ape [sic] her. She could get me out of her way any time [sic] she wanted." Defendant then went on to say that the victim was a "bloodsucker" who tries to get what she wants using her looks. He warned the judge that she would be doing "lots" of lying and he asked the judge to dismiss the case if she lied under oath. He stated multiple times that the victim would lie, adding that she "[i]s a good looking woman but she [is] a very very very big lyer [sic] and she [is] real cool with [i]t." He warned the judge multiple times that the letter was for the judge's eyes only and that defense counsel should not be informed about it. He ended by stating that "every thing [sic] I say she [is] going to do [i]n this letter she [i]s go [sic] to do [-] mark my word."

Defendant argues that the trial court committed an error requiring reversal when it admitted this letter into evidence. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Osantowski*, 274 Mich App 593, 607; 736 NW2d 289 (2007). "An abuse of discretion will not be found if the trial court's decision is within the principled range of outcomes." *Id.*

Generally, all relevant evidence is admissible at trial. *People v Fletcher*, 260 Mich App 531, 553; 679 NW2d 127 (2004); MRE 402. Evidence is relevant if it makes a material fact more or less probable. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004); MRE 401. "A material fact is '[a] fact that is significant or essential to the issue or matter at hand.'" *People v Katt*, 468 Mich 272, 292; 662 NW2d 12 (2003), quoting Black's Law Dictionary (7th ed). At trial, the prosecutor bears the burden to establish every element of the crime; therefore, the existence of each element is a material fact. *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). The essential elements of first-degree CSC as charged in this case are that defendant (1) engaged in sexual penetration with the victim, (2) caused personal injury to the victim, and (3) used force or coercion to accomplish the sexual penetration. *People v Nickens*, 470 Mich 622, 629; 685 NW2d 657 (2004). Force or coercion includes the actual application of physical force and also includes threats of force, as long as the victim believes the defendant has the present ability to execute the threats. MCL 750.520b(1)(f)(i)-(ii). In addition, the credibility of witnesses is a material issue, and the parties "may draw in dispute the credibility of the witnesses and, within limits, produce evidence assailing and supporting their credibility." *People v Mills*, 450 Mich 61, 72; 537 NW2d 909, modified on other grounds 450 Mich 1212 (1995) (internal citation and quotation marks omitted).

We conclude that the trial court did not abuse its discretion in allowing the letter into evidence. The letter was relevant to the case because, in it, defendant admits that he "put his

hand on [the victim]" on the day in question, that he "lost his cool," and that he and the victim were fighting that day. This was pertinent because, as noted, the prosecutor's theory was that defendant caused personal injury to the victim and that force or coercion was used to accomplish the sexual penetration. See MCL 750.520b(1)(f). Although defendant had admitted to the police that he assaulted the victim, the letter nonetheless added further credence to the prosecutor's theory.

Moreover, defense counsel made clear, while the judge was considering whether to admit the letter as evidence, that defendant would be putting forward the defense that any sexual contact between the victim and him was consensual.<sup>1</sup> The tone and contents of this letter were pertinent to the trial in that they had a bearing on the believability of defendant's theory of the case. The letter arguably portrayed defendant in a desperate and unbalanced light, and the jurors rightfully were allowed to assess its significance when considering whether the sex between defendant and the victim actually was consensual.

On appeal, defendant states:

[T]he apparent rationale for admitting Mr. Hollins' statement was to allow the prosecutor to ridicule it as inherently incredible. However, the prosecutor could have accomplished the same objective by redacting the specific reference to the prior criminal sexual conduct charge and substituting a reference to Mr. Hollins' unspecified prior record.

However, defendant never suggested at trial that the letter should have been redacted in this fashion. As indicated by the trial court, it was defendant "who has wrapped this all together."

