

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTIONE D. FORD,

Defendant-Appellant.

UNPUBLISHED

September 11, 2003

No. 239974

Kent Circuit Court

LC No. 01-008438-FH

Before: Cooper, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

A jury convicted defendant of two counts of pandering, MCL 750.455; two counts of transporting a female for prostitution, MCL 750.459; and two counts of using a child for sexually abusive activity, MCL 750.145c(2). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 46 to 600 months' imprisonment for his pandering convictions; 290 to 600 months' imprisonment for his transporting a female for prostitution convictions, and 290 to 600 months' imprisonment for his child sexually abusive activity convictions. These sentences were to be served concurrently. Defendant appeals as of right. We affirm.

Defendant's convictions arise out the transportation of two girls, ages thirteen and fifteen, from Nebraska to Michigan for the purpose of prostitution. Mechelle and Monique are sisters who were running away from home when they met defendant in Nebraska. Defendant gave them bogus names and birth dates and then introduced them to Angelique Epps. During trial, Ms. Epps admitted that she had been a prostitute for at least twenty-two years and claimed that defendant was her procurer at the time she met Mechelle and Monique.

Shortly after meeting defendant, Mechelle and Monique agreed to leave Nebraska with defendant and Ms. Epps. When the four reached Indianapolis, Ms. Epps claimed that defendant told her to send the girls over to a nearby truck stop to engage in prostitution. A security officer stopped Mechelle and Monique before they were able to solicit any activity.

The next day, defendant drove Ms. Epps and the girls to Grand Rapids, Michigan. According to Mechelle, defendant informed the girls that they would have to engage in prostitution if they wanted to stay with him. Ms. Epps gave the girls some suggestive clothing to wear and defendant drove Ms. Epps, Mechelle, and Monique to a Grand Rapids' street corner. Mechelle testified that a male paid her \$30 to masturbate him. Mechelle claimed that she gave this money to Ms. Epps to give to defendant. That same night, Monique stated that she

accompanied Ms. Epps to a hotel room with a male customer. In the hotel room, Monique claimed that she performed oral sex on the man while Ms. Epps performed oral sex on her. Ms. Epps testified that the man gave her \$150 for these services. Shortly after they entered the hotel room, a security guard knocked on the door and told them to leave. Ms. Epps, Monique, and Mechelle later walked to a gas station where they met defendant. Mechelle testified that Ms. Epps and defendant were arguing about money when the police arrived. The police ultimately placed Ms. Epps and defendant under arrest and took the girls into custody.

I. Fifth Amendment

Defendant initially argues that the trial court erroneously permitted a witness, Michael Zwick, to invoke the Fifth Amendment privilege against self-incrimination. We disagree. A trial court's evidentiary decisions are reviewed for an abuse of discretion. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001). To the extent this involves a preliminary question of law, our review is de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Under the Fifth Amendment, an individual may refuse to testify at any criminal proceeding where the answers could incriminate him in a future criminal proceeding. *People v Wyngaard*, 462 Mich 659, 671-672; 614 NW2d 143 (2000). However, this privilege against self-incrimination may not be asserted unless the trial court determines that there is a reasonable basis for a witness to fear incrimination. *People v Dyer*, 425 Mich 572, 578; 390 NW2d 645 (1986). “[A] trial court may compel a witness to answer a question only where the court can foresee, as a matter of law, that such testimony could not incriminate the witness.” *Id.* at 579. Thus, it is for the trial court to decide whether a witness’ silence is justified based on the facts in evidence. See *People v Joseph*, 384 Mich 24, 29-30; 179 NW2d 383 (1970).

Mr. Zwick is the individual who allegedly paid Ms. Epps and Monique to perform sexual acts in his hotel room. At the time of trial, Mr. Zwick was a trial attorney with a suspended license and was facing further disciplinary proceedings. He pleaded guilty to state charges arising out of the solicitation of Ms. Epps and Monique prior to defendant’s trial. Defendant sought to call Mr. Zwick as a witness to impeach Ms. Epps and Monique. Mr. Zwick informed the trial court and counsel that he would assert his Fifth Amendment privilege if called as a witness.

The trial court questioned Mr. Zwick several times on this matter outside the presence of the jury. During these sessions, the trial court noted that there were no further criminal charges pending against Mr. Zwick from the state. However, the trial court acknowledged the possibility that federal charges could be levied against Mr. Zwick under the Mann Act. In response, defense counsel informed the trial court that after speaking with the United States Attorney’s office, it was his understanding that they did not intend to indict Mr. Zwick because the state had already brought charges against him. Defense counsel also asserted that the prosecution could grant Mr. Zwick immunity from federal prosecution—a claim that the prosecution denied. Nevertheless, Mr. Zwick informed the trial court that he had not been granted immunity by the federal government. The trial court stated that it did not know of any policy that absolutely precluded the federal authorities from charging an individual with a federal crime because the same transgression had already been punished by the state.

We find no error requiring reversal. Without evidence that Mr. Zwick was granted immunity from federal prosecution, it was within the trial court's discretion to conclude that Mr. Zwick's testimony might be used to incriminate him in future federal proceedings.

II. Cross-Examination

Defendant further contends that the trial court unreasonably limited his cross-examination of co-defendant Angelique Epps. Specifically, defendant notes the portion of the record where the trial court prevented him from questioning Ms. Epps regarding that fact that she has been convicted of prostitution and solicitation in several states. Defendant asserts that this testimony went to the key issue of whether Ms. Epps or defendant "masterminded the acts giving rise to this prosecution."

After reviewing the record, we find no merit to defendant's claims that the trial court acted improperly. Pursuant to MRE 609:

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross-examination, and

- (1) the crime contained an element of dishonesty or false statement, or
- (2) the crime contained an element of theft

We nevertheless note that defendant was able to elicit the fact that Ms. Epps had been engaged in prostitution for twenty-two years and that she repeatedly lied to the police in the past regarding her name, birth date, and social security number.

III. Sufficiency of the Evidence

Defendant ultimately asserts that there was insufficient evidence to support his convictions. We disagree. In sufficiency of the evidence claims, this 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 proven beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). "[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

Defendant's argument concerning the sufficiency of the evidence essentially revolves around the credibility of the witnesses. While defendant admits that there was some evidence presented against him, he contends that a rational jury could not have found him guilty because the prosecution's witnesses were highly suspect and incredible. Defendant also notes that there were discrepancies between preliminary examination testimony and the testimony at trial. However, the jury was presented with these facts and found the prosecution's witnesses to be more credible. We will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Viewing the evidence presented in the light most favorable to the prosecution, we

conclude that a rational trier of fact could find that defendant was guilty beyond a reasonable doubt of the charged offenses. *Hunter, supra* at 6.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly