

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 20, 2017

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2016AP897

Cir. Ct. No. 2011CF4807

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAMONT DONNELL SHOLAR,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Milwaukee County: THOMAS J. MCADAMS, Judge. *Affirmed.*

Before Brennan, P.J., Brash and Dugan, JJ.

¶1 DUGAN, J. Lamont Donnell Sholar appeals from a judgment of conviction, following a jury trial, involving five counts of “sex trafficking” and one count of sexual assault. He also appeals an order denying his postconviction

motion for relief on the “sex trafficking” counts.¹ This is Sholar’s second appeal regarding his conviction. Previously, we reversed the order denying his postconviction motion and remanded the action for a *Machner*² hearing. *See State v. Sholar (Sholar I)*, No. 2014AP1945, unpublished slip op. ¶¶33, 40 (June 30, 2015)

¶2 On this appeal Sholar argues that the *Machner* court erred in its interpretation of *Sholar I*. He also contends that the outcome of his trial on all six counts was prejudiced because trial counsel was ineffective in allowing an entire exhibit including approximately 1400 text messages and photographs of women and girls in suggestive poses to be given to the jury.³

¶3 After holding a *Machner* hearing, the *Machner* court found that although the trial counsel was deficient in allowing the photos and texts to be given to the jury, Sholar suffered only prejudice with respect to the one charge of second degree sexual assault, not with respect to the remaining charges. This

¹ The Honorable Rebecca F. Dallet presided over the trial and entered the judgment of conviction. The Honorable Thomas J. McAdams presided over the postconviction hearing, rendered an oral decision, and entered the order vacating the judgment of conviction and sentence on count five and denying the defendant’s postconviction motion on the remainder of the counts.

² *See State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

³ Although Sholar also maintains that trial counsel’s failure to object to admission of the exhibit was ineffective, he does not cite to any part of the record indicating that the jury saw any parts of exhibit 79 except those parts referenced during a witness’s testimony until it was sent to the jury during deliberations. Since Sholar could be only be prejudiced by the exhibit being sent to the jury, we consider his appeal as raising the single ineffective assistance of counsel claim based on trial counsel’s failure to object to the entire exhibit being given to the jury. Moreover, absent a showing of prejudice, Sholar could not prevail on any ineffective assistance of counsel claim premised on the failure to object to the exhibit’s admission. *See State v. Williams*, 2015 WI 75, ¶74, 364 Wis. 2d 126, 159-60, 867 N.W.2d 736, *cert. denied*, 136 S. Ct. 1451 (2016).

appeal followed.⁴ For the reasons stated below we agree with the *Machner* court and affirm.

BACKGROUND

¶4 In October 2011, Sholar was charged with one count of trafficking a child, one count of soliciting a child for prostitution, two counts of pandering/pimping, one count of human trafficking and one count of second-degree sexual assault related to two women: E.C. and S.G. At the time of the offenses, E.C. was seventeen years old and S.G. was nearly twenty years old.

¶5 A six-day jury trial commenced on April 16, 2012, after which Sholar was found guilty of all six charges. At trial, E.C. and S.G. testified that they worked as prostitutes for Sholar. They also testified that Sholar uploaded advertisements with pictures of them to the website Backpage.com (“Backpage”) and that Sholar drove them to and from various hotels for the purpose of engaging in sexual acts with men for payment (“acts of prostitution”). S.G. also testified that Sholar sexually assaulted her. E.C. and S.G.’s testimony was corroborated by testimony from other witnesses. Sholar testified that he did not get involved in prostitution and blamed the pimping on Shawnrell Simmons.

¶6 During the trial, the State moved to admit exhibit 79, a printout of a 181-page report containing the contents of Sholar’s cell phone, including approximately 1400 text messages and photographs of girls and women in

⁴ In the Notice of Appeal, Sholar also states that he appeals from the order denying postconviction relief entered by the Honorable Rebecca F. Dallet on August 7, 2014. However, that order was addressed in *Sholar I*. Sholar raises no issues regarding that order in this appeal. For clarity, the court refers to Judge Dallet as the trial court and Judge McAdams as the *Machner* court.

suggestive poses. Trial counsel did not object, and the exhibit was admitted into evidence. During deliberations the jury asked, “[c]an we request [Sholar’s] phone records, 544 0125, looking for in[/]out bounds regarding I got dollars text messages while with client.” Both the State and trial counsel agreed that the trial court could send the entire exhibit 79, which contained those records, to the jury.

¶7 After the jury found Sholar guilty of all six counts, the trial court sentenced him on each count. Sholar filed a postconviction motion with the trial court raising a number of issues. The additional issues and their resolution are not germane to the issues on appeal and, thus, we omit any further recitation of those details.

