

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLENE PEOPLES,

Defendant-Appellant.

UNPUBLISHED

October 14, 2010

No. 288667

Wayne Circuit Court

LC No. 07-014323-FH

Before: BORRELLO, P.J., and CAVANAGH and OWENS, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of bribing, interfering, or intimidating a witness, MCL 750.122(7)(a). She was acquitted of additional charges of witness intimidation by threat to kill or injure, MCL 750.122(7)(c), and aggravated assault, MCL 750.81(a)(1). She was sentenced to probation for one year and now appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that she is entitled to a new trial because of newly discovered evidence. Because defendant did not raise this issue in a motion for a new trial in the trial court, we will examine the proffered evidence under the standards for granting a new trial to determine whether a remand for further development of the record would be appropriate. *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993). The purported newly discovered evidence consists of extrinsic evidence tending to show specific acts of dishonesty by the complainant. Such evidence generally is not admissible at trial. MRE 608(b). Further, “[n]ewly discovered evidence is not ground for a new trial where it would merely be used for impeachment purposes.” *Davis*, 199 Mich App at 516. Because the alleged newly discovered evidence does not meet the standards for a new trial, remand for further development of the record is not warranted.

Defendant also argues that defense counsel was ineffective for failing to call Denice Hill and Officer McGregor as defense witnesses. Hill allegedly would have testified that she observed the complainant and defendant involved in an altercation in front of defendant’s house, contrary to the complainant’s testimony that the altercation took place in front of the complainant’s house. Officer McGregor allegedly would have testified that defendant made a police report regarding an alleged threat by the complainant following the altercation between defendant and the complainant.

“Generally, to establish ineffective assistance of counsel, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, but for counsel’s errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable.” *People v Seals*, 285 Mich App 1, 17; 766 NW2d 314 (2009) (citation omitted). “Ineffective assistance of counsel can take the form of a failure to call witnesses or present other evidence only if the failure deprives the defendant of a substantial defense.” *People v Bass (On Rehearing)*, 223 Mich App 241, 252-253; 565 NW2d 897 (1997), vacated in part on other grounds 457 Mich 866 (1998). “A substantial defense is one that might have made a difference in the outcome of the trial.” *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990).

The proffered testimony of Hill and Officer McGregor relates to the altercation between the complainant and defendant. Defendant was acquitted of the charges related to that altercation. The only offense of which defendant was convicted arises from her subsequent offer to assist in the recovery of the complainant’s purse if the complainant would stop assisting in the criminal prosecution of defendant’s son. The testimony of Hill and Officer McGregor was not relevant to that charge. Accordingly, there is no reasonable probability that the result of the proceeding would have been different if the proposed testimony had been presented at trial. Therefore, remand for an evidentiary hearing on this issue also is not warranted.

Affirmed.

/s/ Stephen L. Borrello

/s/ Mark J. Cavanagh

/s/ Donald S. Owens