

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0797
September Term, 2015

LAWRENCE DWAYNE DURANT

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: May 25, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted by a jury, in the Circuit Court for Baltimore County, of receiving the earnings of a prostitute, assignation, and contributing to the delinquency of a minor¹, appellant, Lawrence Dwayne “Stay Right” Durant, presents a single question for our review: Was the evidence sufficient to sustain his convictions? We believe that it was and shall affirm.

TRIAL

Anna F., eighteen years of age at the time of trial, testified that in September 2014, when she was seventeen-years-old, she traveled from New Jersey, to Baltimore with the intention of engaging in prostitution. She had been a prostitute since she was thirteen-years-old and, of late, had been utilizing a variety of social media to advance her illicit activities. Among other things, she had a Facebook account under the alias “Anna J. Marie.” In September 2014, someone named “Stay Right,” who was later identified as appellant, contacted her through that Facebook account.

The first message “Stay Right” wrote to Anna F. read:

[H]ey, Boo I’m Stay. Just wondering how I could get to know someone like you. I’m on my way out of this world and on the way I spotted you. I’m ready to see if you’re ready to board this ship. Next stop orbit. If you’re loyal and thorough, Team Stay Right should be your next move. Let’s talk and really get to know each other.”

When Anna F. indicated that she “liked” a photograph of a woman in lingerie that was on “Stay Right’s” Facebook page, “Stay Right” sent a message that said “Boo? I see

¹ Appellant was acquitted by the jury of two human trafficking related offenses.

you like my bottom bitch picture.” Unaware of the meaning of the term “bottom bitch” at that time, she later learned that “bottom bitch” or “bottom girl” meant one was “like the top, you’re above all the hos . . . you above everybody, the top bitch.”

In any event, Anna F. asked “Stay Right,” “. . . you have a girlfriend, so why are you trying to talk to me[?]” Several text and phone conversations later Right, “Stay Right” asked her to call him “Daddy” and she agreed. Anna F. explained at trial that “Daddy” is “what you call your pimp.”

Anna F. also communicated with a woman portrayed on “Stay Right’s” Facebook page, who identified herself as “Chiraq.” Chiraq was “Stay Right’s” “bottom girl.” Her real name was “Cheyenne Cazalas.” On Facebook, Chiraq told Anna F.:

[W]e live a life of luxury, traveling to whatever city we decide. We have hit Jersey, New York, Florida, Atlanta, Baltimore. We sleep in the most comfortable, shop in the finest, eat at the best, make nothing but hundos and live life. My man needs another rider, a go getta, someone to come get this money with me, make a family, ride or die for one another.

Chiraq bought a bus ticket for Anna F. to come to Baltimore, but Anna F. overslept and missed the bus. The next morning, Anna F., after buying herself a bus ticket, travelled to Baltimore. “Stay Right” arranged and paid for a taxi to pick her up from the bus station and take her to the Towson East Motel. When she arrived there, she saw “Stay Right” and Chiraq for the first time in person.

Inside a room of that motel, Anna F. and Chiraq had a discussion about the procedures for having sex for money, specifically: “[t]he time limit and the amount and what [she] was supposed to say when [she] got on the phone.” Clients were to pay \$150.00

for one half-hour and \$200.00 for one hour. During that discussion, “Stay Right” took Anna F.’s money and told her she was not allowed to have any money in her possession.

The first night that they were together they smoked marijuana and drank alcohol provided by “Stay Right.” At some point, “Stay Right” and Anna F. stepped outside the room, and “Stay Right” told Anna F. she “was pretty and [she] had a nice body and he wasn’t going to touch [her] until [she] put money in his pocket”

The next day, Chiraq began receiving telephone calls on her cell phone from prospective “customers.” Ultimately, she arranged that day three separate meetings with customers. Each time, “Stay Right” and Anna F. left the motel room while Chiraq conducted her business. When she was finished, Chiraq called “Stay Right,” and “Stay Right” and Anna returned to the room. Then, inside the room, “Stay Right” collected Chiraq’s earnings. The second night, they all again smoked marijuana provided by “Stay Right” and then went to sleep.

The next morning, Anna F. awoke to the sound of “Stay Right” and Chiraq arguing outside the room. She testified that “Chiraq said that ever since I got there . . . [‘Stay Right’] been paying more attention to me than her so they was arguing about that.” She said the argument made her feel uncomfortable; she wanted to leave because, as she put it: “I came there to prostitute and I didn’t do anything so I wanted to leave.” Seeking advice on what to do next, she called her former pimp in New Jersey. He advised her to make up an excuse to leave. She did by telling “Stay Right” that her son was in the hospital. “Stay Right” then responded that he would pay for a cab to get her to the bus station, but, after that, she would have to fend for herself.

After Anna F. left the premises on foot, she called her social worker in New Jersey and asked her to come get her. The social worker declined to do so but took a description of the clothing she was wearing and contacted the Baltimore County Police Department. Officer Kimberly Lankford of that department found Anna F. walking one-half mile from the Towson East Motel sometime after 3:00 p.m. After speaking with Anna F., the officer contacted the Vice Unit, whereupon Detective David Blackburn of that unit instructed Officer Lankford to go to the motel room and arrest its occupants.