In addition, the trial court did not err in concluding that the probative value of the evidence was not substantially outweighed by its potential for unfair prejudice. See MRE 403. The letter had a substantial amount of probative value, and the trial court provided a limiting instruction to the jury. Additionally, the letter was admitted along with affidavits in which various individuals connected with the prior CSC conviction indicated that the conviction was based on lies. These affidavits arguably helped defendant's credibility. Under the circumstances, we cannot find an abuse of discretion.

Defendant also argues that a statement he made to the police about his prior CSC conviction should have been kept from the jury. After being arrested and read his *Miranda*<sup>2</sup> rights, defendant explained that the victim knew about his prior CSC conviction and that she fabricated the rape so that he would be sent to jail. Defendant now argues that the reference to his prior conviction should have been redacted from the statements provided to the jury. This argument, however, was explicitly abandoned by defense counsel after the court ruled that the letter discussed above would be admitted. Counsel stated, "I assume now that based open [sic]

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<sup>1</sup> At trial defendant testified that any sex between the victim and him on the day in question was consensual.

<sup>2</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

the [c]ourt's ruling that that tape would not need to be redacted." Defendant's argument has been waived. *People v Riley*, 465 Mich 442, 449; 636 NW2d 514 (2001).

### III

Defendant next argues that the prosecutor committed misconduct requiring reversal during her opening and closing arguments. However, defendant did not object to the prosecutor's statements at trial. Therefore, our review is for plain error that affected defendant's substantial rights. *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003). To be entitled to relief, defendant must show the existence of a clear or obvious error that affected the outcome of the lower court proceedings. *People v Carines*, 763 Mich 750, 763; 597 NW2d 130 (1999). Moreover, this Court will only reverse if "plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings, independent of defendant's innocence." *People v Ackerman*, 257 Mich App 434, 448-449; 669 NW2d 818 (2003). The prosecutor's comments must be reviewed in the context in which they were given, including defendant's arguments at trial. *Id.* at 452.

During closing arguments, a prosecutor is not required to precisely quote the language of trial testimony. *Hicks, supra*, 259 Mich App 533. However, the prosecutor must fairly characterize the testimony and evidence. *Id.* The prosecutor is "free to argue the evidence and all reasonable inferences arising from it as they relate to the theory of the case." *Id.* at 532 (internal citation and quotation marks omitted).

Here, the prosecutor's statements were supported by the evidence. At times, she synthesized facts from different sources and drew inferences from those facts. This was not improper. *Id.* First, the prosecutor stated that the victim "told her daughter that she thinks something bad is going to happen. She's not feeling like she wants to have sex with him. That doesn't point to consent, that points to guilt." Defendant argues that this was a false statement because the victim never told her daughter she did not "feel like having sex with him." However, the prosecutor's statement was supported by the trial testimony. The victim testified that at approximately 10:00 p.m. on the night she was raped, she talked with her daughter on the telephone. During their conversation, the victim expressed that she was very nervous about having defendant in her home. She whispered defendant's last name for her daughter so that she would know who was there with the victim in case something happened to her. Immediately after this testimony, the victim explained that she told defendant that she was not interested in engaging in sexual intercourse with him that evening. During her closing argument, the prosecutor did not say that the victim told her daughter she was not interested in sexual intimacy with defendant that night; she simply put two facts together, i.e., that (1) the victim was afraid of defendant and expressed this during her discussion with her daughter, and (2) the victim did not feel like having sex with defendant.

Second, the prosecutor stated that the victim had an injury to her cervix and that it was caused by sexual penetration with defendant. Defendant argues that this was a false statement because he never admitted to sexual *penetration* and because no one testified that the victim's injury was caused by sexual penetration. He claims there was no evidence of penetration. Again, the prosecutor's statements were a reasonable inference from the evidence presented at trial. A nurse examined the victim after the rape. When asked to describe the injuries she observed on the victim's body, the nurse explained that the victim had a hematoma in her cervix.

