

motions collectively as a single motion seeking the same relief - that is, either a judgment of acquittal or a new trial. The government, of course, refutes Defendant's arguments and opposes his request for relief.

Standards for Assessing Post-Trial Motions

By the motions now before us, Defendant renews his previous motion under Fed. R. Crim. P. 29 for judgment of acquittal and/or, in the alternative, seeks a new trial based upon what he alleges is newly-discovered evidence under Fed. R. Crim. P. 33. Under Rule 29(c):

(c) After Jury Verdict or Discharge.

(1) *Time for a Motion.* A defendant may move for a judgment of acquittal, or renew such motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

(2) *Ruling on the Motion.* If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

(3) *No Prior Motion Required.* A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

The essence of a Rule 29 motion for judgment of acquittal is a challenge by the moving defendant to the sufficiency of the evidence presented against him. See, e.g., United States v.

No. 133), Motion for Evidentiary Hearing Request (Doc. No. 134), Rule 29/33 Rebuttal Motion (Doc. No. 146), Amendment to Rule 29/33 Rebuttal Motion (Doc. No. 147) and Supplemental Motion for New Trial and Evidentiary Hearing (Doc. No. 164).

Gjurashaj, 706 F.2d 395, 399 (2d Cir. 1983) (“very nature” of Rule 29 motions for judgment of acquittal “is to question the sufficiency of the evidence to support a conviction”); United States v. Young, No. 05-CR-307, 2008 U.S. Dist. LEXIS 214 at *4 (E.D. Pa. Jan. 2, 2008) (quoting United States v. Carter, 966 F. Supp. 336, 340 (E.D. Pa. 1997) (“sole foundation upon which a judgment of acquittal should be based is a successful challenge to the sufficiency of the Government’s evidence”); Fed. R. Civ. P. 29(a) (“[a]fter the government closes its evidence or after the close of all the evidence, the court on the defendant’s motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction”).

In assessing evidentiary sufficiency, the court is charged with determining whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 2788-2789, 61 L. Ed. 2d 560 (1979). “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Id., 443 U.S. at 319, 99 S. Ct. at 2789 (emphasis in original). The verdict must therefore be sustained “if there is substantial evidence, taking the view most favorable to the government, to support the verdict.” United States v. Rennert, No. 97-CR-51,

1997 U.S. Dist. LEXIS 14437 at *6 (E.D. Pa. Sept. 17, 1997) (citing United States v. Aguilar, 843 F.2d 155, 157 (3d Cir 1988)). "Evidence which is sufficient to support a conviction need not be direct evidence, and the conviction will stand if supported by circumstantial evidence." United States v. Fenech, 943 F. Supp. 480, 483 (E.D. Pa. 1996). In reviewing the testimony for determining a Rule 29 motion, the Court may not assess the credibility of witnesses for that is a jury function; and thus questions of the weight of the evidence or of the credibility of the witnesses are foreclosed by the jury's verdict. United States v. Hart, No. 97-CR-21, 1997 U.S. Dist. LEXIS 19113 at *3 (E.D. Pa. Dec. 3, 1997); Fenech, supra. Given that the court must "consider the evidence in its totality, not in isolation, and the government need not negate every theory of innocence," a "defendant seeking a judgment of acquittal on the ground that the evidence was insufficient bears a heavy burden." United States v. Marcus, 487 F. Supp. 2d 289, 298 (E.D. N.Y. 2007) (quoting United States v. Autuori, 212 F.3d 105, 114 (2d cir. 2000) and United States v. Russo, 74 F.3d 1383, 1395 (2d Cir. 1996)).

