STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 18, 2011
v	No. 298954 Crawford Circuit Court
ROBERT VERNELL CHILDS, Defendant-Appellant.	LC No. 09-002846-FC

Before: M. J. KELLY, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Defendant Robert Childs appeals as of right his jury conviction of first-degree criminal sexual conduct (CSC)[1] and assault with a dangerous weapon.[2] The trial court sentenced Childs to 12 to 50 years in prison for the CSC conviction and 2 to 4 years in prison for the assault conviction. We affirm.

I. FACTS

On Saturday, January 31, 2009, Childs, Christopher Lauterwasser, and Brock Wilson were inmates at the Crawford County Jail.[3] That evening, they were drinking "hooch," or homemade alcohol, in Childs' jail cell.[4] According to Lauterwasser, they were intoxicated and started discussing another inmate—the complainant in this case—Cody Huffman.[5] Huffman was incarcerated for committing third-degree criminal sexual conduct against a fifteen-year-old girl.[6] The men agreed to call Huffman to the cell so that they could ask him about the charges against

[1] MCL 750.520b.

[2] MCL 750.82.

[3] (Tr I, 226, 200; Tr II, 47-48.)

[4] (Tr I, 172, 200, 228; Tr II, 47-48.)

[5] (Tr I, 200.)

[6] MCL 750.520d; (Tr I, 180.)

him.[7] Lauterwasser and Childs denied that the men planned to beat up Huffman.[8] However, Wilson testified that Lauterwasser was angry about the charges against Huffman because he had a sister who was about the same age as Huffman's victim.[9] According to Wilson, Lauterwasser "was going to rough [Huffman] up a little bit."[10] Although Huffman originally told investigators that the other inmates dragged him into the cell,[11] he later admitted that he entered the cell voluntarily.[12] Huffman explained that he lied at first because he did not want to get in trouble for going into another inmate's cell, which was prohibited.[13]

Huffman entered the cell and sat down to talk to other the men for several minutes.[14] According to Lauterwasser, the then-nineteen-year-old Huffman explained to them that he had been in love with the fifteen-year-old girl and that he did not feel like it was "that big of a deal."[15] (Huffman testified at trial that he was in a relationship with the girl when he was eighteen and that she ended up getting pregnant, after which the authorities got involved.)[16] Lauterwasser testified that after Huffman's admission to them, he and Childs then grabbed Huffman and started wrestling with him as a "big joke."[17] Lauterwasser explained that he grabbed Huffman's arms, while Childs grabbed Huffman's legs.[18] Wilson also held Huffman's legs at one point during the struggle, but he then backed off and watched the struggle from the cell doorway.[19]

Lauterwasser stated that at one point, while he had Huffman in a headlock, he hit his elbow on the side of the bunkbed, which upset him.[20] According to Lauterwasser, at the same time, Huffman's leg got caught underneath the bunkbed, after which Childs began "banging [Huffman's leg] up under the bunk trying to get it loose[.]"[21] Childs admitted to hitting

---

[7] (Tr I, 172, 200-201; Tr II, 49.)

[8] (Tr I, 206; Tr II, 48-49.)

[9] (Tr I, 226.)

[10] (Tr I, 226.)

[11] (Tr I, 180, 267; Tr II, 6.)

[12] (Tr I, 172, 268-269).

[13] (Tr I, 180-181, 183-184.)

[14] (Tr I, 172, 186-187, 201, 206; Tr II, 49.)

[15] (Tr I, 201.)

[16] (Tr I, 180.)

[17] (Tr I, 201, 207; Tr II, 51.)

[18] (Tr I, 172, 174, 201, 207.)

[19] (Tr I, 202, 228; Tr II, 53, 55.)

[20] (Tr I, 201, 226.)

[21] (Tr I, 175, 203, 207, 226.)

