STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 6, 2014
V	No. 311605 Wayne Circuit Court
SEDRICK LEMAN-ISSAC MITCHELL, Defendant-Appellant.	LC No. 11-009744-FC

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

This case arises from defendant's contact with two teenage runaways, C. M. and D. J. The minors ran away from their family homes and encountered defendant. Although 14 and 15 years old, respectively, at the time they met defendant, he engaged in sexual intercourse with them, placed them on the streets to engage in prostitution, and took their earnings. He would beat the girls if they did not earn minimum nightly amounts or argued with him. Eventually, defendant came to the attention of a state and federal task force investigating child exploitation. At the time of the investigation, these victims were no longer working for defendant. Ultimately, defendant was apprehended in California and returned to Michigan for trial.

Defendant was convicted by a jury of forced labor involving criminal sexual conduct (CSC), MCL 750.462i (victim D. J.), first-degree CSC, MCL 750.520b(1)(f) (victim D. J.), first-degree CSC, MCL 750.520b(1)(b) (victim D. J.), first-degree CSC, MCL 750.520b(1)(b) (victim C. M.), prostitution/pandering, MCL 750.455, two counts of accepting the earnings of a prostitute, MCL 750.457, and conducting a criminal enterprise, MCL 750.159i(1). He was resentenced as a habitual offender, third offense, MCL 769.11, to 35 to 60 years' imprisonment for the CSC convictions, 34 months to 20 years' imprisonment for the prostitution/pandering and the accepting the earnings of a prostitute convictions, and 13 to 20 years' imprisonment for the conducting a criminal enterprise conviction.[1] Defendant appeals by right. We affirm his

[1] Defendant was acquitted of forced labor involving CSC, MCL 750.462i (victim C. M.), first-degree CSC, MCL 750.520b(1)(e) (victim C. M.), prostitution/pandering, MCL 750.455, felonious assault, MCL 750.82, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and possession of a firearm by a felon, MCL 750.224f.

convictions and sentences, but remand for the ministerial correction of the amount of restitution on the amended judgment of sentence.

I. Basic Facts

In July 2010, C. M. left the home of her grandmother because she was over protective. C. M. learned of defendant through a friend and contacted him. He took her to a home near Eastland Mall and engaged in sex with her. Initially, he sent her to live in a drug house with a 19-year old male. Then, he began to establish prostitution customers for C. M. and another girl named "Rosie" that occurred in homes. However, in early August 2010, Rosie left defendant. Defendant explained that he wanted C. M. to make more money in light of Rosie's departure, and he took C. M. to work on the streets at the corner of Livernois and Fenkell in the city of Detroit. Defendant established the prices that C. M. would charge for her services and followed her while she worked the streets. She turned over any money she earned to him. If C. M. complained about having to work or said "something smart" to defendant, he would strike her. C. M. was forced to work every day from 8:00 p.m. until 6:00 a.m., except Sundays. On Sunday, defendant gave her money to go shopping. While she worked, defendant gave her $10 for food.

Before meeting defendant, C. M. did not engage in prostitution. Defendant maintained control over C. M. by threatening to kill her or her grandmother if C. M. tried to leave him. Defendant always had a gun with him. C. M. observed defendant strike other people, including Rosie. On one occasion, defendant forced C. M. to perform a sexual act upon defendant in front of his friends by holding a gun to her head. Ultimately, C. M. left defendant on August 25, 2010, after the two argued over C. M.'s refusal to go to work. He threatened her with a gun, but when he turned, she struck him with a bottle and ran. C. M. called the police from a gas station, hid from view as the police drove her by defendant's home, and identified defendant. However, defendant was not apprehended at that time.

Although D. J. did not work for defendant at the same time as C. M., her testimony was remarkably similar. Specifically, in early November, 2010, D. J. ran away from home after being sexually abused by a family member. D. J. agreed to go to a party at a home near Eastland Mall where she encountered defendant. Defendant asked D. J. how old she was, and she said, "15." Defendant responded, "Now, you're 19." He engaged in sexual intercourse with D. J., and the next day, sent her out to work on the streets as a prostitute with another woman named "LaTonya." When advised by LaTonya that they had not earned enough money for defendant, D. J. left defendant's residence and stayed away for several weeks.