Pursuant to Fed. R. Crim. P. 33,

(a) Defendant's Motion. Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File. (1) *Newly Discovered Evidence.* Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) *Other Grounds.* Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

The decision to grant or deny a motion for a new trial under Rule 33 is committed to the sound discretion of the trial court, and the scope of review is whether such discretion was abused. United States v. Cimera, 459 F.3d 452, 458 (3d Cir. 2006); United States v. Console, 13 F.3d 641, 665 (3d Cir. 1993). A new trial should only be granted where there is a reasonable probability that the trial error could have had a substantial impact on the jury's decision. Government of Virgin Islands v. Bedford, 671 F.2d 758, 762 (3d Cir. 1982); United States v. McGhee, No. 07-CR-733, 2012 U.S. Dist. LEXIS 55645 at *27 (E.D. Pa. April 20, 2012); United States v. Rennert, No. 96-CR-51, 1997 U.S. Dist. LEXIS 14437 at *50 (E.D. Pa. Sept. 18, 1997). And, "in contrast to a motion under Rule 29, a motion for a new trial does not require the court to view the evidence in the light most favorable to the government," but "[r]ather, the court must weigh the evidence and evaluate the credibility of witnesses." United States v. Young, No. 05-CR-307, 2008 U.S. Dist. LEXIS 214 at *6 (E.D. Pa. Jan. 2, 2008); United States v. Donzo, No. 07-CR-134, 2007 U.S. Dist. LEXIS 85179 at *10 (E.D. Pa. Nov. 18, 2007) (both

citing United States v. Martinez, 763 F.2d 1297, 1312 (11th Cir. 1985)). A district court "can order a new trial on the ground that the jury's verdict is contrary to the weight of the evidence only if it believes that there is a serious danger that a miscarriage of justice has occurred - that is, that an innocent person has been convicted." United States v. Davis, 397 F.3d 173, 181 (3d Cir. 2005); United States v. Stillis, Nos. 04-CR-680-3, 680-6, 2007 U.S. Dist. LEXIS 51511 at *9 (E.D. Pa. July 16, 2007).

Where a motion for new trial is premised upon newly discovered evidence, there are five requirements which must be met before a court may grant the motion:

(a) the evidence must be in fact, newly discovered, *i.e.*, discovered since trial; (b) facts must be alleged from which the court may infer diligence on the part of the movant; (c) the evidence relied on must not be merely cumulative or impeaching; (d) it must be material to the issues involved; and (e) it must be such, and of such nature, that the evidence would probably produce an acquittal.

United States v. McGee, 763 F.3d 304, 321 (3d Cir. 2014). To warrant a new trial based on impeachment evidence, there must be "a factual link between the heart of the witness's testimony at trial and the new evidence" and "this link must suggest directly that the defendant was convicted wrongly." Id. (quoting United States v. Quiles, 618 F.3d 383, 390 (3d Cir. 2010)). In ascertaining whether this factual link exists, the Third Circuit recommends that the reviewing court ask if there is

a strong exculpatory connection between the newly discovered evidence and the evidence presented at trial or does the newly discovered evidence, though not in itself exculpatory, throw severe doubt on the truthfulness of the critical inculpatory evidence that had been introduced at the trial. If the answer is affirmative, then a defendant may be entitled to a new trial even though he relies on evidence that could be classified as impeachment evidence. If the answer is negative, then the defendant is relying on *mere* impeachment evidence and will not be entitled to a new trial on its basis.

Quiles, at 393.

Discussion

As noted, Defendant was convicted first of two counts (one count each for two persons) of sex trafficking by force, fraud or coercion under 18 U.S.C. §1591. That statute reads as follows in relevant part:

(a) Whoever knowingly -

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2) or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

...

(c) In a prosecution under subsection (a)(1) in which the

defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of 18 years.

...

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means -

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(c) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(5) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

Although he has filed numerous motions, it is clear that the grounds upon which Defendant premises each and every motion are essentially identical. That is, Defendant claims that the jury's verdict was erroneous and that the evidence adduced at trial was insufficient because:

(1) The government "fraudulently" brought the charges against Defendant in that the government created false documents and because the witnesses who testified against him either lied and/or were coerced into testifying in the manner in which they did by the investigating FBI agent and the Assistant United States Attorney.

