

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO :  
Plaintiff-Appellee : C.A. CASE NO. 23562  
vs. : T.C. CASE NO. 08CR04321  
ADAM D. HARRIS : (Criminal Appeal from  
Defendant-Appellant : Common Pleas Court)

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O P I N I O N

Rendered on the 12<sup>th</sup> day of March, 2010.

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GRADY, J.:

{¶1} Defendant, Adam Harris, was found guilty following a trial to the court of promoting prostitution, in violation of R.C. 2907.22(A)(2). The trial court sentenced Defendant to five years of community control.

{¶2} Defendant timely appealed to this court from his conviction and sentence. Defendant's appellate counsel filed a

brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 19 L.Ed.2d 493, stating that she could find no meritorious issues for appellate review. We notified Defendant of his appellate counsel's representations and afforded him ample time to file a pro se brief. None has been received. This case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶3} Defendant's appellate counsel has identified one possible issue for appeal:

ASSIGNMENT OF ERROR

{¶4} "THE TRIAL COURT ERRED WHEN IT FOUND THAT APPELLANT VIOLATED SECTION 2907.22 OF THE OHIO REVISED CODE AS SUCH FINDING IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶5} A weight of the evidence argument challenges the believability of the evidence in relation to the reasonable doubt standard, and asks which of the competing inferences suggested by the evidence is more believable or persuasive. *State v. Hufnagle* (Sept. 6, 1996), Montgomery App. No. 15563, unreported.

The proper test to apply to that inquiry is the one set forth in *State v. Martin* (1983), 20 Ohio App.3d 172, 175:

{¶6} "[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the

evidence, the jury lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Accord: *State v. Thompkins* (1997), 78 Ohio St.3d 380.

{¶ 7} The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve. *State v. DeHass* (1967), 10 Ohio St.2d 230. In *State v. Lawson* (Aug. 22, 1997), Montgomery App.No. 16288, we observed:

{¶ 8} "[b]ecause the factfinder . . . has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness."

{¶ 9} This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at its verdict. *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03.

{¶ 10} R.C. 2907.22(A)(2), which prohibits promoting

prostitution, states: "No person shall knowingly [s]upervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire." "'Prostitute' means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another." R.C. 2907.01(D). "'Sexual activity' means sexual conduct or sexual contact, or both." R.C. 2907.01(C). "Sexual conduct" includes fellatio. R.C. 2907.01(A). "Sexual contact" includes touching the erogenous zone of another for the purpose of sexually arousing or gratifying either person. R.C. 2907.01(B). "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶ 11} The evidence presented in this case demonstrates that on October 30, 2008, while monitoring the internet website Craigslist for prostitution activities, Dayton police discovered, under the erotic services section, an advertisement for massages performed in downtown Dayton, Ohio. Using the fictitious name Jeremy, police responded to the ad, and within twenty minutes they were contacted by "Kitty," who offered a massage and oral sex for two hundred dollars. Kitty provided police with an address at

57 East Riverview Avenue, Apartment 15, and a meeting was arranged for 2:00 p.m. on October 30, 2008. Kitty said she would have a man meet Jeremy outside the apartment building and escort him inside.

{¶ 12} When plain clothes police officers arrived outside the apartment building they were met by Defendant Harris. The officers identified themselves and asked Defendant if they could talk to him and Kitty inside the apartment about the Craigslist ad. Defendant agreed to that. Defendant took the officers inside Apartment 15, where they encountered a female, Kathleen Kievitt, who was dressed only in black lingerie. After Defendant consented to a search of the apartment, police discovered a ledger book with names, dates, times and phone numbers, photos of Ms. Kievitt wearing the same clothing that appears in the Craigslist ad, a computer, a bottle of lotion, and sex toys. Police also discovered two hundred dollars they learned about from Ms. Kievitt on Defendant's person.

{¶ 13} Defendant admitted to police that he placed the advertisements on Craigslist, that he responded to potential clients who answered the ads, and that he handled all the money paid to Ms. Kievitt. Defendant also acknowledged that the names and phone numbers in the ledger book were people who had responded to his Craigslist ad. When Detective Coberly asked Defendant if

he facilitated the massages and related masturbation and took the money for it, Defendant said, "yes," that is how he now gets his money since becoming unemployed.

{¶ 14} Defendant suggests that the evidence does not demonstrate that he controlled or managed the activities of a prostitute who is engaging in sexual activity for hire. The evidence presented, specifically Defendant's admissions to the police officers regarding his role in this activity, is clearly sufficient to allow a reasonable trier of facts to find that Defendant supervised or managed the activities of a prostitute in engaging in sexual activity for hire. Managing is a broad term that clearly encompasses what Defendant admitted he did. Furthermore, Ms. Kievitt's offer to perform oral sex or masturbation for two hundred dollars clearly involves engaging in sexual activity for hire, which is the very definition of a prostitute. R.C. 2907.25(A).

{¶ 15} The credibility of the witnesses and the weight to be given to their testimony were matters for the trier of facts, the trial court here, to decide. *DeHass*. The court did not lose its way simply because it chose to believe the State's witnesses, which it had a right to do.

{¶ 16} Reviewing this record as a whole, we cannot say that the evidence weighs heavily against a conviction, that the trier

of facts lost its way in choosing to believe the State's witnesses, or that a manifest miscarriage of justice has occurred. Defendant's conviction is not against the manifest weight of the evidence. This assignment of error lacks arguable merit.

{¶ 17} In addition to reviewing the possible issue for appeal raised by Defendant's appellate counsel, we have conducted an independent review of the trial court's proceedings and have found no error having arguable merit. Accordingly, Defendant's appeal is without merit and the judgment of the trial court will be affirmed.

DONOVAN, P.J. And BROGAN, J., concur.

Copies mailed to:

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Hon. Michael T. Hall