¶8 Relevant to this appeal, Sholar asserted that trial counsel was ineffective in allowing exhibit 79 to be sent to the jury in its entirety. The trial court denied the motion by written order without a hearing. On appeal, this court reversed the trial court order and remanded the matter for a *Machner* hearing regarding the exhibit 79 ineffective assistance of counsel issue.

¶9 The *Machner* court held an evidentiary hearing and found that trial counsel was ineffective in allowing exhibit 79 to be sent to the jury in its entirety. However, the *Machner* court held that Sholar was only prejudiced in relation to the second-degree sexual assault charge involving S.G. It found that “as to the trafficking counts which would be Counts [one, two, three, four] and [six] I find that the performance was certainly not prejudicial as the evidence on those counts was overwhelming.” The *Machner* court stated that it believed that Sholar would be convicted of the five human trafficking counts regardless of exhibit 79 being sent to the jury during its deliberations.

¶10 The *Machner* court then considered whether Sholar was prejudiced by having the jury receive exhibit 79 in its entirety as to the sexual assault charge. The *Machner* court concluded that the State’s evidence in support of the sexual assault charge was not very strong. The *Machner* court stated that “as the *Strickland* case notes, a verdict or a conclusion *only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.*” (Emphasis added).

¶11 The *Machner* court then issued a written order vacating Sholar’s conviction and sentence on count five, the sexual assault of S.G. charge, and denied the remainder of Sholar’s postconviction motion.

¶12 Sholar then filed this appeal. The State did not file a cross appeal of the *Machner* court’s decision to vacate count five, the sexual assault charge. Therefore, that issue is not before this court.

¶13 On June 6, 2016, the *Machner* court dismissed count five.⁵ On June 17, 2016, a judgment of dismissal was entered.

¶14 Thereafter, Sholar filed a motion for summary reversal. The State filed a response. We denied the summary reversal motion on August 8, 2016, holding that the matter should be resolved with the benefit of full briefing.

⁵ The dismissal of count five and judgment of dismissal are shown on Wisconsin’s CCAP (Consolidated Court Automation Programs), an online website which reflects information entered by court staff, of which this court may take judicial notice. See *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522.

DISCUSSION

I. The *Machner* Court Properly Interpreted This Court’s Remand as Requiring a Complete *Strickland* Analysis as to All Counts.

¶15 Sholar asserts that in *Sholar I*, this court held that he had met his burden of showing prejudice at trial and that the *Machner* court misunderstood the remand order. He contends that the only issue to be addressed at the *Machner* hearing was whether trial counsel’s performance was deficient.

¶16 This court’s choice of wording in the order for remand in *Sholar I* was not a model of clarity. At one point addressing the *Machner* court’s conclusion that Sholar had not demonstrated that he was prejudiced by the admission of the text messages and the exhibit being sent to the jury in its entirety, this court stated, “[w]e are not so sure. As Sholar points out, *at the very least*, the impact of this evidence could have been significant as to the sexual assault charge.” (Emphasis added). This court went on to quote Sholar’s argument regarding prejudice as it related to the sexual assault charge.

¶17 Later in *Sholar I*, addressing the issue of deficient performance, we stated that, “[w]ithout a *Machner* hearing we cannot determine whether counsel’s decision not to object was a reasonable strategic choice.” Addressing the issue of prejudice this court stated:

With respect to prejudice, Sholar’s motion establishes a reasonable probability that, had the text messages not been admitted into evidence and provided to the jury during deliberations, the result of the trial, at least as to the sexual assault charge, would have been different. We therefore reverse that portion of the circuit court’s order denying Sholar’s claim that his attorney was ineffective for failing to object when hundreds of text messages were both admitted into evidence and provided to the jury during deliberations.

Finally this court stated, “[w]e remand for the circuit court to conduct a *Machner* hearing on that claim.”

¶18 This wording could be read to mean that this court found that there was no prejudice regarding all of the other charges because the evidence was so overwhelming regarding those charges, but there may be prejudice as to the sexual assault charge. However, it cannot be read to mean that this court found prejudice entitling Sholar to a new trial on all the charges as he now argues.

¶19 This court specifically reversed that portion of the trial court’s order denying Sholar’s claim that his attorney was ineffective for allowing all of exhibit 79 to be provided to the jury during deliberations and we remanded this matter for a *Machner* hearing on that claim. This court did not rule that trial counsel’s performance was deficient in any manner nor did this court rule there was prejudice as to any of the charges. Those issues were left to the *Machner* court to address.