On December 25, 2010, D. J. returned to defendant's home after contracting a sexually transmitted disease. D. J. needed to have a prescription filled and knew that defendant would help her obtain the prescription. She promised defendant that she would not leave him again, and he got the pills that she needed. The next evening, defendant picked up D. J. and two other girls and took them to the area of Fenkell and Livernois to work the streets. D. J. continued to work for defendant until she was picked up by the police and returned to her family home. After a family dispute, she was placed in a mental hospital for five days, but upon her release, D. J. contacted defendant. Defendant picked her up, she changed her clothes, and he drove her to Fenkell and Livernois to work as a prostitute.

D. J. worked every day for defendant, starting between 7:00 and 9:00 p.m., and returning between 8:00 and 10:00 a.m. One night, D. J. only earned $40. Defendant slapped her across the face and told her that would not happen again. D. J. observed defendant strike other girls, and he told the girls that if they left, defendant would find them and kill them. D. J. admitted that she engaged in sexual intercourse with defendant voluntarily and even initiated sex with him. However, one sexual assault provided the motivation for D. J. to leave defendant permanently. Defendant attempted to anally penetrate D. J. while he choked her, and when she resisted, he forced vaginal penetration as he continued to choke her. Shortly after this assault, D. J. made arrangements to have a friend pick her up when defendant was not home.

C. M. and D. J. came to the attention of a task force investigating child exploitation. The authorities learned of C. M. when reviewing the August 25, 2010 police report. A relative of D. J.'s called the authorities to report her as missing. The information provided by these girls led to an investigation of defendant, and the discovery that he was identified on a social networking website as "Pimping Rock."

Defendant's theory of the case was that once the minors came into contact with the police, they falsely accused defendant to deflect from their own misconduct. On cross-examination, C. M. admitted that she had posted information on the Internet that was incorrect, and D. J. admitted that she had stolen items from her family and a threat against a family member caused her to be sent to a mental hospital. Although C. M. accused defendant of assault and contacted the police, defendant was not arrested at that time, but C. M. was detained for a matter unrelated to defendant. Despite the attack on the credibility of the witnesses, defendant was convicted for his role in exploiting the teenage runaways, sexually assaulting them, forcing them to engage in prostitution, and taking their earnings. From these convictions, defendant now appeals.

II. Defendant's Brief on Appeal

A. Ineffective Assistance of Counsel

Defendant first alleges that he was deprived of the effective assistance of trial counsel because of counsel's admission of inculpatory evidence that was not presented in the prosecution's case in chief. We disagree. "For an issue to be preserved for appellate review, it must be raised, addressed, and decided by the lower court." *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). To preserve a claim of ineffective assistance of counsel, a defendant must move in the trial court for a new trial or *Ginther*[2] hearing. *People v Payne*, 285 Mich App 181, 188; 774 NW2d 714 (2009). There is no indication that a *Ginther* hearing was held below. Therefore, this issue is unpreserved. "Whether a defendant received ineffective assistance of trial counsel presents a mixed question of fact and constitutional law." *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). "This Court reviews for clear error a trial court's findings of fact and de novo its conclusions of law." *People v Douglas*, 296 Mich App 186, 199-200; 817 NW2d 640 (2012). However, when no *Ginther* hearing is held in

[2] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

the trial court, appellate review is limited to mistakes apparent on the record. *Payne*, 285 Mich App at 188.

"To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness and that there exists a reasonable probability that, absent counsel's errors, the result of the proceeding would have been different." *Douglas*, 296 Mich App at 200. "There is a presumption that defense counsel was effective, and a defendant must overcome the strong presumption that counsel's performance was sound trial strategy." *People v Johnson*, 293 Mich App 79, 90; 808 NW2d 815 (2011). "[D]ecisions regarding what evidence to present and which witnesses to call are presumed to be matters of trial strategy, and we will not second-guess strategic decisions with the benefit of hindsight." *People v Dunigan*, 299 Mich App 579, 589-590; 831 NW2d 243 (2013). "Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel." *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). "The fact that defense counsel's strategy may not have worked does not constitute ineffective assistance of counsel." *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). However, counsel may be found ineffective for the strategy employed when it is not a sound or reasonable strategy. *People v Dalessandro*, 165 Mich App 569, 577-578; 419 NW2d 609 (1988). The burden of establishing the factual predicate for a claim of ineffective assistance is on the defendant. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Defendant contends that it was erroneous for trial counsel to stipulate to the admission of the police report because, although it contained evidence beneficial to the defense, it also contained evidence that corroborated the testimony of the victims. We hold that defendant failed to meet his burden of demonstrating ineffective assistance of counsel. *Id*.