Huffman's foot against the bunkbed to dislodge it.[22] Huffman testified that he intentionally wrapped his foot around the bottom of the bunk so that the man could not flip him over.[23]

Lauterwasser, who was not laughing anymore, then wrestled Huffman to the ground.[24] At that point, Lauterwasser and Childs began yelling at Huffman, asking things like, "What if that was [Childs'] niece? . . . or [Lauterwasser's] sister . . . or Brock's daughter[?]"[25] Lauterwasser testified that he then "heard smacking and I looked over the corner of my shoulder and I seen Cody's pants turned down and there was a pencil going in a stabbing motion, but it was just scraping the side of his [left] butt cheek."[26] Wilson confirmed that he saw Childs "stab[]" Huffman with the pencil in the left buttocks.[27] According to Lauterwasser, he then decided that Huffman had "had enough" and let him go.[28] Lauterwasser testified that Huffman remained in the cell for a couple minutes after the incident and complained about his foot and the scratches that he sustained from the pencil.[29] Lauterwasser stated that Huffman did not complain about any other injuries at that time.[30]

At trial, the prosecution asked Lauterwasser if he had heard Childs say anything sexual to Huffman during the incident.[31] Lauterwasser confirmed that he had heard such comments: "During the whole incident of the fighting, I kept hearing, Oh, I'm going to f--- you, Cody. I'm going to f--- you, Cody. And then afterwards in the block, I kept hearing, Oh, I f---ed, Cody. I f---ed Cody."[32] But Lauterwasser and Wilson repeatedly denied seeing the pencil enter Huffman's rectum.[33]

Huffman recounted the details of the event differently. According to Huffman, after Lauterwasser and Childs wrestled him to the ground and Childs was able to get Huffman's foot loose from the bunk, Childs flipped him over and pulled down Huffman's pants.[34] Huffman

---

[22] (Tr II, 52.)

[23] (Tr I, 173, 174, 226.)

[24] (Tr I, 201.)

[25] (Tr I, 202.)

[26] (Tr I, 202, 208-209.)

[27] (Tr I, 227, 237.)

[28] (Tr I, 202, 209.)

[29] (Tr I, 209, 210.)

[30] (Tr I, 210.)

[31] (Tr I, 203.)

[32] (Tr I, 203, 213.)

[33] (Tr I, 208, 209, 216, 223, 239-240.)

[34] (Tr I, 174-175.)

testified that after that, "[Childs] hit me . . . . He was punching me and slapping me. And then he grabbed a pencil off his desk and stabbed me with it a couple times."[35] Huffman clarified that Childs stabbed him "[i]n the left side of [his] butt cheek."[36] Huffman then explained, "After that, one of the other guys that was in there grabbed my other foot and spread my legs, and that's when [Childs] stuck the pencil in my rectum."[37] Huffman testified that the pencil went into his rectum about one inch deep.[38] Huffman stated that right before Childs inserted the pencil he said "that he was going to f--- me."[39] Huffman also stated that, during the incident, Lauterwasser said "that this was for his sister."[40] Huffman testified that after the incident, he got up, went back to his cell, and tended to his wounds.[41] According to Huffman, the pencil left wounds on his side.[42] He also had bruising and "gashes" on his foot, as well as marks around his neck.[43]

Childs testified in his own defense, and he also had his own version of the event. Childs explained that after Lauterwasser and Huffman started wrestling,

> they knocked pencils off from my desk along with papers and a whole bunch of stuff when they were wrestling. And I grabbed the pencils off of the floor and I put—threw them onto the—the desk that's on the far left-hand side of the—the cell. I threw them back onto the thing. And that's when—when I was pulling [Huffman] across the floor, I had him by his leg still, and his pants, they slid down like this far (indicating). They weren't off from his body or anything. And that's when I started spanking his side.[44]

Childs explained that he spanked Huffman after hearing "somebody yell, Spank his ass."[45] When Childs explained that he complied with the anonymous instigating because he was drunk.[46] Childs claimed that he spanked Huffman with only his open hand.[47] Childs denied

---

[35] (Tr I, 175.)

[36] (Tr I, 176.)

[37] (Tr I, 176; Tr II, 92.)

[38] (Tr I, 176, 178.)

[39] (Tr I, 177.)

[40] (Tr I, 176.)

[41] (Tr I, 178.)

[42] (Tr I, 176.)

[43] (Tr I, 178.)

[44] (Tr II, 52.)

[45] (Tr II, 53.)

[46] (Tr II, 53.)