¶20 The *Machner* court properly interpreted our decision on remand and fully addressed Sholar’s ineffective assistance claims during the *Machner* hearing.

II. The *Strickland* Standard.

¶21 Sholar claims that trial counsel was ineffective for failing to object when hundreds of text messages and photographs were provided to the jury during deliberations. We do not review the arguments in isolation, but instead make our determination based on whether “the cumulative effect undermines our confidence in the outcome of the trial.” *State v. Thiel*, 2003 WI 111, ¶63, 264 Wis. 2d 571, 665 N.W.2d 305.

¶22 “Wisconsin has adopted the United States Supreme Court’s two-pronged *Strickland* test to analyze claims of ineffective assistance of counsel.” *State v. Williams*, 2015 WI 75, ¶74, 364 Wis. 2d 126, 867 N.W.2d 736 (citing *Strickland v. Washington*, 466 U.S. 668 (1984); *State v. Johnson*, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990)), *cert. denied*, 136 S. Ct. 1451 (2016). “To prevail under *Strickland*, a defendant must prove that counsel’s representation was both deficient and prejudicial.” *Williams*, 364 Wis. 2d 126, ¶74. “Courts may apply the deficient performance and prejudice tests in either order, and may forgo the deficient performance analysis altogether if the defendant has not shown prejudice.” *Id.*

¶23 “Deficient performance means that defendant’s counsel’s conduct ‘so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.’” *Id.* (quoting *Strickland*, 466 U.S. at 686). “Prejudice means that, but for counsel’s unprofessional errors, there is a reasonable probability that the trial’s outcome would have been different.” *Id.* (quoting *Strickland*, 466 U.S. at 694). “A reasonable probability is ‘a probability sufficient to undermine confidence in the outcome.’” *Id.* (quoting *Strickland*, 466 U.S. at 694). In applying this principle, we consider the totality of the evidence before the trier of fact. *See Johnson*, 153 Wis. 2d at 129-30.

¶24 “The standard of review of the ineffective assistance of counsel components of performance and prejudice is a mixed question of law and fact.” *Id.* at 127. “Thus, the trial court’s findings of fact, ‘the underlying findings of what happened,’ will not be overturned unless clearly erroneous.” *Id.* (citations omitted). Furthermore, “this court will not exclude the [trial] court’s articulated assessments of credibility and demeanor, unless they are clearly erroneous.” *State v. Carter*, 2010 WI 40, ¶19, 324 Wis. 2d 640, 782 N.W.2d 695. However, we

review independently the ultimate determination of the questions of law of whether counsel's performance was deficient and prejudicial to the defense. *Johnson*, 153 Wis. 2d at 128.

III. The *Machner* Court Properly Concluded that Providing the Entire Exhibit to the Jury did not Result in Prejudice to Sholar Because the Evidence Against Sholar was Overwhelming and Sholar's Testimony was Not Credible.

¶25 This court need not address the question of whether trial counsel's performance was deficient because on appeal the State concedes that the *Machner* court was correct in finding that trial counsel's performance in allowing the jury to receive all of exhibit 79 was deficient. Additionally, the State concedes that the *Machner* court was correct in finding that Sholar was prejudiced because the entire exhibit was given to the jury, but only as the exhibit relates to the sexual assault charge. Therefore, the only issue before this court is whether Sholar was prejudiced, with respect to the remaining five charges on the grounds that the entire exhibit was provided to the jury.

¶26 The remaining charges on appeal include: (1) sex trafficking a child—E.C.; (2) soliciting a child for prostitution—E.C.; (3) two counts of pimping/pandering—E.C. and S.G.; and (4) human trafficking—S.G. For purposes of simplicity we will refer to these charges as the “sex trafficking charges.”

¶27 The *Machner* court found that the evidence introduced at trial was overwhelming in support of conviction for the sex trafficking charges. In reaching its conclusion, the *Machner* court meticulously reviewed the evidence on those charges. The *Machner* court stated that it believed that Sholar would have been

convicted of all the sex trafficking charges regardless of exhibit 79 being sent to the jury during its deliberations.

¶28 We agree with the *Machner* court’s conclusion that the evidence regarding the sex trafficking charges was so overwhelming that there is no reasonable probability that the outcome of the trial would have been different if exhibit 79, in its entirety, would not have been given to the jury during deliberations.