(2) The testimony of the witnesses who testified against Defendant was incredible and thus the jury erred in accepting their testimony and/or finding the testimony to be worthy of belief.

(3) There were numerous inconsistencies in Victim 1's testimony about Defendant's alleged violence that showed she was lying.

(4) In contravention of the instructions given to it by the Court, the jury found only one element in lieu of the three elements which it was purportedly required to find in order to convict Defendant of the sex trafficking offense.

(5) The prosecutor's remarks that Defendant and Victim 2 were being held in adjacent holding cells during the trial and her inquiry of Victim 2 as to whether Defendant had tried to influence her testimony improperly deprived Defendant of his presumption of innocence.

(6) Defendant's attorney was ineffective insofar as he purportedly failed to subpoena material witness Stevi Slavin, refused to question FBI Agent Goodhue about his coercion of witnesses, failed to object to the government's production of allegedly false documents regarding Defendant's arrest record(s), failed to follow-up on the defense request for additional funds for investigation and/or to request a continuance to obtain and use more funds, and otherwise allegedly colluded with the government.

In addition, Defendant submits that a new trial is warranted because Victim 2 has now provided an affidavit in which she recants her trial testimony that Defendant was violent toward her and several other women who were working as prostitutes for him and would now testify that the testimony which she gave at trial and before the grand jury was coerced by the Government. Defendant asserts that this newly discovered evidence satisfies the criteria under Fed. R. Civ. P. 33. We consider this argument first.

A. Newly-Discovered Evidence: Victim 2's Affidavit

As discussed above, before a motion for a new trial on the basis of newly discovered evidence may be granted, it is incumbent upon the movant to show: (1) that the evidence is, in fact, newly discovered; (2) that he was diligent in uncovering the new evidence; (3) that the evidence is not merely cumulative or impeaching; (4) that the evidence is material to the issues involved in the case; and (5) that it would probably produce an acquittal in the event of a re-trial. See, Quiles, supra. Defendant here cannot make the necessary showing.

First and foremost, there is nothing new about Victim 2's proffered recantation, notwithstanding Defendant's assertion that her claims of coercion and intimidation on the part of the Government have not been raised previously and that Victim 2's affidavit includes a claim that she was made to lie and told to

say she was forced to commit acts of prostitution by the U.S. Attorney and two FBI agents. The record reflects that Victim 2 was thoroughly questioned and cross-examined at trial about her interactions with the FBI and the fact that she did not tell them that Defendant had done anything violent to her:

Q. Okay. You stopped working for the defendant, you said, in May of 2012?

A. Yes.

Q. Why did you stop working for him?

A. I got arrested.

Q. What did you get arrested for?

A. Because I had a warrant here in Philly for not paying my fine.

Q. Were you subsequently extradited back to New Jersey?

A. Yes.

Q. Do you know how that came about?

A. Because I wouldn't tell on Mr. Williams so they extradited me.

Q. Okay. Do you know who caused your extradition to happen?

A. Those two dudes over there.

Q. Do you know who they are?

A. FBI agents.

...

(N.T. 9/24/13, 211).

Q. Now in May of 2012, you told us that you got arrested by Philadelphia on a bench warrant for failing to pay

some fines?

A. Yes.

Q. It was at that time that you got arrested that you were first met by the FBI, is that true?

A. Correct.

Q. You pointed out two agents here yesterday in court. Can you identify them again, or point them out for us who interviewed you?

A. This one right here (indicating).

Q. That would be Agent Goodhue?

A. And the one with the black shirt and the bald head.

Q. So those are the two individuals who came to interview, in the custodial setting in Philadelphia, in the bench warrant hearing; is that right?

A. Yes.

Q. And they told you that, you know, you could be released if you told them about Justin Williams; is that right?

A. Right.

Q. In point of fact, Ms. Moore, you never told either this agent here, Agent Goodhue, or the gentleman in the black shirt and the bald head about Mr. Williams doing anything violent to you; isn't that right?

A. Right.

....