The victim testified that defendant raped her and penetrated her vagina with his penis. Defendant admitted that he was sexually intimate with the victim. It is a reasonable inference from these facts that the victim's injury resulted from defendant's penetration, and contrary to defendant's argument, there was evidence of penetration.

Third, defendant challenges the following statement by the prosecutor: "I submit to you that he did enter the room just like he said and gave her some and began rubbing on her, as he said, between the lips of her vagina, putting his finger inside of her." Defendant argues that this was a false statement because he never stated that he touched the victim "between the lips of her vagina." However, the prosecutor used the testimony of defendant and the victim together, in concert, to tell one cohesive story. She highlighted the fact that defendant admitted to touching the victim's legs and "rubbing on" her. Then she added the victim's testimony that she awoke to defendant's finger "playing with her" in her vagina. This was a reasonable synthesis of the facts, and it does not constitute an error requiring reversal.

During her closing argument, the prosecutor also referred to a tissue the victim used to clean herself after the rape that she subsequently hid behind a wastebasket in the bathroom. Defendant argues that this reference to the tissue was not appropriate because the tissue was not admitted into evidence. However, the victim testified that, after being raped, defendant prepared bathwater for her and told her to clean herself. Before taking a bath, the victim cleaned herself with a tissue and placed it behind the wastebasket, presumably to preserve evidence. The prosecutor properly argued about the issue from the testimonial evidence presented at trial.

Additionally, the prosecutor used defendant's statements and admissions to argue that the victim's story was accurate. For example, she questioned defendant's credibility when she argued that although defendant stated he knew the victim could not handle "rough sex," he still was so rough with her that she had an internal injury. She also argued that the domestic violence that occurred before the police arrived, which defendant admitted, was for the purpose of preventing the victim from telling the police about the rape. Defendant argues that these types of statements misled the jury about the truth, because they did not comport with his version of events. However, again, the prosecutor has latitude in arguing reasonable inferences from the facts that are presented at trial. *Id.* Because the prosecutor stated facts and made reasonable inferences from the facts and testimony presented at trial, she did not commit an error requiring reversal.

Defendant also argues that the prosecutor misquoted a letter that was in evidence. Defendant states that he never wrote "You better tell the truth," and that the prosecutor misrepresented the letter at trial. However, a close reading of the prosecutor's statement reveals that she argued that defendant's letter to the victim, requesting toiletries and cosmetics, was an unusual letter to write to a person who had falsely accused defendant of rape. She argued that a person falsely accused of rape would write: "You better tell the truth. I'm looking at some serious charges. Why are you lying on me?" The prosecutor then argued that the fact that defendant did not write a letter like that points to his guilt. The prosecutor did not misrepresent what defendant's letter stated. Rather, she called upon the jury to use its common sense in considering the letter. It is not improper for a prosecutor to appeal to the jury's common sense. See e.g., *People v Fisher*, 220 Mich App 133, 160-161; 559 NW2d 318 (1996).

#### IV

Defendant next argues that the pictures in evidence showed that the victim's throat did not sustain an injury severe enough to have been caused by defendant choking the victim over a long period of time. Defendant contends that, because the victim testified that defendant choked her for "hours and sequence of events [sic]," she was obviously lying. He also contends that the prosecutor's reliance on this "perjury" entitles defendant to a new trial.

Defendant did not object to this testimony or to the prosecutor's related actions; therefore, this issue is not preserved, and our review is under the plain error doctrine. *Hicks, supra*, 259 Mich App 522. We find no plain error.

To be entitled to relief, defendant must show that the prosecutor knowingly presented false testimony. See *People v Canter*, 197 Mich App 550, 558; 496 NW2d 336 (1992). A prosecutor may not knowingly use false testimony to convict a defendant, and she must correct false evidence when it appears. *People v Lester*, 232 Mich App 262, 276-277; 591 NW2d 267 (1998). The fact that a witness's testimony conflicts with earlier statements does not automatically show that the prosecutor knowingly offered perjured testimony. See, e.g., *People v Parker*, 230 Mich App 677, 690; 584 NW2d 753 (1998). "It is the province of the jury to determine questions of fact and assess the credibility of witnesses." *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998).

Defendant argues that the pictures admitted at trial showing the victim's injuries do not comport with the victim's statement about the cause of those injuries. To argue that the prosecutor relied on perjury, defendant refers to a statement the victim made during the preliminary examination. When asked when she was choked by defendant, the victim replied, "When I was lying on the bed. It was such—you know what? This is—it went on for hours, off and on for hours, so I can't even tell you exactly, honestly, the—the sequence of events." Taken in context, the victim was referring to the whole rape and domestic violence incident. She was trying to communicate that she could not pinpoint the exact time she was choked by defendant because the attack went on for hours, and everything blurred together. During trial, the victim testified that defendant choked her shortly after she called the police. This was the statement on which the prosecutor relied when she argued that the victim's injuries to her face and neck were caused by defendant's attempt to keep her from telling the police about the rape. The record does not support that the prosecutor knowingly allowed or condoned perjured testimony. Furthermore, the jury saw the pictures and had the opportunity and the duty to decide whether the victim's explanation of the injuries was credible. This Court will not disturb that finding on appeal. See *Lemmon, supra*, 456 Mich 637-647.

#### V

Defendant next argues that the prosecutor withheld exculpatory evidence from the jury. Defendant did not move for a new trial under MCR 2.611(A)(1)(f), and he did not move for relief from judgment under MCR 2.612(C)(1)(b). Therefore, he did not preserve this issue, and our review is under the plain error doctrine. *People v Cox*, 268 Mich App 440, 448; 709 NW2d 152 (2005).

A criminal defendant has a right to have all evidence within the prosecutor's control, which has a bearing on guilt or innocence, produced at trial. *Id.*; *People v Davis*, 199 Mich App 502, 514; 503 NW2d 457 (1993). To establish a violation of this rule, a defendant must prove:

(1) that the state possessed evidence favorable to the defendant; (2) that the defendant did not possess the evidence nor could the defendant have obtained it with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*Cox, supra*, 268 Mich App 448.]

Thus, a defendant's right to have exculpatory evidence presented at trial is protected by ensuring that he has access to the information. Here, defendant has provided no authority for his assertion that the prosecutor is required to present every single piece of potential evidence or testimony to the jury during the prosecutor's case. Rather, the prosecutor must make sure that the defendant possesses the evidence or could reasonably obtain it. Because defendant does not provide facts or evidence to show that he had no access to the evidence, that the prosecutor suppressed it, that it was exculpatory, or that the evidence would have changed the outcome of his trial, defendant has abandoned this issue. See *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001).

## VI

Defendant next argues that a nurse who testified for the prosecutor provided erroneous testimony. Defendant did not object to the nurse's testimony at trial; therefore, the issue of the nurse's "false" statements was not preserved, and our review is under the plain error doctrine. See *Hicks, supra*, 259 Mich App 522.

The trial court did not commit plain error when it allowed the nurse to testify. First, contrary to defendant's allegation, the nurse was not qualified as an expert during trial and did not testify as an expert. Generally, witnesses may only testify about matters based on their personal knowledge. *People v Holleman*, 138 Mich App 108, 114; 358 NW2d 897 (1984); MRE 602. However, lay witnesses may also testify about opinions or inferences that are rationally based on the perception of the witness and helpful to understanding the witness's testimony or to the determination of a fact at issue. MRE 701.

Here, when the prosecutor requested that the trial court allow the nurse to testify as an expert, defense counsel objected. After a bench conference, the nurse was allowed to testify as a lay witness to the facts she had observed. The nurse testified about the injuries she observed on the victim's body, and she concluded that those injuries were consistent with what the victim told her. She also testified that the victim's bruising was fresh and that the hematoma in her cervix was inflicted "within the last day or two." This was appropriate testimony based on the nurse's observations. In other words, the testimony was rationally based on the witness's perception and was helpful to understanding the issues – e.g., when the victim's injuries may have occurred. MRE 701.