A review of the trial reveals that defendant expressly waived his right to testify. The defense theory of the case was that the testimony of the victims was not credible. To support the challenge to the credibility of C. M., defense counsel sought to call the officer who prepared the August 25, 2010 police report in response to C. M.'s emergency call. However, the officer did not appear at trial. In order to allow the trial to continue, the prosecution and the defense stipulated to admit the police report at trial.

Generally, police reports are inadmissible hearsay. MRE 801(c); *In re Forfeiture of a Quantity of Marijuana*, 291 Mich App 243, 254; 805 NW2d 217 (2011). The stipulation to admit the police report is not a mistake apparent on the record, and this Court cannot examine the admission of the report with the benefit of hindsight. *Dunigan*, 299 Mich App 589-590; *Payne*, 285 Mich App at 188. Although appellate counsel correctly notes that the police report contained information that corroborated the testimony by the victims, the report contained information critical to the defense. The corroborating information in the report was that C. M. identified defendant as a man who held her captive and forced her to engage in sex. However, C. M. also testified that defendant held a gun to her, and she was forced to strike him with a bottle to leave the house. Despite this testimony, the police report did not contain C. M.'s account of a gun or an injury to defendant from a bottle to allow her escape. Additionally, notwithstanding C. M.'s statements and identification, defendant was not apprehended by the police and charged with any crimes at that time. On the contrary, as a result of her emergency call, C. M. was

detained for a matter unrelated to defendant's activities. Consequently, the stipulated admission of the police report disclosed contradictions by C. M. to the jury.

More importantly, the admission of the police report proved beneficial to the defense because the jury acquitted defendant of the charges related to C. M.'s departure from defendant's home. Specifically, C. M. testified that she argued with defendant about having to work. To obtain C. M.'s cooperation, defendant allegedly took C. M.'s clothes and threatened her with a gun. Defendant was charged with three crimes arising from this argument, felonious assault, felony-firearm, and felon in possession, but was acquitted of all three of these offenses. The jury also acquitted defendant of the first-degree CSC charge wherein C. M. testified that she was forced to engage in a sexual act with defendant in front of others at gunpoint. "A jury has the right to disregard all or part of the testimony of a witness." *People v Goodchild*, 68 Mich App 226, 235; 242 NW2d 465 (1976). In light of the admission of the police report which did not contain any reference to a gun and the acquittal of the gun offenses, the factual predicate for a claim of ineffective assistance of counsel was not established. *Hoag*, 460 Mich at 6.

Despite the acquittal of four offenses related to C. M.'s testimony and the content of the police report, defendant alleges that the admission of details in the police report that corroborated the testimony by the victims caused him to be convicted of eight offenses. However, the factual predicate to support that allegation is not apparent on the record and constitutes mere speculation. *Id*. After the parties stipulated to the admission of the police report, the trial court noted its policy that the exhibit would be available to the jury, but not submitted to them unless requested. A request by the jury to examine the exhibits is not contained in the lower court record. Furthermore, there was ample corroborating evidence to support defendant's convictions irrespective of the content of the police report. Two minor female runaways found their way to defendant's home. They identified the same home near Eastland Mall where they resided. They were taken to the same intersection to work as prostitutes and required to give their earnings to defendant. If they did not earn minimum amounts in an evening, they were beaten. Defendant maintained control over them by threatening to kill them or their family members. The similarity in the factual description of events occurred despite the fact that the girls worked for defendant at different periods of time and did not know each other. It is the jury's function to weigh the competing evidence and assess the credibility of the witnesses. *People v Unger*, 278 Mich App 210, 228-229; 749 NW2d 272 (2008). The jury may believe or disbelieve any of the evidence submitted at trial, in whole or in part, and we afford deference to that determination. *Id*. Thus, the contention that, but for the corroborating evidence in the police report, defendant would not have been convicted is without foundation in the record evidence.