Q. It was only after - it was only after they decided to keep you in jail did you then in September of 2012, some four months later, decide to talk about acts of violence that Mr. Williams committed; is that right?

A. Right.

Q. And your desire - I mean, obviously, was to do something to help you get out of jail, right?

A. Right.

Q. And you knew from this government counsel about the fact that she had written a letter to the parole people in New Jersey talking about cooperation that you had provided; is that right?

A. That came after I made my statement.

Q. Right. But you're aware of that; is that correct?

A. Right.

Q. But you still sit in jail in New Jersey. You haven't been released yet?

A. No.

....

Q. Okay. But the bottom line is that it was only after you knew you were sitting in jail for a while, at least four months, that you then decide to talk about the alleged acts of violence that Mr. Williams committed; am I right?

A. They told me if I didn't, that I was going to go to jail, that they were going to arrest me.

Q. Okay. So you then did?

A. Right.

...

Q. So the feds threatened you; is that right?

A. Yes, they did.

...

Q. And it's also true that force or threats of force or fraud or coercion was not used for you to commit commercial sex acts; is that right?

A. That's right.

Q. And you never have been in danger or insecure or in

serious harm from Justin; am I correct in that?

A. No.

Q. I am correct in that, you have never been -

A. No, have never been in danger. No.

Q. It's fair to say that you were free to go at all times, in fact; is that right?

A. Yes.

Q. And the statements that you gave to the FBI talking about acts of violence were because you were in fear of your freedom; is that right?

A. Right.

(N.T. 9/25/13, 23-28).

And on re-cross examination, Victim 2 stated:

Q. The reason you told them that he hit you or that he hit Talia was because the FBI threatened you; is that right?

A. Correct.

(N.T. 9/25/13, 36).

Thus, the evidence upon which Defendant bases his claim for a new trial is obviously **not** newly-discovered. The alleged coercion, threats and intimidation of Victim 2 by the "feds" was raised and thoroughly explored by Defendant's trial attorney during his cross-examination and it would at most be merely cumulative or impeaching should a new trial or evidentiary hearing be granted. Further, given that this issue has already been carefully vetted, we certainly cannot find this evidence to be likely to result in a judgment of acquittal. We therefore see

no reason to conduct either an evidentiary hearing or grant Defendant a new trial on the basis of this evidence. The Rule 33 motion is consequently denied.

B. Rule 29 Motion

We next consider Defendant's challenges to the sufficiency of the evidence on the grounds of purported fraud on the part of the government and the false, perjured, and/or inconsistent testimony from the witnesses against him, particularly Victim 1. In this regard, the gist of Defendant's apparent argument is that the testimony given by Victim 1, Victim 2 and all of the other witnesses who testified for the prosecution were lies perpetrated and fabricated by the government for the sole purpose of convicting him. According to Defendant, this theory is borne out by the fact that Victim 1 testified that Defendant punched her in the face three times after he was released from jail in Arlington, Virginia. During an interview with the Arlington police, Victim 1 lied and did not tell them that the defendant was beating on her and the other girls who were working for him. (N.T. 9/24/13, 94-95, 168). Defendant asserts that because Victim 1 was interviewed by the Arlington police while he was still incarcerated, she could not say that he had punched her because it would not have happened yet. Here again, the transcript evinces that Defendant is taking Victim 1's testimony out of context:

Q. All right, Talia, before we took a break, you testified that very early on when you joined the defendant you heard what you thought was him hitting Erika Moore, correct?

A. Yes.

Q. Did you ever directly observe the defendant being violent toward any of the girls who were working for him?

A. Yes.

Q. When was the first time that you actually saw him be violent towards somebody?

A. Very recently within the time that we were with him, probably at least once within the first month. It didn't really take a lot for him to hit Trina.

Q. Trina being Erika Moore?

A. Yes.

Q. How frequently did you see him be violent toward Erika Moore?

A. Not every day, but at least once every other week or something. It mainly depended upon what type of mood he was in. If he was in a bad mood and she talked back, she was going to get hit. That's just how it worked.

...

Q. Aside from Erika Moore, was he violent toward any of the other girls who worked for him?

A. He was violent towards Stevi.

Q. Do you recall any specific incidents where he was violent towards Stevi?

A. Yes. There was one main time, which was the most dramatic of any of these events. Me and Trina, Erika Moore and Stevi were all in Philadelphia. Justin was there, too. I believe this was after he had got arrested and we bailed him out and he was back in

Philadelphia. ... We were on the streets, me and Trina were. ... So Trina was on phone with Justin that time. He asked something like, what is going on, who is that? She said, there is this guy out here, and he was kind of messing with me, acting like kind of boyfriend-ish. Justin took that the wrong way. He called us into the house, Teddy's property, which is on that same street, Kensington. He lined us up right inside the door in the hallway.

Q. Lined who up?

A. Me and Trina, Erika Moore, right next to each other. He started screaming at us, yelling all sorts of things, asking what was going on, who is this boyfriend guy, and we're like pleading with him, "That's not my boyfriend, I don't know him," anything like that. He hit Trina. I don't know if it was a slap or a punch. But he hit her. And we're still right up against the wall. He turned to me and was screaming in my face. I was asking him, "What is going on? What did I do?" He hit me three times in my face, and he like pushed or shoved me as I was against the wall so my head banged against the wall. ...

(N.T. 9/24/13, 83-86).

Hence it is clear that Victim 1's recitation of this incident of violence was in response to a question concerning whether Defendant had ever been violent to her and the others; it was not in response to an inquiry relative to that period of time before Defendant's incarceration in Arlington in December, 2011. Moreover, Victim 1 was subjected to extensive cross-examination into when the defendant purportedly struck her three times, and into her veracity, especially regarding having lied to the Arlington Police when she was interrogated by them on December 13, 2011. (N.T. 9/24/13, 138-141, 148-150, 160-177). Indeed, Victim 1's testimony was clear that she could not remember

precisely when the incident outlined above occurred, that she believed but was not certain that it had happened after Defendant had been bailed out of the Arlington jail. Given that Defendant was re-incarcerated in Arlington in early January 2012 and that it was up to the jury to assess Victim 1's credibility, we discern no grounds to warrant granting Defendant's Rule 29 motion.

We reach the same conclusion with respect to the testimony of all of the witnesses who purportedly lied or whose testimony was coerced or improperly fabricated by the government. In making his insufficiency argument, Defendant disregards the facts that each and every witness who testified against him was thoroughly cross-examined by defense counsel, the veracity and credibility of their testimony called into question, and the inconsistencies in their testimonies were argued to the jury by defense counsel in his closing argument. We reiterate that in reviewing the testimony for determining a Rule 29 motion, the Court is precluded from assessing the credibility of witnesses - that is a jury function with the result that questions of the weight of the evidence or of the credibility of the witnesses are foreclosed by the jury's verdict. See, Hart and Fenech, both supra. Again, the evidence produced at trial must be evaluated in its totality, viewed in the light most favorable to the prosecution with an eye toward determining whether any rational

trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In so doing, we easily answer that question in the affirmative. Defendant's motion for judgment of acquittal on the grounds of fraud and/or false, perjured, and/or inconsistent witness testimony is denied.

C. Jury's Failure to Follow Instructions

Defendant also contends that the jury failed to follow the Court's instructions as it only found one element of the crime instead of the three elements which it was purportedly required to find in order to convict Defendant of the sex trafficking offense. More to the point, Defendant alleges that the jury did not find him guilty of force, fraud or coercion. Again, we disagree.

Specifically, the instruction given on the offense of sex trafficking was as follows:

So saying, ladies and gentlemen, in order to prove the defendant guilty of sex trafficking, the government must prove each of the following elements beyond a reasonable doubt:

First, "Either that the defendant knowingly transported or recruited or enticed or harbored or provided or obtained or maintained a person by any means."

And this is the first portion of each of those counts, 1 and 2, that is there for you to check or not check pursuant to your deliberations.

"Or, that the defendant benefitted financially or by receiving anything of value from participation in a venture which recruited, obtained or maintained by any means a person."

And that's the second portion that you're to consider pursuant to each of these counts to make that determination.

Now, that's the first element. The second element of each of these Counts 1 and 2 is that "the defendant knew or recklessly disregarded the fact that force, threats of force, fraud or coercion would be used with respect to this person." And that refers to the person that is alleged in each of these counts, Person 1 in the first count, and Person 2 in the second count.

Third, "that the defendant knew or was in reckless disregard of the fact that this person would be caused to engage in a commercial sex act," as I defined that term to you; And fourth, "that the defendant's conduct was in or affecting interstate commerce."

(N.T. 9/26/13, 88-90).

It is well-settled that "a jury is presumed to follow its instructions." Blueford v. Arkansas, ___U.S.___, 132 S. Ct. 2044, 2051, 182 L. Ed. 2d 937, 944 (2012) (quoting Weeks v. Angelone, 528 U.S. 225, 235, 120 S. Ct. 727, 145 L. Ed. 2d 727 (2000)); United States v. Givan, 320 F.3d 452, 462 (3d Cir. 2003)). Here, we have no reason to believe otherwise. Although defense counsel's cross-examination and closing argument made the point that the two victims engaged in commercial sex acts of their own free will and not as the result of any force on the part of his client, the jury found to the contrary. Specifically, as delineated on the verdict slip, the jury found that:

Justin Williams knowingly transported or recruited or enticed or harbored or provided or obtained or maintained [the victims] by any means

and that:

Justin Williams benefitted, financially or by receiving anything of value, from participation in a venture which recruited, enticed, harbored, transported, provided, obtained, or maintained [the victims] by any means.

Prior to giving the instruction recited above, the Court instructed the jury as to the definitions of various terms given in the statute itself:

Count 1 and Count 2 of the indictment charges the defendant with sex trafficking and attempting to commit sex trafficking. Sex trafficking is a violation of Section 1591 of Title 18 of the United States Code. That section provides that whoever knowingly:

(1) In or affecting interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person;

Or (2) benefits financially or by receiving anything of value from participation in a venture which has engaged in an act just described, knowingly or in reckless disregard of the facts, that means a force, threat of force, fraud or coercion, or any combination of such means, will be used to cause the person to engage in a commercial sex act, shall be guilty of a crime.

Section 1591(e) (2) of Title 18 provides the term "coercion" means:

A, threats of serious harm to, or physical restraints against any person;

B, any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restrain against any person.

Or, C, the abuse or threat and abuse of law or the legal process.

Section 1591(e)3) provides, the term "commercial sex acts" means any sex act on account of which anything of value is given to or received by any person.

Section 1591(e) (4) provides the term "serious harm" means

any harm, whether physical or non-physical, including psychological, financial, or reputational harm that is sufficiently serious under all the surrounding circumstances to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

...

(N.T. 9/26/13, 86-88). Thus while the verdict slip only inquired into the means by which the jury found Defendant to have been guilty of sex trafficking by force, the instructions given clearly directed that it must find that force, threats of force, fraud or coercion motivated the victims to act as they did. By finding the defendant guilty, the jury so found and its verdict is amply supported by the evidence produced at trial. Consequently Defendant's motion for judgment of acquittal on this basis is also denied.

D. Prosecutor's Allegedly Improper Questions

It is Defendant's next contention that he was improperly deprived of his presumption of innocence by the prosecutor's inquiry of Victim 2 as to whether he (Defendant) had tried to influence her testimony while they were being held in adjacent holding cells while awaiting commencement of this trial.

We likewise find this argument to be meritless. The prosecutor only raised this issue on re-direct examination of Victim 2, who had recanted her testimony about Defendant's violence on cross-examination. (See, N.T. 9/24/13, 183-192; N.T.