A. The Testimony of Detective Lynda Stott Provided an Overview of Sexual Trafficking.

¶29 Our review of the record begins with the trial testimony of Detective Lynda Stott with the City of Milwaukee Police Department (“MPD”) who described the workings of sex trafficking. She described the process by which pimps recruit sex workers, explaining that the relationship begins with the pimp cultivating the recruit’s trust by befriending the sex worker by acts such as inviting conversation or offering to share drugs. She indicated that the “draw” for most sex workers is “the feeling of family ... like they belong to something.... [L]ike they have some type of worth.” After gaining the sex worker’s trust and affection, the pimp will reveal that he is a pimp and wants the sex worker to work as a prostitute, and will say that they can make lots of money or get a car and house.

¶30 Stott explained that over time, the relationship changes as the pimp takes control and the sex worker no longer views the pimp as taking care of her, and instead considers herself as belonging to the pimp. The pimp controls the sex worker by indicating that if the sex worker wants to eat, the sex worker must work, or threatening to kick the sex worker out when the sex worker feels like there is no other place to go. The pimp may threaten to physically hurt the sex

worker or the sex worker's family. Stott testified that these threats are often carried out.

¶31 Stott also described how the sex trafficking occurs. She explained that the sex workers may be taken to areas of vehicular traffic to solicit, they may go on chat lines to solicit, or ads may be posted on websites such as Backpage or Craigslist. Stott explained that, as part of posting ads on the websites with a number to call or text, the pimp, other sex workers, or the sex worker would take suggestive photographs of the sex worker.

¶32 Stott also explained how the money from prostitution is handled, pointing out that most often the pimp gets all the money, but there may be situations where the sex worker may be allowed to keep a percentage. Stott testified, “[b]ut in end, the pimps realize with money comes control, and the more experienced pimps will keep all of the money.”

¶33 Stott also testified about how the acts of prostitution occur. She explained that in-calls occur where the sex worker already has a room and the person seeking sexual gratification (the “john”) comes to the room. She explained that out-calls involve the sex worker going to the john's location and that for out-calls the pimp normally would drive the sex worker to the john's location.

¶34 Stott described that the rules require that the sex worker get the money first and put it in a safe place. Another rule may include contacting the pimp when the john arrives and when they are finished.

¶35 The testimony of E.C. and S.G. very closely followed the pattern of human trafficking that Stotts described at trial. Sholar befriended each of the girls when he was recruiting them, gained their trust and affection and then told them

that they could make a lot of money. Then Sholar convinced them to engage in acts of prostitution. The manner in which E.C. and S.G. engaged in acts of sex trafficking matched Stott's description including: in-calls; out-calls; posing for suggestive photographs; posting ads on Backpage; contacting Sholar when the john arrived and left; and the handling of the money. Their testimony also made it clear that any interactions with Simmons were incidental, and it was Sholar who was acting as the pimp for both E.C. and S.G.

B. E.C.'s Testimony Overwhelmingly Supports Sholar's Conviction.

¶36 E.C. testified at trial that she was eighteen years old and would have been seventeen years old when the events she testified to occurred. She began her testimony saying that she did not want to state where she was in school because she was afraid of Sholar, she was afraid that his family might hurt her, and she believed that people in the courtroom were part of his family. She testified that she and some girl friends, who were fourteen to seventeen years old, met Simmons. Simmons took them to a hotel near the Milwaukee airport (the "airport"). Sholar was sleeping in the hotel room when they arrived.

¶37 E.C. said that after that meeting, Simmons texted her clearly trying to get her to "prostitute for him." E.C. explained that she contacted Simmons because she didn't have any money and didn't have anywhere to go. When she decided to work for Simmons, "he had two of [E.C.'s] friends already working for him, so [E.C.] went to work for [Sholar]" engaging in acts of prostitution.

¶38 On E.C.'s first day working for Sholar, he picked her up with his car and told her that he would be taking half-naked pictures of her and she would be doing prostitution at the hotel or he would take her to other places to engage in

prostitution. She would live at the hotel and the money would be split half to him and half to her. E.C.'s thirteen-year-old friend was with her and her friend also went to work for Sholar.

¶39 Sholar took both girls to the Red Roof Inn near the airport. Sholar or one of the other girls took half-naked pictures of E.C. He told E.C. that the pictures were to be posted on Backpage. E.C. testified that the half-naked pictures of her were taken at the Red Roof Inn, Super 8 and Econo Lodge hotels. E.C. testified that exhibit 32 consisted of pictures that a police officer recovered from Backpage in her presence. She testified about the pictures and the girls in the pictures. E.C. stated that one ad said "Roxy Limited Time Only Specials—19," and explained that Roxy was one of Sholar's girls. E.C. explained that when she was listed in the ads she was listed by her given name or "Star." E.C. also identified several other pictures taken off of Backpage that showed her and S.G. who also worked for Sholar.