[47] (Tr II, 54.)

punching Huffman, and he denied stabbing or poking Huffman with a pencil.[48] Childs also denied that he pulled down Huffman's pants; he claimed that they simply came down while Childs was holding Huffman's legs.[49] Childs testified that the men then let Huffman go, after which they all—including Huffman—laughed about the incident.[50] However, Huffman did complain about a cut on his foot.[51] When asked why he thought Lauterwasser and Wilson testified that he stabbed Huffman with a pencil, Childs opined that they were just trying to get plea deals.[52]

Huffman testified that he did not report the incident right away because he was ashamed and because he did not want any more problems.[53] But Huffman told his father about the incident when he came to visit the following Monday.[54] An investigation then ensued,[55] followed by a trial,[56] after which the jury convicted Childs of first-degree criminal sexual conduct and assault with a dangerous weapon.[57]

Following his conviction, Childs retained counsel, who moved for a *Ginther*[58] hearing, alleging that defense counsel was ineffective during trial. Childs' retained counsel also moved for a new trial on the CSC conviction,[59] asserting essentially the same ineffective assistance claims that Childs now raises on appeal. After hearing testimony and arguments on both motions,[60] the trial court made its decision on the record.[61] After reviewing the standards for assessing a claim of ineffective assistance of counsel,[62] the trial court found that defense counsel had not provided ineffective assistance at trial. Specifically, the trial court stated as follows:

---

[48] (Tr II, 55, 57, 68, 79-80.)

[49] (Tr II, 54).

[50] (Tr II, 54.)

[51] (Tr II, 54.)

[52] (Tr II, 57.)

[53] (Tr I, 178.)

[54] (Tr I, 178.)

[55] (Tr I, 179, 266.)

[56] (Tr I; Tr II.)

[57] (Tr II, 157-158.)

[58] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[59] (Tr III, 148.)

[60] (Tr III.)

[61] (Tr III, 154-158.)

[62] (Tr III, 154-155.)

Now, what I find troubling about this matter is the failure to interview many of these witnesses. And so little trial preparation at least with time spent with Mr. Childs. But when I looked through all these statements, and again reviewed them, Anthony Bentley clearly was not exculpatory.

He was, in fact, inculpatory to Defendant. Bobby Brinker was clearly lying that he witnessed the event. He did not leave his cell, per Morrison, or room, whatever room he was in per Morrison and Felps (phonetic).

Certainly, his claim to what he had witnessed was not exculpatory to the Defendant. Michael Phipps, and based on his statement knew nothing. Daniel Clark, Huffman showed cuts on his foot and didn't report the buttocks or hip injury or any penetration with a pencil. Frank Sweitzer really knew nothing. Donald Holland, Huffman showed him cuts and bruises on his ankle and marks on his rear end.

There was no report of penetration. However, he stated that Mr. Childs called Huffman up to his cell, so that part certainly was not exculpatory. Joshua Spencer, Huffman reported he was roughed up and showed scrapes and marks on his legs, again no report of penetration. Jeremy Morrison knew that Brinker, or his main thing was that Brinker didn't go up there, and that Huffman reported to him that he was roughed up and ankle was red.

Again, no report of penetration. However, he also heard in his statement anyway the Defendant tell Huffman to shut up it's not so bad, not necessarily an exculpatory matter. Cory Clee certainly was not in any was exculpatory to the defendant.

Now, Counsel only interviewed Bentley, Laddawasser, Blinker [sic] and Morrison. She indicated that some of these people she felt were would [sic] testifying falsely. Certainly she can not [sic] put somebody on the stand that she believes would commit perjury.

And what we come down to on my mind on this, and it's very close, and you've made a very excellent record, Mr. Harris, is by not reporting immediately after the event happened to these various other people in the jail, that it would be proving a negative, that the CSC did not occur.

So the other thing I'm thinking about is, okay, can you really get into what a CSC victim, especially in a jail, would report and to whom and when? I suppose you can argue that.

Reviewing the nurse and counseling records may have shown some exculpatory evidence but maybe not. As I recall, this trial at least, there was it was just in passing a discussion that he was seen by a nurse, and he went to counseling.