9/25/13, 27-28, 32-35). Insofar as Defendant opened the door on cross-examination, the Government was well within its rights to explore with Victim 2 the motivation behind her decision to recant this testimony. Defendant's motion on this claim is likewise denied.

E. Ineffective Assistance of Counsel

Defendant's final claim is that he should be granted an evidentiary hearing or a new trial because his trial attorney was ineffective in failing to undertake a reasonable investigation into the whereabouts of certain "critical" witnesses so as to procure their testimony and/or to follow up on the request for additional investigator funding or request a continuance of the trial.

While Defendant is correct that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary," the test for ineffective assistance of counsel is a well-settled and firmly established one containing two components. Strickland v. Washington, 466 U.S. 668, 695, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674 (1984). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id., 466 U.S. at 687, 104 S. Ct. at 2064. "Second, the defendant must

show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. To establish deficient performance, a "defendant must show that counsel's representation fell below an objective standard of reasonableness." Lewis v. Horn, 581 F.3d 92, 106 (3d Cir. 2009) (quoting Strickland, 466 U.S. at 688, 104 S. Ct. 2052).

In analyzing this first prong of the Strickland test, there is a strong presumption that counsel performed reasonably. Id. (citing Strickland, 466 U.S. at 689). To establish prejudice, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Saranchak v. Beard, 616 F.3d 292, 301 (3d Cir. 2010) (quoting Strickland, 466 U.S. at 694). A reasonable probability is a probability sufficient to undermine confidence in the outcome." Lewis, at 106-107. It is generally advisable to consider the prejudice prong before examining the performance of counsel prong because this course of action is less burdensome to defense counsel. United States v. Booth, 432 F.3d 542, 546 (3d Cir. 2005); United States v. McCoy, 410 F.3d 124, 132, n.6 (3d Cir. 2005); Jones v. United States, 2010 U.S. Dist. LEXIS 106189, at *8 (W.D. Pa. Oct. 5, 2010).

In this case, although Defendant asserts that he is prejudiced by the failure/inability of his defense attorney to

locate "critical witnesses" and that "there were other records that were never obtained that could have contradicted the government's chronology of the case and other leads that could not be developed about Erika Moore's relationship with Mr. Williams," (Supplemental Brief to Post-Trial Motions, pp. 9-10), the only critical witness who Defendant can definitively point to as not having been produced to his prejudice is Stevi Slavin. The record reflects that Ms. Slavin gave a statement to the FBI which was produced to the defense as Jencks Act material on September 16, 2013. In that statement, Ms. Slavin indicated that Defendant was "her boyfriend and her baby," which Defendant construes as demonstrating that she would testify that he never touched her. In fact, Defendant cannot be heard to complain that the jury did not hear the substance of Ms. Slavin's statement or contradiction of Victim 1's testimony regarding his violence toward Ms. Slavin as Defendant himself testified at trial that what Ms. Slavin said in her FBI statement was that nobody ever touched her. (N.T. 9/25/13, 209).

Additionally, the record evinces that in his cross-examination of FBI agent Goodhue, defendant's attorney asked if he had interviewed Stevi Slavin to which Agent Goodhue answered "yes." There followed a brief pause after which defense counsel concluded his cross-examination of the agent without proceeding further on the matter. (N.T. 9/25/13, 137). This strongly

suggests that defense counsel made a strategic, tactical decision to refrain from further questioning on this point, presumably because he felt it would not serve his client's best interests. Again, under Strickland, there is a strong presumption that counsel acted reasonably and it is incumbent upon the defendant to demonstrate otherwise and to show a reasonable probability that the outcome of his trial would have been different had Stevi Slavin been compelled to testify. Defendant here fails to do either. We therefore cannot find that defense counsel's performance was deficient or that an evidentiary hearing or a new trial are warranted on the basis of the alleged ineffectiveness of Defendant's trial counsel.

For all of the reasons outlined above, Defendant's motions are hereby denied pursuant to the attached order.