Although not raised in the statement of the questions presented, defendant further asserts that trial counsel was ineffective during closing arguments by failing to respond to the prosecutor's use of the police report and by conceding that defendant may be guilty of the three firearm related charges and a CSC offense. Trial counsel is not ineffective for failing to object to the prosecutor's actions or argument particularly when the objection would have been meritless. *People v Eliason*, 300 Mich App 293, 303; 833 NW2d 357 (2013); *Ericksen*, 288 Mich App at 201. Our review of the record does not reflect a factual predicate for the claim of ineffective assistance. *Hoag*, 460 Mich at 6. Defense counsel did respond to the prosecutor's use of the police report and noted that there was crucial information, including a threat with a firearm and a bleeding injury to defendant, that were absent in the report, despite C. M.'s testimony to the

contrary. Furthermore, counsel did not concede that defendant was guilty of four offenses; the context of the entire closing argument reveals that he argued that reasonable doubt existed with regard to all of the charged offenses. In fact, the jury acquitted defendant of the four offenses appellate counsel contends were conceded. Defendant failed to meet this burden with regard to this claim of error.

B. Cruel and/or Unusual Punishment

Defendant next asserts that the concurrent sentences of 35 to 60 years' imprisonment constitute cruel and/or unusual punishment in light of his age, the principle of proportionality, and the questionable reliability of the convictions. We disagree. A constitutional challenge to a sentence as cruel and unusual punishment must be raised in the trial court to be preserved for appellate review. *People v Bowling*, 299 Mich App 552, 557; 830 NW2d 800 (2013); *People v Hogan*, 225 Mich App 431, 437-438; 571 NW2d 737 (1997). Defendant did not raise this issue at sentencing or in a motion following sentencing. When a defendant fails to preserve his constitutional challenge during sentencing, defendant must demonstrate plain error affecting substantial rights. *People v McCuller*, 479 Mich 672, 695; 739 NW2d 563 (2007). "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when the error seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Id*. (further quotation, citation, and punctuation omitted.)

Cruel or unusual punishment is prohibited by the Michigan Constitution, Const 1963, art 1, § 16. The United States Constitution prohibits both cruel and unusual punishment, US Const, Am VIII. If a punishment is deemed valid pursuant to the state constitution it necessarily is valid under the federal constitution. *People v Benton*, 294 Mich App 191, 204; 817 NW2d 599 (2011). There is a presumption that a sentence given within the guidelines range is proportionate, and a proportionate sentence is not cruel or unusual. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). "In deciding if punishment is cruel or unusual, this Court looks to the gravity of the offense and the harshness of the penalty, comparing the punishment to the penalty imposed for other crimes in this state, as well as the penalty imposed for the same crime in other states." *People v Brown*, 294 Mich App 377, 390; 811 NW2d 531 (2011). A defendant's age is insufficient to overcome the presumptive proportionality of his sentence, particularly where the defendant has a lengthy criminal history and commits violent offenses. *Bowling*, 299 Mich App at 558-559.

Defendant failed to demonstrate that his sentence was cruel or unusual by comparing the penalty imposed for other crimes in this state as well as other states. *Brown*, 294 Mich App at 390. His age is similarly insufficient to overcome the presumption of proportionality particularly in light of his extensive criminal history. *Bowling*, 299 Mich App at 558-559. Furthermore, defendant engaged in violent conduct to ensure that his victims would comply with his demands. *Id*. Accordingly, defendant is not entitled to appellate relief.

III. Defendant's Standard 4 Brief

Defendant filed a Standard 4 Brief, Administrative Order, No. 2004-6,[3] raising a multitude of issues. However, an appellate brief must contain a statement of both favorable and unfavorable material facts, presented fairly without argument or bias and with specific page references to the transcripts. MCR 7.212(C)(6) and (7); *People v Lewis*, 302 Mich App 338, 339 n 1; 839 NW2d 37 (2013). "Appearance *in pro per* does not excuse all application of court rules[.]" *Bachor v Detroit*, 49 Mich App 507, 512; 212 NW2d 302 (1973). A brief that does not conform to the requirements of the court rules may be stricken. MCR 7.212(I); *Lewis*, 302 Mich App at 339 n 1. To the extent we can discern defendant's arguments, despite the deficiencies in the supplemental brief, we will address the issues.

A. Prosecutorial Misconduct

Defendant first contends that the prosecutor engaged in misconduct when she implied that defendant was a "brutal rapist, a pimp, and part of a prostitution ring." He further contends that the prosecutor inappropriately sought to convict defendant based on improper character evidence, improperly vouched for the credibility of her witnesses, allowed witnesses to testify regarding other criminal acts, advised the jury of defendant's prior conviction for felony-firearm, and failed to present corroborating evidence. We disagree.

When issues of prosecutorial misconduct are preserved, appellate review is de novo to determine if the defendant was denied a fair and impartial trial. *People v Mann*, 288 Mich App 114, 119; 792 NW2d 53 (2010). Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting substantial rights. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). "Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings, independent of defendant's innocence." *Id*. at 448-449. Where a curative instruction would have alleviated the prejudicial effect of any prosecutorial questioning or comment, error requiring reversal has not occurred. *Id*. at 449. When determining whether prosecutorial misconduct deprived a defendant of a fair and impartial trial, the defendant bears the burden of demonstrating that the conduct resulted in a miscarriage of justice. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). "A prosecutor may fairly respond to an issue raised by the defendant." *Id*. at 135. "Prosecutors have discretion on how to argue the facts and reasonable inferences arising therefrom, and are not limited to presenting their arguments in the blandest terms possible." *People v Meissner*, 294 Mich App 438, 456; 812 NW2d 37 (2011). Despite this discretion, it is nonetheless improper for the prosecutor to appeal to the jury to sympathize with the victim. *Id*.

Although defendant raised general claims of prosecutorial misconduct, he failed to cite to the lower court record and address whether the claims were preserved for appellate review. Following a review of the record, we conclude that defendant failed to demonstrate plain error

[3] When a defendant insists on raising a claim against the advice of counsel, defendant has the right to present the claim *in propria persona*.

affecting substantial rights. *Ackerman*, 257 Mich App at 448. The record does not support the contention that the prosecutor improperly referenced defendant in derogatory terms or improperly vouched for the credibility of her witnesses. Rather, the prosecutor argued that the nature of the charges and the corroboration in the testimony by the victims, despite being employed by defendant at different times, demonstrated that their testimony was credible. Similarly, there is no indication in the record that the prosecutor attempted to convict defendant based on character evidence.

Defendant's contention that the prosecutor improperly admitted evidence of other bad acts offered by the victims is also without merit. The jury is entitled to hear the "complete story" surrounding the matter in issue. *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996). Evidence of other criminal events may be admissible when so blended or connected to the other crime that proof of one explains the circumstances of the other. *Id*. The more jurors know about the full transaction, the better equipped at performing their sworn duty. *Id*. The testimony regarding defendant's assaults on others was not improper MRE 404(b) evidence, but explained how defendant obtained compliance from his victims and his management of his victims. *Sholl*, 453 Mich at 742. The prosecutor did not improperly admit defendant's prior convictions before the jury. Rather, to avoid an inquiry into defendant's criminal history, the parties stipulated that defendant was not eligible to carry a firearm. A party cannot agree to specific action in the trial court and submit, on appeal, that the action was erroneous. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995). Finally, there is no requirement that the testimony of a criminal sexual conduct victim be corroborated for purposes of MCL 750.520b. MCL 750.520h. This claim of error does not entitle defendant to appellate relief.

B. Amendment of the Information

Defendant next submits that the prosecutor's amendment of the information was improper. We disagree.

Waiver is the intentional relinquishment or abandonment of a known right, and a defendant who waives a right extinguishes the underlying error, precluding appellate review. *People v Vaughn*, 491 Mich 642, 663; 821 NW2d 288 (2012). A trial court's decision to permit amendment of the information is reviewed for an abuse of discretion. *Unger*, 278 Mich App at 221. The information may be amended at any time before, during, or after trial to cure any defect, imperfection, or omission in form or in substance provided the accused is not prejudiced by the amendment and the amendment does not charge a new crime. MCL 767.76; MCR 6.112(H); *People v Siterlet*, 299 Mich App 180, 186; 829 NW2d 285 (2012). The catch line immediately to the right of the section number in the penal code is not part of the statute, title, or body. *People v Nick*, 374 Mich 664, 665; 133 NW2d 201 (1965). It may not be used to construe the section more broadly or narrowly than the content of the section allows, but is merely inserted for purposes of convenience. See MCL 8.4b.

On the first day of trial, the prosecutor noted that although the information entitled offenses as human trafficking, the actual statutory and jury instruction reference was to forced labor involving CSC. Defense counsel did not object to the change to the title of the offense, but noted that he was prepared to defend against the CSC charge to the extent it involved kidnapping, and did not want the reference to kidnapping removed. The prosecutor noted that

the charging language at bind over contained no reference to kidnapping. The trial court granted the motion to amend.

In light of the record, defendant waived appellate review of this claim of error. *Vaughn*, 491 Mich at 663. Nonetheless, the trial court did not abuse its discretion by allowing the amendment of the information. *Unger*, 278 Mich App at 221. Defendant was charged in the information with violating MCL 750.462i. The information entitled the crime "human trafficking." The prosecutor merely amended the information to change the title of the crime to forced labor involving CSC, the underlying statutory charge continued to be MCL 750.462i. The amendment did not prejudice the defense because it did not charge a new crime. *Siterlet*, 299 Mich App at 186. This claim of error is without merit.[4]

C. Sufficiency of the Evidence

Defendant seemingly alleges that there was insufficient evidence to convict him of the CSC offenses because the evidence of position of authority and personal injury was lacking and the victims, both above the age of 13, consented and did not resist; therefore, he could only be convicted of third-degree CSC offenses. He also contends that he could not be convicted of conducting a criminal enterprise because the prosecutor relied on the testimony of two admitted prostitutes, and the mere accusations without corroboration were insufficient. We disagree.

"Criminal defendants do not need to take any special steps to preserve a challenge to the sufficiency of the evidence." *People v Cain*, 238 Mich App 95, 116-117; 605 NW2d 28 (1999). A challenge to the sufficiency of the evidence is reviewed de novo. *People v Malone*, 287 Mich App 648, 654; 792 NW2d 7 (2010). Conflicts in the evidence are resolved in favor of the prosecution and circumstantial evidence and reasonable inferences arising from that evidence may constitute proof of the elements of the crime. *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). In reviewing a challenge to the sufficiency of the evidence, the appellate court does not interfere with the jury's assessment of the weight and credibility of the witnesses or the evidence. *Dunigan*, 299 Mich at 582. When the gravamen of the defendant's argument requests that this Court reweigh the credibility of the witnesses, we must decline to do so because it is the province of the jury. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). A defendant may not give cursory treatment to an issue, but must cite applicable authority, and the failure to meet this burden constitutes abandonment of the issue. See *People v Schumacher*, 276 Mich App 165, 178; 740 NW2d 534 (2007); *People v Sowders*, 164 Mich App 36, 49-50; 417 NW2d 78 (1987).

MCL 750.520b(1)(b)(*iii*) provides that a person is guilty of first-degree CSC if he engages in sexual penetration with another person between the ages of 13 and 16 and the actor is in a position of authority over the victim and uses that authority to coerce the victim to submit.

[4] Defendant contends that, at resentencing, the prosecutor moved to have the charge of forced labor involving CSC reclassified as human trafficking, and the court agreed. This claim is simply not supported by the transcript. Defendant was resentenced for forced labor involving CSC in violation of MCL 750.462i.

See also *People v Reid*, 233 Mich App 457, 467; 592 NW2d 767 (1999). Force or coercion is not limited to physical violence, but must be determined in light of all of the facts and circumstances. *Id*. at 468. For purposes of MCL 750.520b, a victim need not resist. MCL 750.520i. "Proof of consent is no defense, for a female child under the statutory age is legally incapable of consenting." *People v Gengels*, 218 Mich 632, 641; 188 NW 398 (1922).

We reject defendant's challenges to the sufficiency of the evidence to support his convictions because he failed to cite applicable and appropriate authority in support of his position, and his convictions were premised on the jury's evaluation of the credibility of the witnesses. *Eisen*, 296 Mich App at 331; *Schumacher*, 276 Mich App at 178. D. J. testified regarding the injuries she sustained, and there was no requirement that the injury be limited to resulting physical harm, or that medical records documenting her injuries be admitted. *Reid*, 233 Mich App at 467. The conviction for conducting a criminal enterprise was premised on the credibility of the testimony offered by the victims. There was sufficient evidence to support his convictions.

D. Impeachment Evidence

Next, although difficult to decipher, defendant apparently alleges that the trial court abused its discretion by failing to allow full impeachment of the witnesses and subsequently failing to instruct the jury accordingly. We disagree. The decision to admit or exclude evidence, including impeachment evidence, is reviewed for an abuse of discretion. *People v King*, 297 Mich App 465, 472; 824 NW2d 258 (2012); *People v McCray*, 245 Mich App 631, 634-635; 630 NW2d 633 (2001). A witness who does not recall making a prior inconsistent statement may be impeached by extrinsic evidence with that statement. *People v Jenkins*, 450 Mich 249, 256; 537 NW2d 828 (1995). "MRE 609 provides for the impeachment of witnesses by evidence of convictions of crimes containing elements of dishonesty or false statement or crimes containing an element of theft with certain conditions." *People v Layher*, 464 Mich 756, 770-771; 631 NW2d 281 (2001). This rule of evidence only applies to past convictions, not arrests. *Id*. at 771. The sexual history of a witness is generally irrelevant and cannot be used as impeachment evidence because it has no bearing on the character for truthfulness. *People v Adair*, 452 Mich 473, 481; 550 NW2d 505 (1996).