> And as I recall, though I didn't have time to review the transcript, Huffman testified that he only went to a counselor once, maybe twice. And he hadn't been back in many months.
>
> The failure to object to the Bentley statement, I think that was erroneous that she did not object to it, but does it mandate a new trial, I don't think so.
>
> The Huffman inconsistencies could have been pressed harder by Counsel with Officer McDonald and with Huffman, but I do recall she did press him and Officer McDonald on those issues. The prison, I tried to nip that in the bud that Mr. Childs was in prison. I don't think that there was any overemphasis.
>
> I do conclude that the failure to call witnesses, get the nurse and counselor records, and the object [sic] to the statement by Bentley did not fall beyond objective standards of prevailing professional norms. I do not think that there is enough here for me to conclude that there was a reasonable probability that the result would have been different in this matter.
>
> And do I not feel [sic] that all in all the result in proceedings were fundamentally unfair or unreliable so I believe you've made a very throw [sic] and excellent record for the Court of Appeals to review this issue, these issues I should say, but I will deny your motion for a new trial for reasons stated.[63]

Childs now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Childs argues that the evidence presented at trial was insufficient to support his conviction for first-degree criminal sexual conduct. Childs did not raise this argument in the proceedings below. However, a criminal defendant need not take any special steps to preserve an insufficiency of the evidence claim.[64] A defendant may raise a claim of insufficiency of the evidence for the first time on appeal.[65] A claim of insufficiency of the evidence invokes a defendant's constitutional right to due process of law, which this Court reviews de novo on appeal.[66] "[T]his Court reviews the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were

---

[63] (Tr III, 155-158.)

[64] *People v Cain*, 238 Mich App 95, 116-117; 605 NW2d 28 (1999).

[65] *People v Patterson*, 428 Mich 502, 505; 410 NW2d 733 (1987).

[66] *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

proven beyond a reasonable doubt."[67] "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to establish the elements of a crime."[68]

B. APPLICABLE LEGAL STANDARDS

MCL 750.520b provides in pertinent part as follows:

> (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:
>
> * * *
>
> (f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:
>
> (i) When the actor overcomes the victim through the actual application of physical force or physical violence.

Sexual penetration, as that term in used on MCL 750.520b, includes "any . . . intrusion, however slight, . . . of any object into the . . . anal openings of another person's body . . . ."[69]

It is for the jury to determine the credibility of the witnesses, and the jurors are free to believe all, some, or none of a witnesses' testimony.[70] Moreover, in prosecutions for first-degree criminal sexual conduct, MCL 750.520h provides that "[t]he testimony of a victim need not be corroborated[.]" Therefore, a victim's testimony, if believed by the jury beyond a reasonable doubt, is alone sufficient to support a conviction for first-degree criminal sexual conduct.[71]

C. APPLYING THE STANDARDS

Huffman, who was incarcerated, testified that Childs, another jail inmate, penetrated his rectum with a pencil while other inmates restrained him. Huffman had numerous injuries from the assault, and testimony revealed that Childs made sexual comments during and after the assault. Specifically, Huffman stated that right before Childs inserted the pencil, Childs said "that he was going to f--- me." Lauterwasser confirmed that he had heard such comments:

---

[67] *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

[68] *Id.*

[69] MCL 750.520a(r).

[70] *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

[71] See *People v Lemmon*, 456 Mich 625, 642 n 22; 576 NW2d 129 (1998); *People v Smith*, 149 Mich App 189, 195; 385 NW2d 654 (1986).

"During the whole incident of the fighting, I kept hearing, Oh, I'm going to f--- you, Cody. I'm going to f--- you, Cody." Lauterwasser also testified that, after the incident, Childs was bragging to other inmates that he had "f---ed, Cody." In light of the testimony, the lack of physical evidence of anal penetration is irrelevant. In sum, reviewing the evidence in the light most favorable to the prosecution, Huffman's testimony (which alone could have been sufficient to support the conviction) taken together with Lauterwasser's testimony was sufficient to support a rational trier of fact's finding that the essential elements of first-degree criminal sexual conduct were proven beyond a reasonable doubt.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

A. STANDARD OF REVIEW

Childs argues that his defense counsel provided ineffective assistance at trial for several reasons. "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law."[72] The trial court must first find the facts and then decide whether those facts constitute a violation of the defendant's constitutional rights.[73] This Court reviews for clear error the trial court's findings of fact and reviews de novo questions of constitutional law.[74]

B. APPLICABLE LEGAL STANDARDS

A criminal defendant has the fundamental right to effective assistance of counsel.[75] To prove that his defense counsel was not effective, a defendant bears the burden to show (1) that defense counsel's performance was so deficient that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) that there is a reasonable probability that defense counsel's deficient performance so prejudiced the defendant that it deprived him of a fair trial; that is, but for defense counsel's errors, the result of the proceeding would have been different.[76] In proving these elements, the defendant must overcome a strong presumption that defense counsel's performance constituted sound trial strategy.[77] This Court evaluates defense counsel's performance from counsel's perspective at the time of the alleged error and in light of the circumstances.[78] This Court may not second-guess defense counsel regarding matters of trial

---

[72] *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

[73] *Id*.

[74] *Id*.

[75] US Const, Am VI; Const 1963, art 1, § 20; *United States v Cronic*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984).

[76] *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

[77] *People v Riley*, 468 Mich 135, 140; 659 NW2d 611 (2003).

[78] *Strickland*, 466 US at 689.

strategy, and even if defense counsel was ultimately mistaken, this Court will not assess counsel's competence with the benefit of hindsight.[79]

C. FAILURE TO CALL WITNESSES

Childs argues that defense counsel was ineffective when she failed to call or interview witnesses who were incarcerated at the jail with Huffman and to whom Huffman allegedly made statements within minutes of the assault yet failed to disclose a sexual penetration.

"Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy."[80] "In order to overcome the presumption of sound trial strategy, the defendant must show that his counsel's failure to call these witnesses deprived him of a substantial defense that would have affected the outcome of the proceeding."[81]

Childs argues that if the jury would have heard testimony that Huffman told several inmates about the incident and even showed them his injuries, yet failed to mention the penetration, it is more likely that the jury would have concluded that the penetration did not actually occur. Childs argues that "[i]t defies reason that a person would endure a violent penetration, then proceed to tell 6 people about the altercation, even showing them wounds, yet not disclose the act of penetration." We, however, believe the opposite to be true. Contrary to Childs' contention, it defies reason that a young male jail inmate *would* readily disclose to jail inmates that he had just been sexually assaulted by other inmates. As Huffman testified, he was ashamed and he did not want create any more problems for himself.

Moreover, we find no clear error in the trial court's finding that counsel was not ineffective where the various witnesses were either lying or had no exculpatory information to share. A defense attorney is not ineffective for failing to call witnesses whom she believes are going to commit perjury.[82] And given that the witnesses' testimonies had no actual exculpatory value, Childs has failed to show that defense counsel's failure to call these witnesses deprived him of a substantial defense that would have affected the outcome of the proceeding. Indeed, defense counsel testified that her strategy in not calling the witnesses to testify to Huffman's statements about his leg injuries was based on her belief that "more likely than not there was going to be a conviction for at least the felonious assault. . . . [P]art of my strategy was why . . . emphasize something that we're not disputing." Accordingly, we conclude that Childs has not met his burden to show that defense counsel was ineffective for failing to call certain witnesses.

---

[79] *People v Rice* (*After Remand*), 235 Mich App 429, 445; 597 NW2d 843 (1999).

[80] *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

[81] *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994).

[82] *People v Toma*, 462 Mich 281, 303 n 16; 613 NW2d 694 (2000).

D. FAILURE TO PREPARE FOR TRIAL

Childs argues that defense counsel was ineffective when she only met with him one time before trial, for 29 minutes, and failed to engage in any meaningful preparation with him before his testimony.

Defense counsel confirmed that approximately one month before Childs' trial, she drove up to an Upper Peninsula prison to see him after he was incarcerated on an unrelated offense. At that time, defense counsel spent approximately 29 minutes with Childs. However, defense counsel had met with Childs two times prior to that meeting and also met with him during trial. According to defense counsel, she provided Childs with police reports, discussed the possibility of him testifying, and obtained his version of the events along with his list of witness questions. Moreover, defense counsel testified that she was prepared for trial and had a strategy. When asked what her strategy was, defense counsel responded as follows:

> Overall . . . , there was no way of getting around the felonious assault. That was discussed right from the beginning, . . . there was no way around that.
>
> So part of the strategy was just admit that right off the bat. Just admit that, yes, there was there was an assault.
>
> In terms of the criminal sexual conduct, there was no testimony even from Mr. Laddawasser [sic] or Mr. Wilson, which was from our strategy was to help bolster [Childs'] testimony. But nothing happened.

Childs' convictions for both felonious assault and first-degree criminal sexual conduct evidence that defense counsel's strategy of focusing on Lauterwasser and Wilson's testimony that there was no penetration to bolster Childs' account of the event did not work. The fact that defense counsel's trial strategy was unsuccessful, however, does not constitute ineffective assistance of counsel.[83] The salient point is that defense counsel clearly *did* have a strategy, and Childs' contention that defense counsel failed to prepare for trial is therefore without merit.

E. FAILURE TO OBTAIN RECORDS

Childs argues that defense counsel was ineffective when she did not attempt to get copies of Huffman's examinations with the jail nurse or his counseling records. We conclude that this argument is without merit.

Other than mentioning in passing that police reports indicated that Huffman had seen a counselor, Childs offers no argument regarding how the counseling records could have been helpful to his defense. To properly present an appeal, an appellant must appropriately argue the merits of the issues he identifies in his statement of the questions involved.[84] "An appellant may

---

[83] *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001).

[84] *People v Jones* (*On Rehearing*), 201 Mich App 449, 456-457; 506 NW2d 542 (1993).

not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims[.]"[85] "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue."[86]

Turning to the nurse's records, Childs argues that "[h]er testimony and notes are crucial to the defense." Yet, Childs fails to explain *why* the nurse's records were so crucial to his defense. Again, an appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims.[87] Moreover, we fail to see how the records could have been so crucial when Huffman himself admitted that, although he told the jail nurse that he observed blood in his stool following the assault,[88] he declined medical treatment.[89] Indeed, defense counsel testified that she did not request the jail nurse's records specifically because Childs denied that he had sought medical treatment following the incident. Accordingly, we conclude that Childs has not met his burden to show that defense counsel was ineffective for failing to request the nurse's records.

F. FAILURE TO OBJECT

Childs argues that defense counsel was ineffective when she failed to object to the prosecutor's questions on cross-examination that repeatedly referred to the fact that Childs was in prison on an unrelated drug charge. We first note that Childs fails to cite to the places in the record where these alleged references can be found.[90] He also fails to specifically argue why these references were objectionable[91] or how their inclusion so prejudiced him as to deprive him of a fair trial.[92] Moreover, the trial court acknowledged this argument in Child's motion for new trial and found that it discussed the references with counsel in a bench conference off the record and "tried to nip that in the bud that Mr. Childs was in prison." The trial court then found that there was no "overemphasis" of the issue.

Childs also argues that defense counsel was ineffective when she failed to object when the prosecutor asked the investigating officer if there was only one inconsistency in Huffman's accounts of the event. Childs contends that there were actually "many important inconsistencies." However, again, Childs fails to point to specify what these alleged inconsistencies were.[93] Moreover, defense counsel's strategy was to point out that Huffman was

---

[85] *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004) (citations omitted).

[86] *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004).

[87] *Matuszak*, 263 Mich App at 59.

[88] (Tr I, 193.)

[89] (Tr I, 188-189; Tr II, 14.)

[90] MCR 7.212(C)(7).

[91] *Matuszak*, 263 Mich App at 59.

[92] *Strickland*, 466 US at 694; *Pickens*, 446 Mich at 302-303.

[93] MCR 7.212(C)(7); *Matuszak*, 263 Mich App at 59.

inconsistent in his statements. Therefore, defense counsel did not object to the question about what Huffman told the investigating officer because it revealed that he had initially lied about the offense and this was consistent with defense counsel's theory that Huffman was not credible.

We therefore find no merit to Childs' contention that defense counsel was ineffective for failing to object in these instances.

IV. NEW TRIAL

Childs argues that the trial court abused its discretion in not granting his motion for a new trial. Given our conclusions that defense counsel was not ineffective for the reasons that Childs sets forth on appeal, we conclude that the trial court did not abuse its discretion[94] in denying Childs' motion for a new trial raised on the same grounds.

We affirm.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck

[94] *People v Blackston*, 481 Mich 451, 460; 751 NW2d 408 (2008).