¶40 E.C. testified that at both in-calls and out-calls she was supposed to engage in intercourse, by which she meant penis to vagina. She said that she had to do "whatever the guy had wanted." This included mouth to penis, penis to anus, but mostly mouth to penis and penis to vagina. This occurred at least 100 times and maybe more than 200 times. E.C. testified that she was not able to say "no" to any of these things because Sholar wanted his money.

¶41 E.C. explained that when the john showed up, he would come to the hotel room, give her the money and she would put it in a safe place because that is what Sholar told her to do. When the john arrived she would contact Sholar to let him know the john arrived and when the john left she would contact Sholar so he could get his money. At first the money was split between Sholar and E.C.

However, once she started getting more calls and more money, Sholar took all the money.

¶42 E.C. testified that when a john did not want to come to the hotel, Sholar would drive her to wherever the john was located for the out-call. Sholar took her to Racine, Brookfield, West Allis and New Berlin for out-calls. The in-calls occurred at the hotels noted above.

¶43 Sholar set the prices for each sex act, which was generally eighty to one hundred dollars for a half hour and one hundred fifty to two hundred dollars for an hour. E.C. could not set the price. Sholar also set the length of time E.C. spent with the john.

¶44 E.C. was afraid of Sholar because he told her if she left he would find her. Additionally, he screamed at her, he sent her threatening texts, and one time he went to E.C.'s aunt's house looking for E.C. She described an incident when S.G. said something to Sholar that he did not like and he responded by punching E.C. several times. Sholar told S.G. that if S.G. ever talked to him like that again he would punch S.G. The jury was shown a picture of the bruises that E.C. suffered from that incident.

¶45 Sholar screamed at E.C. "because [E.C.] wasn't getting as [much] calls as [Simmons'] girls, or [Sholar] thought [E.C.] was not taking calls." She testified that "I was just there because I didn't have anywhere to go. And I was really shy about taking off my clothes. I didn't want to have sex with guys. I mean, those are all older guys. I was just uncomfortable, and he knew that. I have told him." Sholar didn't care.

¶46 E.C. described Sholar as cold-hearted. She felt that way because “he was prostituting girls [of] every age. The lowest age was 13.” She repeatedly testified that she was afraid of Sholar and she felt that she could not leave him.

¶47 When asked how she stopped working for Sholar, E.C. explained that at the end of September she borrowed a car from a friend, A.F. The next day she went to Sholar’s mother’s house with the car and Sholar told E.C. that he wanted to sell the car to get money. But then Sholar changed his mind and decided he wanted to go to A.F.’s home and rob him. E.C., Sholar, and a friend of Sholar drove to A.F.’s home in Sholar’s car. Sholar and his friend went into A.F.’s apartment and stole several items including a fifty-inch television.

¶48 Sholar put the items in his car and Sholar went back to get another television from the apartment. When Sholar came out he said that A.F. caught him and told E.C. to drive off. A.F. called the police and Sholar was arrested.

¶49 At Sholar’s sentencing, the trial court found E.C.’s testimony credible.

C. S.G.’s Testimony Overwhelmingly Supports Sholar’s Conviction.

¶50 S.G. testified that she was afraid to testify because she was afraid that people related to Sholar would hurt her or her family. S.G. went on to describe how she met Sholar. She testified that Sholar was very nice to her and her friend. Sholar continuously complimented them which made S.G. “feel really good about things about [herself].” S.G. got Sholar’s number and they texted about hanging out, drinking and doing things together, along with S.G.’s friend. Sholar made her feel comfortable about him and that she could trust him. She told

him about problems in her past, her life situation and her weaknesses. S.G. told him about her family and where they lived.

¶51 After awhile, Sholar brought up the fact that he had some girls that he pimped for money. S.G. said that at first she and her friend laughed it off, but sometime later Sholar asked S.G. if she would be interested in dancing for people. He said she could make three hundred dollars for a half-hour of dancing. S.G. said she was interested because she had danced in the past “[b]ut not something to be proud of, but it was money.” S.G. testified that the first time that she went with Sholar to dance for a man, it happened as Sholar described—she just danced for the man. But after the first time, S.G. had to engage in sexual acts.

¶52 S.G. stated that Sholar took pictures of her at the Econo Lodge near the airport and posted them on Backpage. She stated that the postings on Backpage were ads for her. S.G. was shown several exhibits containing pictures recovered from Backpage. She identified herself as the girl in those exhibits where she was listed as “Miss Fiery Sonya—21.” S.G. also testified that E.C. was in one of the pictures.

¶53 S.G. described what happened when she was with the john. She would get the money, put it in a safe place, and text Sholar that she had the money. S.G. would then engage in sexual acts with the john. This occurred every time. The sex included penis to vagina, mouth to penis and mouth to vagina. S.G. testified that at times the john wanted her to perform other types of sex acts. When that occurred, she would have to text Sholar to see if he would okay the sex act and how much extra the john would have to pay. S.G. said that the cost of sex for an hour was three hundred dollars, and out of that she would generally get fifty dollars.

¶54 S.G. explained that Sholar was very nice to her at first, but after she had sex with the first john, everything changed. If she did not do what Sholar wanted, he would threaten her. He threatened S.G.'s life and her family's life. Sholar warned her that he knew where her family lived, and in fact Sholar went to her mother's house looking for S.G. When her mother told Sholar that she didn't know where S.G. was, he threatened her mother.

¶55 S.G. testified that she did not want to engage in sexual acts, but she did not have a choice. She believed that if she told Sholar that she did not want to prostitute anymore he would hurt her or her family. When S.G. did tell Sholar she did not want to prostitute anymore, he told her he would harm her, her family, and he would kick her out. Sholar told S.G. that when another girl tried to escape from him, he broke her jaw. She said that scared her. Sholar became mean and was controlling S.G.'s life.

¶56 S.G. stated that when she tried to leave Sholar, he followed her around and threatened her. S.G. also testified that when she tried to leave Sholar, he called saying that he was outside of her house. Sholar said that she had one chance to come out so she could go back with him. He was "totally acting insane on the phone" threatening to burn her house down if she did not come out.

¶57 S.G. also said that when she did not want to go back with Sholar, he went to her roommate's workplace and threatened to get her fired and threatened that he would start her house on fire and get her evicted if she did not get S.G. to go back to him. That same day, S.G.'s roommate called her saying that Sholar was causing lots of problems at her workplace. At the time, Sholar was already back at S.G.'s home, pounding on the windows and knocking on the door. Alone in the home, S.G. was very scared and hid in her closet. Hidden in the closet, she

called her mother and told her what was happening and her mother called the police. The police arrived and drove S.G. to her mother's house.

¶58 S.G. stated that for some time after that incident she got calls and texts from E.C. "stalking" S.G. S.G. stated that E.C. was trying to get S.G. to go back to Sholar. S.G. said that when she was getting the calls and texts from E.C. she felt both scared and bad for E.C. at the same time. She explained that "[E.C.] didn't have [anywhere] else to go. She didn't have the option of trying to get away, or she didn't have the courage to try to avoid it."

¶59 At Sholar's sentencing, the trial court found that S.G. was credible.

D. The Testimony from Another Sex Worker, S.G.'s Mother and the Econo Lodge Desk Clerk Corroborates E.C. and S.G.'s Testimony.

¶60 This court has also considered the testimony of several witnesses which corroborated that of E.C. and S.G. Another sex worker, N.S. testified for the State at trial. She said that she met Sholar through Simmons while she was staying at the Econo Lodge near the airport. N.S. said that she was in business by herself as an escort which she described as being a prostitute.

¶61 N.S. testified that she met E.C., Smiley and Chula who were also in the escort business at the Econo Lodge. N.S. said that Smiley and Chula were working for Simmons. There were ads posted of them on Backpage and they were engaged in prostitution. She identified E.C. in a picture that she was shown. N.S. believed that E.C. was working for Sholar because E.C. was staying with him at the Econo Lodge and there were postings for E.C. on Backpage. She said that E.C. lived at the Econo Lodge in the same room as Sholar for a couple of months.

¶62 S.G.'s mother, S.L., testified at the trial about the phone call that she received from S.G. when S.G. was hiding in the closet. S.L. said that S.G. was very hysterical and crying. Based on the call from S.G., S.L. called the police and told them that her daughter called her and told S.L. that there was a man outside S.G.'s home who wanted to kill her. S.L. also told the police to "please" force entry.

¶63 S.L. said that MPD escorted S.G. to S.L.'s home. When S.G. arrived, she was still crying and very upset. She had never seen S.G. in such a state. S.G. told her that Sholar wanted a phone that he had given S.G. and threatened to kill her.

¶64 S.L. also testified that Sholar came to her house looking for S.G. two times prior to the day S.L. called the police. On the first occasion, Sholar came in the mid-afternoon. He asked for S.G. and said she had a phone that he wanted back. Sholar left, but later that night, he returned and was parked across the street from S.L.'s house. She was concerned and called the police because she was afraid to approach him.

¶65 Peter Wargolet, a desk clerk, at the Econo Lodge described by E.C., S.G. and N.S., also testified. Wargolet stated that E.C. was staying at the Econo Lodge, but Sholar was paying for her room. Wargolet identified Sholar in the courtroom.