In the discussion of this issue, defendant delineates various portions of witness questioning and concludes that the trial court abused its discretion by not permitting impeachment. The trial court's rulings addressing impeachment evidence did not constitute an abuse of discretion. *King*, 297 Mich App at 472. Defendant contends that the trial court erred by limiting or refusing to allow impeachment evidence of C. M. in light of the police report and FBI interview. However, the record discloses that the police report did not contain C. M.'s statement, but rather hearsay evidence. Generally, police reports are inadmissible hearsay. *In re Forfeiture*, 291 Mich App at 254. Therefore, in light of the content of the report, the trial court's ruling was proper. Additionally, the record denotes that the defense was allowed to impeach C. M. with her FBI interview. Although the defense's first attempt to impeach failed because of equipment issues, the problem was corrected the next day. Finally, the contention that impeachment should have been allowed with regard to C. M.'s charges and her grant of immunity is without merit. A review of the record reveals that defense counsel asserted that C. M. should be advised that her testimony would subject her to various criminal charges unless the

prosecutor granted immunity. The prosecutor noted that no charges were pending against C. M., and the investigation led to the charges levied against defendant only. Because there is no evidence of prior convictions pursuant to MRE 609 or evidence of immunity, this claim fails. See *Layher*, 464 Mich at 771.

E. Double Jeopardy

Defendant next alleges that his convictions violate double jeopardy protections because one cannot be convicted of more than one offense for a single act of penetration. We disagree. Generally, a double jeopardy issue presents a question of law that the appellate court reviews de novo. *People v Lett*, 466 Mich 206, 212-213; 644 NW2d 732 (2002). When a claim of double jeopardy is not raised in the trial court, it is reviewed for plain error affecting substantial rights. *People v Strickland*, 293 Mich App 393, 401; 810 NW2d 660 (2011). When a defendant gives cursory treatment to an issue, it is abandoned. *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). "An appellate court cannot effectually review matters inadequately presented and argued to it." *People v Raub*, 9 Mich App 114, 122; 155 NW2d 878 (1967).

Defendant's argument in support of this issue does not recognize that the victims testified regarding multiple acts of penetration. He further neglects to address the disparity in the elements of the CSC convicted offenses and the other convictions for purposes of conducting a double jeopardy analysis. Accordingly, this claim of error is abandoned. *Matuszak*, 263 Mich App at 59.

F. Jury Instructions

Here, defendant asserts that the trial court deprived him of a fair trial when it did not properly instruct the jury. We disagree. When a defendant expresses satisfaction with the jury instructions, any error is waived. *People v Carter*, 462 Mich 206, 214-215; 612 NW2d 144 (2000); *People v Reid*, 292 Mich App 508, 515; 810 NW2d 391 (2011). When a defendant fails to object to an omitted instruction, the claim of error is forfeited and reviewed for plain error affecting substantial rights. *People v Gonzalez*, 468 Mich 636, 643; 664 NW2d 159 (2003). When preserved, claims of instructional error are reviewed de novo. *People v Kowalski*, 489 Mich 488, 501; 803 NW2d 200 (2011). The instructions are reviewed as a whole, rather than piecemeal, to determine if error occurred. *Id*. An imperfect instruction is not a basis for setting aside a conviction "if the instruction fairly presented the issues to be tried and adequately protected the defendant's rights." *Id*. at 501-502. "The failure of the court to instruct on any point of law shall not be ground for setting aside the verdict of the jury unless such instruction is requested by the accused." MCL 768.29. When a defendant cites no authority in support of the instructions requested, the issue is abandoned. *People v Huffman*, 266 Mich App 354, 371; 702 NW2d 621 (2005).