Defendant argues that the nurse's testimony was incredible and should not have been believed. From the volume of defendant's objections to the nurse's testimony, it appears that

defendant is attempting to argue that the nurse's testimony was so incredible that his conviction was against the great weight of the evidence. However, defendant does not provide any authority to support this argument and does not explicitly argue that his conviction was against the great weight of the evidence. Therefore, this argument is abandoned, and we do not reach it on appeal. *Kevorkian, supra*, 248 Mich App 389. At any rate, the credibility of witnesses is within the province of the jury unless the testimony supporting the verdict has been impeached to the point that it was deprived of all probative value and the jury could not believe it. *Lemmon, supra*, 456 Mich 643. Here, the nurse's lack of memory and purported inconsistencies did not remove all probative value from her testimony.

Defendant further argues that the nurse lied about the number of assault victims that she has observed during her work as a nurse examiner and that she made inconsistent statements about the victim's injuries. We disagree. With respect to the number of sexual assault victims she examined, the nurse first stated that she completes *training* for one or two days every year. She subsequently stated that she has examined 98 victims in the five years she has worked as a sexual assault nurse examiner. Defendant believes the nurse stated that she *works* only one to two days each year and has examined 98 women in five years. As defendant points out, this would require the nurse to examine approximately 20 women each day of work. Defendant asserts that that number of examinations is impossible and that, therefore, the nurse must be lying. Defendant's argument is based on a misreading of the transcripts.

With respect to the extent of the victim's injuries, defendant also misreads the transcripts. Contrary to defendant's contention, the nurse did not assert that there were injuries to multiple areas of the victim's genitalia.

Defendant also argues that the nurse was incorrect in her conclusion that the victim's bruises were fresh, because of the way she described how to determine whether a bruise is old or new. However, defendant did not object to this testimony at trial, and no contradictory evidence was presented. Furthermore, the nurse was testifying as a lay witness, and the jury could give her testimony whatever weight it thought appropriate.

Defendant also raises a sufficiency of the evidence argument with the context of this issue. He argues that because he did not testify that there was sexual penetration between him and the victim that night, and because the nurse did not testify that there was sexual penetration, the evidence was insufficient to convict him. The standard of review in an appeal challenging the sufficiency of the evidence for a conviction is whether, "[t]aking the evidence in the light most favorable to the prosecution, . . . a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Hardiman*, 466 Mich 417, 420-421; 646 NW2d 158 (2002). Considering the evidence in the light most favorable to the prosecutor, the evidence was sufficient to enable a reasonable jury to find, beyond a reasonable doubt, that defendant penetrated the victim. The victim testified that defendant physically held her down and struggled with her during sexual penetration. The victim also testified that defendant's penetration caused her pain. The nurse's testimony that she observed injuries on the victim's shoulders and on the victim's cervix provided corroborating evidence. Moreover, we note that the testimony of the victim alone can be sufficient evidence to establish guilt. MCL 750.520h.

## VII

Defendant next argues that (1) the side effects of the victim's medications could have caused the victim's bruises and could have caused the victim to hallucinate about the rape, (2) this evidence was not presented at trial, and (3) therefore, it is new evidence that requires a new trial. We review this unpreserved issue under the plain error doctrine. See *Cox, supra*, 268 Mich App 450 (the defendant needed to demonstrate plain error affecting substantial rights to obtain a new trial on the basis of newly discovered evidence).