Officer Lankford went to the front desk, where he learned that the room had been rented to Cheyenne Cazalas. When Officer Lankford knocked on the door of that room, Cazalas opened the door. He then arrested Cazalas and appellant, who also was inside the motel room.

The motel room was searched by police pursuant to a warrant. Inside, they found the following items: a cell phone belonging to appellant, a paystub bearing his name and an address of 52 Acorn Circle, Towson, Maryland; a marijuana grinder; condoms; lubricant; and a chalice. The chalice was adorned with jewels and the words "Stay Right."

Detective David Blackburn testified that he had received specialized training in human trafficking. He was familiar with the Backpage.com website and explained that "it is a common site where prostitutes advertise business." He also explained that he was familiar with Cheyenne Cazalas, who was charged along with appellant in connection with this case. He testified that he had obtained information via subpoena regarding a number of Backpage.com advertisements showing photographs of Cheyenne Cazalas. One of the advertisements was titled "gorgeous, petite, blonde and beautiful, sweet southern belle

aimed to tease, ready to please.” The payment information associated with the advertisements bore appellant’s name and the 52 Acorn Circle address in Towson. In addition, Detective Blackburn searched appellant’s cell phone and found photographs that were the same as the ones used in the Backpage.com advertisements.

Detective Blackburn testified that the cell phone linked to appellant contained contacts for “wifey” linked to Cheyenne Cazalas’s cell phone number and for “Anna J.” linked to Anna F.’s cell phone. In addition, the cell phone confiscated from Cheyenne Cazalas contained a contact identified as “Daddy” linked to appellant’s cell phone.

Detective Blackburn received records, pursuant to a search warrant, from Facebook.com about user profiles for “Stay Right,” “Chiraq Bout That Munion,” and “Anna J. Marie” (Anna F.). Those records showed that the “Stay Right” user profile matched appellant’s email addresses and phone numbers. The records also showed that Stay Right was in a relationship with “Chiraq Bout That Munion.” Stay Right’s Facebook page showed the same pictures of Chiraq that were used in the Backpage.com advertisements and also showed pictures of appellant holding the chalice mentioned earlier. The records for “Chiraq Bout That Munion” associated the profile with Cheyenne Cazalas’ email address and showed that the user was “in a relationship with Stay Right.” The records also showed that messages had been sent using Facebook between Stay Right, Chiraq, and Anna F.

DISCUSSION

Maryland Rule 4-324(a) provides, in pertinent part, that a defendant may move for judgment of acquittal “at the close of the evidence offered by the State and, in a jury trial,

at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted.” The particularity requirement is mandatory. *Bates v. State*, 127 Md. App. 678, 691 (citation omitted), *cert. denied*, 356 Md. 635 (1999). Maryland Rule 8-131(a) explains that “[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court...”.

“The standard for appellate review of evidentiary sufficiency 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.” *Tracy v. State*, 423 Md. 1, 11 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.” *State v. Stanley*, 351 Md. 733, 750 (1998) (citing *Binnie v. State*, 321 Md. 572, 580 (1991)). “We do not re-weigh the evidence, but “we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.”” *State v. Smith*, 374 Md. 527, 534 (2003) (quoting *White v. State*, 363 Md. 150, 162 (2001)).

Appellant was prosecuted for, *inter alia*, (1) receiving the earnings of a prostitute in violation of Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article (“CL”), § 11-304(2) assignation in violation of CL § 11-306, and (3) contributing to the delinquency of a minor in violation of Md. Code (1974, 2013 Repl. Vol), Courts & Judicial Proceedings Article (“CJ”), § 3-8A-30.

Receiving the Earnings of a Prostitute & Assignment

At the conclusion of the prosecution's case, defense counsel moved for judgment of acquittal, stating, in pertinent part:

Your Honor, as to prostitution, obviously there's testimony that Cheyenne engaged in acts of prostitution but there's nothing to show that it was encouraged or, or facilitated by my client, Lawrence Durant and I would ask that the, the Court grant the Motion for Judgment of Acquittal as to prostitution, as to both counts of prostitution four and five in the indictment.^[2]

The circuit court denied that motion, stating: "As to the prostitution, I think the backpage ad, again, the prime facie case has been made. Mr. Durant's name is on the ad as the customer. The photographs listed on the ad are set forth on his Facebook page and I believe in his phone also."

CL § 11-304 provides, in pertinent part, "[a] person may not receive or acquire money or proceeds from the earnings of a person engaged in prostitution with the intent to: (1) promote a crime under this subtitle; (2) profit from a crime under this subtitle; or (3) conceal or disguise the nature, location, source, ownership, or control of money or proceeds of a crime under this subtitle." CL § 11-306 provides in pertinent part: "(a) A person may not knowingly: (1) engage in . . . assignment by any mean. CL § 11-301(b) defines "assignment" as "the making of an appointment or engagement for prostitution or any act in furtherance of the appointment or engagement," and CL § 11-301(c) defines

² Count 4 in the indictment charged appellant with receiving the earnings of a prostitute, and Count 5 charged him with assignment.

“prostitution” as the performance of a sexual act, sexual contact, or vaginal intercourse for hire.

During trial, appellant’s entire argument with respect to the sufficiency of the evidence for receiving the earnings of a prostitute and assignation was that nothing was “encouraged or facilitated” by appellant. On appeal, appellant contends that the mere fact that Chiraq (Cheyenne Cazalas) gave the proceeds from her prostitution to appellant was “insufficient to prove that appellant acted with the intent specified in the statute.” To the extent that appellant now seeks to expand his argument to include a perceived lack of evidence that he acted with the requisite intent set forth in the statute, he clearly waived that argument by not making it below. ““A defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal””. *Hobby v. State*, 436 Md. 526, 542 (2014), quoting *Tetso v. State*, 205 Md. App. 334, 384 (2012). Therefore, the issue, which appellant now raises, was not preserved for our review.

But, even if that issue had been preserved, the evidence, we believe, was legally sufficient to support the jury’s verdict that appellant was guilty of receiving the earnings of a prostitute and assignation. Indeed, there was no dispute, at trial, that Chiraq and Anna F. were both prostitutes. Furthermore, there was ample evidence that appellant was Chiraq’s pimp and sought to be Anna F.’s pimp, as well. That Anna F. never engaged in her trade while in the employ of appellant is of no moment. There was evidence that appellant placed advertisements on “Backpage.com” for Chiraq to engage in prostitution. Moreover, the photographs used in those advertisements were also found in appellant’s

phone and on his Facebook page. Finally, Anna F. testified that upon returning to the motel room after Chiraq had thrice used the room to engage in prostitution, Chiraq handed the proceeds to appellant each time.

Recognizing that “[t]he element of intent is generally proved by circumstantial evidence,” *Collins v. State*, 89 Md. App. 273, 278 (1991), and considering the evidence in the light most favorable to the State, *Tracy v. State*, 423 Md. 1, 11 (2011), we believe that the evidence was sufficient to find that appellant received the earnings of a prostitute with the intent to promote prostitution-related crimes or with the intent to profit. As for the crime of “assignment,” the evidence was not only legally sufficient that appellant acted “in furtherance of [an] appointment or engagement” for prostitution.

Contributing to the Delinquency of a Minor

At the conclusion of the prosecution’s case defense counsel moved for judgment of acquittal asserting, in pertinent part:

Your Honor, as to contributing to the delinquency of a minor, this, this would mean that Mr. Durant had to engage in some act which would cause her to, to be taken into a delinquency situation and to require supervision. She already was being supervised, by her own testimony, by, by a social worker, who she said had custody of me . . . in New Jersey. There is nothing that Mr. Durant did to cause her to be placed in, in, into custody. She was already in that scenario and for that reason, I would ask that the Court grant my Motion for Judgment of Acquittal as to that count.

The circuit court denied appellant’s motion for judgment of acquittal, stating: “...as to the delinquency of a minor, we heard Anna [F.’s] testimony about smoking and drinking with Mr. Durant and Mr. Durant getting more marijuana for them to have during her short

time in Baltimore. So for those reasons, again, in a light most favorable to the State, I believe the State has sufficient evidence to overcome the Motion, therefore, I will deny it.”

CJ § 3-8A-30(a) provides that: “[i]t is unlawful for an adult willfully to contribute to, encourage, cause or tend to cause any act, omission, or condition which results in a violation, renders a child delinquent or in need of supervision.” CJ § 3-8A-30(b) explains that “[a] person may be convicted . . . even if the child has not been found to have committed a violation or adjudicated delinquent or in need of supervision.” CJ § 3-8A-01(m) defines “delinquent child” as “a child who has committed a delinquent act and requires guidance, treatment, or rehabilitation.” CJ § 3-8A-01(l) defines “delinquent act” as “an act which would be a crime if committed by an adult.”³

Appellant’s argument that the evidence was insufficient is nothing more than a spurious supposition that, because Anna F. was already adjudicated delinquent, appellant was not legally capable of contributing to her delinquency. The fallacy of this argument is laid bare by the text of the statute itself, which provides that “[a] person may be convicted . . . even if the child has not been found to have committed a violation or adjudicated delinquent or in need of supervision.” By its very terms the statute indicates that persons may be prosecuted for contributing to the delinquency of minors after the minor has been adjudicated delinquent; as the statute points out, such an adjudication is not necessary to sustain a prosecution. In any event, we agree with the trial court that the evidence that

³ The statute also defines “Child in Need of Supervision” and “Violation” however those definitions not necessary for this analysis.

appellant provided marijuana to Anna F. in the motel room was legally sufficient to support the jury's verdict for contributing to the delinquency of a minor, not to mention the evidence tending to show that appellant was actively seeking to hire her to work for him as a prostitute.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**