Defendant did not adequately prime the pump and therefore abandoned these issues. *Id*.; *Matuszak*, 263 Mich App at 59. Although defendant cites various terms, he fails to cite to the elements of the charged offenses given in the instructions and does not analyze the elements to the facts of the case. On various occasions, he misrepresents the status of the record, for example, claiming that victim C. M. was charged with various crimes for which she would have been impeached despite a grant of immunity. The charges and the claim of immunity were not

supported by the record. In any event, defendant was not entitled to the requested instructions. Although he claims he could only be convicted of third-degree CSC because of the age of the victims and that he was entitled to instructions regarding consent and physical injury, that is not the case. As previously noted, MCL 750.520b(1)(b)(*iii*) provides that a person is guilty of first-degree CSC when the victim is between 13 and 16 years of age and the actor is in a position of authority over the victim and uses that authority to coerce the victim to submit. An underage victim is incapable of consenting, irrespective of the testimony from the victims, *People v Starks*, 473 Mich 227, 235; 701 NW2d 136 (2005), and a victim need not resist when a defendant is charged under MCL 750.520b, see MCL 750.520i. Defendant failed to demonstrate entitlement to appellate relief. MCL 768.29.

G. Restitution

In this issue, defendant submits a letter that he wrote to the trial court, asserting that the statute cited by the prosecutor to order restitution did not exist and the victims were not entitled to restitution because they engaged in illegal conduct. Although we uphold the award of restitution, we note that the amended judgment of sentence contains a clerical error regarding the amount and remand for the ministerial correction of the amended judgment of sentence.

Appellate review of a trial court's restitution order is for an abuse of discretion. *People v Fawaz*, 299 Mich App 55, 64; 829 NW2d 259 (2012). The trial court's factual findings are reviewed for clear error, but interpretations of law are de novo. *Id*. The prosecution bears the burden of proving the amount of restitution by a preponderance of the evidence, and the amount of restitution must be premised on the actual loss suffered by the victim. *Id*. By enacting the Crime Victims Rights Act, the Legislature plainly intended on shifting the burden of losses suffered from criminal conduct from crime victims to the perpetrators of crimes. *Id*. The act is remedial in nature and should be liberally construed to effectuate the intent. *Id*.

MCL 780.766b provides that when a defendant is convicted of an offense [MCL 750.462a through MCL 750.462i], "the court shall order restitution for the full amount of loss suffered by the victim." MCL 780.766b(1). The restitution may include lost income. MCL 789.766b(1)(a). The restitution statute at issue contemplates that it is ordering restitution for offenses premised on forced labor involving criminal sexual conduct, MCL 750.462i. Despite the fact that it may result in an award of restitution premised on underlying illegal conduct, the Legislature chose, nonetheless, to grant restitution to victims.

Although the prosecutor initially sought an award of restitution for each victim premised on the average number of customers and the time period at issue, the trial court declined to grant that amount as speculative. The trial court noted that although D. J. gave estimates regarding the amount she earned, her notebook documented contrary amounts. For example, although she estimated an average of $300 per night, her notebook indicated that she earned at most $170 per night and there were three nights when she earned nothing. Therefore, the trial court reduced the amount to $750 for D. J. and $2500 for C. M. Under the circumstances, the trial court's factual findings are not clearly erroneous in light of the fact that the restitution sought by the prosecutor was premised on victim estimates, and documentary evidence, the notebook, indicated a lower amount was warranted. However, the amended judgment of sentence indicates that D. J. was awarded $6750 instead of $750. We remand for the ministerial correction of the amount.

H. Guidelines Scoring

Lastly, defendant contends that his scoring guidelines were improperly scored. We disagree. This issue is unpreserved. "A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals." MCL 769.34(10). "A sentence that is outside the appropriate guidelines sentence range, for whatever reason, is appealable regardless of whether the issue was raised at sentencing, in a motion for resentencing, or in a motion to remand. However, if the sentence is within the appropriate guidelines sentence range, it is only appealable if there was a scoring error or inaccurate information was relied upon in determining the sentence and the issue was raised at sentencing, in a motion for resentencing, or in a motion to remand." *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004).

In this case, the sentence was within the appropriate guidelines sentence range and was not raised at sentencing, in a motion for resentencing, or in a motion to remand. Therefore, this issue was waived. *Id*. In any event, there is no indication that a change in the scoring would alter the guidelines range.

Affirmed with regard to defendant's convictions and sentences, but remanded for the ministerial correction of the amount of restitution on the judgment of sentence. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood