

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
June 18, 2015

v

ANTHONY JEQUINN GRAY,  
Defendant-Appellant.

No. 321441  
Genesee Circuit Court  
LC No. 13-032819-FH

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Before: METER, P.J., and CAVANAGH and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of delivery of less than 50 grams of a controlled substance (two counts), MCL 333.7401(2)(a)(4); accepting the earnings of a prostitute, MCL 750.457; felon in possession of a firearm, MCL 750.224f; and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, third offense, MCL 769.11, to concurrent terms of 34 months to 40 years in prison for each of the controlled substance convictions, 34 months to 40 years in prison for the conviction of accepting the earnings of a prostitute, and 34 months to 10 years in prison for the felon-in-possession conviction, to be served consecutively to a two-year prison term for the felony-firearm conviction. We affirm.

This case arose from a raid of defendant's house at 2104 Cadillac in Flint. The raid was prompted by a telephone call to the police indicating that Kayla Vuillemot was being held at defendant's house against her will. During the raid, the police found drugs and guns. At trial, Vuillemot indicated that she and another woman lived at 2104 Cadillac with defendant. When Vuillemot began living with defendant, he told her that "he would take care of me if I took care of him." She explained that defendant's statement meant that defendant would take care of her drug needs if she took care of his sexual needs. Vuillemot testified that she had sexual encounters with men that came to defendant's house to buy drugs from defendant. In exchange for these encounters, defendant gave her drugs. On the two occasions when Vuillemot received cash in exchange for a sexual encounter, she gave the money to defendant in exchange for drugs.

Defendant first argues that his conviction for accepting the earnings of a prostitute was not supported by sufficient evidence. We disagree. This Court reviews de novo a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). When reviewing a challenge to the sufficiency of the evidence, this Court examines the

evidence in the light most favorable to the prosecution, resolving all evidentiary conflicts in its favor, to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* at 196.

Defendant was convicted of accepting the earning of a prostitute under MCL 750.457, which provides, in pertinent part: “Any person who knowingly accepts, receives, levies, or appropriates any money or valuable thing without consideration from the proceeds of the earnings of any person engaged in prostitution . . . is guilty of a felony punishable by imprisonment for not more than 20 years.” The elements of this offense are that the defendant (1) received money from a prostitute, (2) knew the individual was a prostitute when he took the money, (3) knew the money he received had been earned through prostitution, and (4) did not give the prostitute anything of value in exchange. *People v Martin*, 271 Mich App 280, 325; 721 NW2d 815 (2006). Under the statute, “‘consideration’ does not include the provision of goods and services that are intended to further or keep the prostitute engaged in the business of prostitution.” *Id.* at 326.

Defendant argues that the prosecutor failed to prove beyond a reasonable doubt that he did not give consideration or “anything of value” in exchange for the money he received from Vuillemot’s prostitution activities. Defendant argues that he provided something “of value” to Vuillemot in exchange for the money she gave him because he provided for Vuillemot’s living expenses, such as a place to live and food to eat. Defendant does not, however, point to any specific testimony supporting this argument.

Vuillemot testified that the arrangement she had with defendant was that he gave her drugs in exchange for money and sex. Vuillemot testified that defendant agreed that she “could live with him and he would take care of me if I took care of him.” When the prosecutor asked Vuillemot what it meant for defendant to “take care of her,” she responded that “taking care of her” meant providing her with drugs. There was no evidence that the prostitution proceeds Vuillemot gave to defendant were used for Vuillemot’s food or shelter, and Vuillemot specifically testified that when she received money from men for prostitution, she gave the money to defendant and he “[k]ept it” and she received “[d]rugs” in return. Even assuming, for purposes of argument, that providing drugs could be considered providing something “of value,” Vuillemot testified at one point that when she gave defendant money, he did not give her an equivalent amount of drugs.<sup>1</sup> Viewing all the testimony as a whole and in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that defendant committed the charged crime. Reversal is unwarranted.

Defendant next argues that the verdict was against the great weight of the evidence because Kayla Vuillemot and Shannon Ford misled the jury with respect to whether they were

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<sup>1</sup> Vuillemot testified that defendant would give her just enough drugs to keep her from getting sick. At one point the prosecutor asked, “So, there was never an instance where you gave [defendant] say \$50 and he gave you \$50 worth of drugs?” Vuillemot answered, “Not really, no.”

given immunity in exchange for their testimony and, therefore, their testimony should not be believed. We disagree.

Generally, this Court reviews a claim that the verdict was against the great weight of the evidence by determining whether “the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011). Questions of witness credibility are generally insufficient grounds on which to grant a new trial. *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998). To support a new trial, the witness’s testimony must contradict indisputable physical facts or laws, be “patently incredible or def[y] physical realities,” be “so inherently implausible that it could not be believed by a reasonable juror,” or have been “seriously impeached” in a case that was “marked by uncertainties and discrepancies.” *Lemmon*, 456 Mich at 643-644 (citations and quotation marks omitted).

Vuillemot and Ford both testified that they were not given any deal by the prosecutor in exchange for their testimony. Officer Thomas Cole, however, testified that the prosecutor gave an “immunity letter” to Ford and Vuillemot. A letter from a Genesee County assistant prosecutor, addressed to Vuillemot and dated almost two years before defendant’s trial, was subsequently admitted into evidence. The letter advised Vuillemot that she would not be prosecuted for her involvement in any activities at defendant’s home on March 10, 2013. The letter cited the reasons Vuillemot would not be charged as her “valuable statement to Officer Cole,” the fact that she “appeared for court” and “maintained [her] current sobriety,” and her “continued, anticipated cooperation as a witness in this case[.]”

Although Ford and Vuillemot may have been impeached with respect to whether they received immunity in exchange for their testimony, the jury was “free to believe or disbelieve, in whole or in part, any of the evidence presented at trial.” *People v Unger*, 278 Mich App 210, 228; 749 NW2d 272 (2008) (citation and quotation marks omitted). Having reviewed the record, this Court cannot conclude that the testimony of Vuillemot and Ford met the test set forth in *Lemmon*. Accordingly, defendant has not shown that the verdict was against the great weight of the evidence.

Finally, defendant argues that he was denied the effective assistance of counsel at trial. We disagree. To establish a claim of ineffective assistance of counsel, a defendant must first show that counsel’s performance was deficient. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). “This requires showing that counsel made errors so serious that counsel was not performing as the ‘counsel’ guaranteed by the Sixth Amendment.” *Id.* (citation and quotation marks omitted). Second, a defendant must show that counsel’s deficient performance prejudiced the defense. *Carbin*, 463 Mich at 600. To demonstrate prejudice, a defendant must establish a reasonable probability that, but for counsel’s error, the result of the proceedings would have been different. *Id.*

Defendant claims his counsel was ineffective for not objecting to or moving to strike Ford’s testimony that defendant had beaten her in the past. Defendant has not shown, however, that defense counsel’s failure to object, or to move to strike, constituted ineffective assistance of counsel. First, defendant has not overcome the presumption that defense counsel’s failure to object, at least to the initial mention of a beating, was sound trial strategy. *Id.* Defense counsel

reasonably may have decided not to object so that the jury's attention would not be drawn to the testimony. Further, even assuming that counsel's performance was deficient in that counsel failed to object to the prosecutor's re-raising of the issue on redirect, defendant has not shown that, but for defense counsel's failure to object or move to strike, the result of the proceedings would have been different. There was other evidence at trial that defendant was selling drugs and prostituting women to his drug customers and was at times holding Vuillemot captive. In such a situation, Ford's testimony that defendant had beaten her would not have had the prejudicial impact on the jury that it might have had in another context, and it was unlikely to have changed the jury's verdict. Defendant has not shown that defense counsel's failure to object to the testimony at issue amounted to ineffective assistance of counsel.

Defendant next argues that he received ineffective assistance of counsel when defense counsel failed to object to Officer Cole's testimony that the police began conducting surveillance on 2104 Cadillac after he received a telephone call from Vuillemot's mother stating that her daughter was being held against her will at defendant's house. Defendant claims that the testimony was inadmissible hearsay.

Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Cole's testimony was not offered to prove that Vuillemot was being held against her will but to explain what prompted the surveillance and subsequent raid of 2104 Cadillac. Because Cole's testimony was not offered to prove the truth of the matter asserted, it was not hearsay. Therefore, defense counsel was not ineffective for failing to object to the testimony on hearsay grounds. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000) ("[t]rial counsel is not required to advocate a meritless position"). Further, defendant has not shown a reasonable probability that the result of the proceedings would have been different had defense counsel made the objection. Vuillemot testified that she generally had to ask defendant's permission to leave the house and was not free to come and go at her will. Therefore, this evidence was brought to the jury's attention from another source, and defendant has not shown that counsel's failure to object to Cole's testimony was outcome-determinative.<sup>2</sup>

Affirmed.

/s/ Patrick M. Meter  
/s/ Mark J. Cavanagh  
/s/ Kurtis T. Wilder

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<sup>2</sup> The cumulative nature of the testimony defeats defendant's argument that the testimony was unfairly prejudicial because it "put before the jury for their consideration a claim otherwise not supported by the evidence[.]"