¶66 Wargolet also identified a computer printout of the Econo Lodge records. That record showed that Sholar was renting four rooms at the Econo Lodge: room 246 for two weeks during the relevant time period; room 157, the room that E.C. stayed in for a little over a month; room 240 for one night; and

room 151 for one night. Wargolet also testified that Simmons rented rooms at the Econo Lodge and that Simmons was affiliated with Sholar.

E. The Trial Court’s Finding that Sholar’s Testimony Was Wholly Incredible is not Clearly Erroneous.

¶167 Sholar was the only witness for the defense. At the sentencing hearing the trial court found that Sholar’s testimony was wholly incredible. The trial court stated, “[y]our testimony, as I said before, I went over that again. It was ridiculous.” The trial court pointed out several areas of Sholar’s testimony that were particularly incredible. His explanation for renting four rooms at the Econo Lodge “made no sense.” The trial court also stated:

You said things like you were a big brother, you were someone who cares. You would never have sex with them. You would never hurt them. Man is not created to abuse women. You never saw [S.G.] again. I mean, these things are directly contradicted by evidence and are ridiculous. The thing about the phone and whose phone you were using.

After reviewing the record we agree with the trial court that, in contrast to the clear and compelling testimony of E.C. and S.G., Sholar’s testimony was rambling and incredible.

¶168 We first consider Sholar’s testimony that he was living at the Econo Lodge. Prior to trial, Sholar told Detective Barbara O’Leary that he lived at the Econo Lodge all summer, but during another interview he also told O’Leary that he was living with his girlfriend in a house in Cudahy. He was paying rent on that house and would go and sleep there at night. Sholar also told her that he let E.C. stay in the hotel room and he knew she was bringing dates into the room and that was fine with him. He said he did not care what she did in the room but she had to pay half of the cost.

¶69 However, at trial Sholar told an incredible story about how his apartment burned when his son left french fries on the stove and they had to move out. He claimed to have received a voucher that allowed him to stay wherever he wanted to stay. Of course he offered no evidence regarding such a voucher even though the desk clerk from Econo Lodge was present and testified.

¶70 Sholar stated that he and his son stayed at the Econo Lodge for thirteen days until the voucher ran out. He then moved in with his mother for a short time, but found it hard to live with his mom because he was thirty and she was fifty years old. Sholar then testified that he already overstayed his welcome and decided to do a five-day stint back at the Econo Lodge.

¶71 At trial, Sholar never attempted to explain why he had to move in with his mother or live at a hotel if he was already living with his girlfriend in Cudahy, as he also testified. Moreover, Sholar's testimony about where he was living was also contradicted by Wargolet's testimony. Wargolet stated that Sholar rented four rooms at the Econo Lodge including the one Sholar lived in with E.C. for over a month. N.S. also contradicted Sholar's testimony. She stated that Sholar lived at the Econo Lodge with E.C. for a couple of months. As previously noted, at sentencing, the trial court found this testimony "ridiculous."

¶72 When Sholar was arrested, the police recovered a cell phone on him that contained the contents of exhibit 79. Sholar testified that the phone belonged to Simmons and went on to tell an incredible story about how his phone was broken, so he had to use Simmons' phone. He stated that while sitting in Simmons' car, he put his phone on his lap, as was his habit when he sat in a car. Sholar testified that "I get out the vehicle, and my phone slams into the car. I cracked the screen." So he claimed he had to use Simmons' phone.

¶73 However, Sholar’s testimony about the phone is contradicted by his statements to the police. First, Sholar told Detective Steve Wells that it was Simmons’ phone that was broken and Simmons had to use Sholar’s phone. Additionally, although Sholar had the chance to deny that the phone was his, Sholar never told the police that the phone they recovered from him was not his phone and that it belonged to Simmons. In fact, Sholar testified that when the police asked for his consent to search the phone, he said “yes” and signed his name on the consent form. Sholar tried explaining this by testifying that some police officers, “they live by where you caught with it, it’s yours.” Sholar stated he said “yes” and signed the consent form because of the police officer’s position that “[i]f I’m caught with it, it’s my phone.” In answer to the question if he ever told O’Leary that the phone was not his, Sholar said, “I didn’t have to tell [O’Leary] it wasn’t my phone. [O’Leary] said it was in my possession, it is my phone.”

¶74 Additionally, in attempting to explain how the photos of the women got on his phone, Sholar told Wells that Simmons used Sholar’s phone to take photos of the women to put on Backpage. Sholar told Wells that he was helping Simmons take the photos of the women because it was Simmons’ phone that was broken. Sholar never told Wells that his phone was broken.