A new trial is warranted on the basis of a discovery of new evidence if

(1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. [*Id.*]

Here, the victim testified during the preliminary examination that she takes vicodin and valium. Therefore, the victim's medications were known to defendant at trial. The materiality of the medications could have been discovered by defendant before trial, if he had completed some research. Therefore, defendant is not entitled to a new trial. *Id.*

Defendant also raises an ineffective assistance of counsel claim, arguing that because his attorney did not research the medicines' side effects, and because counsel did not present that evidence to a jury, he prejudiced defendant. Because defendant did not make an evidentiary record below concerning this issue, our review is limited to mistakes that are apparent on the record. *People v Geracer Taylor*, 275 Mich App 177, 186; 737 NW2d 790 (1997), lv granted 480 Mich 946 (1997).

For claims of ineffective assistance of counsel,

counsel is presumed effective, and the defendant has the burden to show both that counsel's performance fell below objective standards of reasonableness, and that it is reasonably probable that the results of the proceeding would have been different had it not been for counsel's error. [*People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).]

Counsel's decisions about what evidence to present at trial are questions of trial strategy that this Court will not second-guess on appeal with the benefit of hindsight. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004).

Defendant asserts that counsel was ineffective because he did not research the side effects of the victim's medications and did not present these side effects at trial as an explanation for the victim's claims and behavior. Because this is an issue related to the presentation of evidence, we will not second-guess counsel's decision with the benefit of hindsight. *Id.* Furthermore, there is no evidence in the record to determine whether the victim's medications caused these side effects in her. Therefore, defendant has failed to meet his burden of establishing ineffective assistance of counsel.

## VIII

Defendant next argues that the victim perjured herself because she lied about her past convictions at the preliminary examination. Defendant contends that the case against him should have been dismissed because of this alleged perjury. We review this unpreserved issue under the plain error doctrine. *Carines, supra*, 460 Mich 763-764.

The exchange about the victim's previous convictions was as follows:

Q. Okay. Alright. Now ma'am, have you ever been convicted of any charges that are—go to theft and dishonesty, like stealing something, or bad checks, armed robbery?

A. No.

Q. But I had a shoplifting back years ago. Yes [sic].<sup>3</sup> Anything other than shoplifting?

A. No. I had a drunk driving.

We first note that, contrary to defendant's assertion, the prosecutor did not present this evidence. The evidence was elicited by defense counsel. Second, the victim corrected her immediate response, probably after she had a moment to process the question, and answered that she had a previous shoplifting charge. The record does not evidence any false testimony.

Defendant asserts that the victim had four retail fraud convictions, one conviction for larceny in a building, and two convictions for driving with a suspended license. However, defendant presents no evidence other than his own, self-serving assertions that the victim had these criminal convictions; the record does not contain evidence of them.<sup>4</sup> Defendant has not demonstrated that the victim lied during the preliminary examination or that his case should have been dismissed. Nor, contrary to his assertion, is there any evidence that the victim perjured herself during trial. It was the province of the jury to evaluate anything implausible or possibly inconsistent in her testimony. *Lemmon, supra* at 625.

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<sup>3</sup> The language quoted appears here exactly as it appears in the transcript. We believe that “But I had a shoplifting back years ago[ -] Yes[.]” was part of the victim's testimony, because it is responsive to the preceding question and there would be no reason for defense counsel to interject that he had a shoplifting conviction.

<sup>4</sup> Moreover, according to defendant's brief, the victim's convictions were all more than ten years old. If true, these convictions would not have been admissible at trial to impeach the victim's credibility under MRE 609(c).

Defendant also argues that his attorney provided ineffective assistance of counsel by not reporting the victim's perjury. Again, there is no evidence in the record of perjury, and therefore defendant has not met his burden of establishing ineffective assistance of counsel.<sup>5</sup>

Affirmed.

/s/ Richard A. Bandstra

/s/ Patrick M. Meter

/s/ Jane M. Beckering

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<sup>5</sup> Defendant raises additional issues relating to ineffective assistance of counsel in the "conclusion" section of his brief. However, he has failed to provide adequate factual support for his arguments and has therefore failed to establish ineffective assistance of counsel. There is no reason to conclude that the outcome of the case likely would have been different had counsel taken the actions that defendant now asserts he should have taken.