¶75 As previously noted, at sentencing the trial court also found that Sholar’s testimony about the phone that the police recovered on his person when he was arrested was incredible.

¶76 The trial court also highlighted Sholar’s testimony that he was a big brother to E.C., that he was someone who cares and would never hurt them or have sex with them—that man is not created to abuse women. The trial court

stated, “I mean, these things are directly contradicted by evidence and are ridiculous.” Sholar’s story portrayed him as the big brother who looked upon E.C. as a poor stray who was trapped and lost and turned to Simmons to engage in prostitution. He asked his mom to help get E.C. into Milwaukee Area Technical College.

¶77 As noted by the trial court, this testimony was contradicted by the other compelling evidence in the record. Not only was this evidence contradicted by the other compelling evidence introduced during the trial, but Sholar offered no other evidence to support his incredible story.

¶78 The trial court also addressed Sholar’s testimony that he only had contact with S.G. on two occasions and then did not see her again. Sholar testified that he went to help his friend Sarah when she called to say that S.G. threw Sarah’s belongings out of a house that Sarah, S.G., and another girl lived in. Sholar claimed that after he mediated the dispute between the women, S.G. came on to him, asking for his phone number. Sholar testified, “I told her I don’t just give out my number like that” and he did not give S.G. his number.

¶79 As noted above, the trial court not only found Sholar’s testimony about S.G. incredible but “ridiculous.”

¶80 Sholar’s story regarding the robbery incident that E.C. testified about was that he went to pick up his car from E.C. and sell her some K-2, which he described as a synthetic marijuana. Sholar said that when he got there, E.C. said her friend, A.F., was moving and was selling a television, which Sholar bought and gave E.C. the money. However, when A.F. arrived and accused Sholar of stealing his television, Sholar testified that he merely gave it back to him and helped A.F. look for E.C.

¶81 However, Sholar’s testimony was contradicted by the rebuttal testimony of Officer Frederick Terriquez, who stated that when he and his partner arrived at the apartment, A.F. was arguing with Sholar, accusing him of stealing his television from his apartment. Terriquez said that Sholar told him that “some black chick” let him into the apartment and sold him the television. Sholar went on to say, “[t]o be honest, I came here to sell some weed and then all this happened.” A.F. told Terriquez that items were missing from his apartment. When Terriquez looked into the apartment it appeared to be ransacked.

¶82 The trial court observed Sholar during his testimony and is in the best position to judge his credibility and determined not only was he not credible, his testimony was “ridiculous.” Having reviewed the record, this court agrees with the trial court that nothing that Sholar offered during his testimony was credible.

CONCLUSION

¶83 Sholar argues that he was prejudiced by the jury receiving exhibit 79 in its entirety during deliberations because it portrayed him as a violent drug dealer and, therefore, we cannot be confident that the jury did not punish him for being a bad person, regardless of his guilt of each crime charged. Sholar’s argument ignores that even without exhibit 79, the jury heard evidence that Sholar was a violent person, involved the violent crime of sex trafficking, and that he was a drug dealer.

¶84 The totality of the evidence in support of the sex trafficking charges involving E.C. and S.G. was overwhelming. *See Johnson*, 153 Wis. 2d at 128. The evidence clearly portrayed Sholar as a violent, threatening, controlling pimp

who enslaved E.C., S.G. and other young girls in the sex trafficking trade, and who was involved in selling drugs.

¶85 The jury heard how Sholar recruited E.C. and S.G. and girls as young as thirteen years old to engage in acts of prostitution. It saw the photographs of E.C., S.G., and other young girls who were working for Sholar on Backpage being offered for sex. The jury heard that Sholar punched E.C., and threatened to punch S.G. if she did not do as told. It heard how Sholar threatened E.C. and S.G. and their families. The jury heard how Sholar forced E.C. and S.G. to engage in acts of prostitution on a daily basis and turn the money over to Sholar. It heard how Sholar broke the jaw of a girl who tried to escape from him. The jury heard, even from his own testimony, about Sholar's involvement in selling marijuana.

¶86 The only evidence offered to rebut the testimony of E.C., S.G., and the other state witnesses was the rambling, incredible testimony of Sholar. We agree with the trial court that his testimony was not only wholly incredible, it was ridiculous.

¶87 There is no reasonable probability that the trial's outcome on the five sex trafficking charges would have been different if exhibit 79 in its entirety would not have been given to the jury. *See Williams*, 364 Wis. 2d 126, ¶74.

¶88 For these reasons, we affirm the judgment of conviction and the order denying postconviction relief.

By the Court.—Judgment and order affirmed.

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