[Cite as *State v. Ford*, 2014-Ohio-4810.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	
CORTYCO FORD	:	Case No. 2014CA00060
	:	
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Alliance Municipal Court, Case No. 2013CRB02195
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	October 27, 2014

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
MATTHEW S. KUHN City of Alliance Assistant Law Director 470 East Market Street Alliance, OH 44601	GEORGE URBAN 116 Cleveland Ave. NW, Suite 808 Canton, OH 44702

Baldwin, J.

{¶1} Appellant Cortyco Ford appeals a judgment of the Alliance Municipal Court convicting him of procuring in violation of R.C. 2907.23(A)(2) and sentencing him to 180 days incarceration with 165 days suspended. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} Appellant met Aaron Bowersock in August of 2013 on "Adam For Adam," a gay dating web site. The two met face to face in September, and had sex at appellant's house. Bowersock told appellant that a friend of his thought he should try to be an escort because he needed money. Appellant told Bowersock that he could get him clients.

{¶3} Bowersock returned to appellant's home a second time to meet a man appellant had arranged for Bowersock to have sex with. Appellant told Bowersock to go upstairs, take off his clothes, lay down on the bed, and wait for the client to come up to the bedroom. Appellant told Bowersock to have sex with the client and to perform oral sex. Pursuant to appellant's instructions, Bowersock had sex and oral sex with the client. Appellant paid Bowersock $50.00 for the encounter.

{¶4} Bowersock was subsequently arrested at Walmart by Detective Matthew Shatzer in a solicitation sting. Bowersock turned his cell phone over to Det. Shatzer. In his phone, Shatzer found messages to and from appellant, who was listed in the phone under the name "Jordan Pimp." On August 31, 2013, appellant texted Bowersock, "When are you free to come up again?" Bowersock responded, "How much money?" Appellant replied, "I could make you some money. I probably have some real clients for you." Tr. 97. On September 3, 2013, appellant texted Bowersock, "When can you

come up? Have clients for you." Bowersock responded, "How much money and white or black?" Appellant responded, "They are white, probably fifty dollars a session." Bowersock asked what they wanted to do, and appellant responded, "Get sucked, fuck you." Bowersock responded that he wanted $100.00. Appellant responded, "They won't pay that much for a person they haven't seen or heard of first." Tr. 158.

{¶5} Appellant was arrested on October 11, 2013, and charged with one count of promoting prostitution in violation of R.C. 2907.222(A)(2). The case was bound over to the grand jury. On December 10, 2013, appellant was indicted with procuring in violation of R.C. 2907.23(A)(2), a first degree misdemeanor. The case proceeded to jury trial in the Alliance Municipal Court. Appellant discharged his attorney after voir dire, and represented himself with standby counsel. Appellant was convicted as charged and sentenced to 180 days incarceration, with 165 days suspended. He assigns two errors on appeal:

{¶6} "I. THE APPELLANT'S CONVICTION FOR ONE COUNT OF PROCURING IN VIOLATION OF R.C. 2907.23 WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶7} "II. THE TRIAL COURT ERRED IN PERMITTING THE STATE OF OHIO TO INTRODUCE EVIDENCE WHICH FAILED TO COMPORT WITH THE BEST EVIDENCE RULE AND WAS INADMISSIBLE HEARSAY."

I.

{¶8} In his first assignment of error, appellant argues that the judgment is against the manifest weight and sufficiency of the evidence because there is no evidence that appellant received any money for the sexual encounter which occurred in

his home between Bowersock and the other man. He argues the evidence reflects that Bowersock received $50.00, but does not demonstrate that appellant gained anything monetarily from the transaction.

{¶9} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a thirteenth juror and "in reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in evidence the jury 'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *State v. Thompkins*, 78 Ohio St. 3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, quoting *State v. Martin*, 20 Ohio App. 3d 172, 175, 485 N.E.2d 717 (1983).

{¶10} An appellate court's function when reviewing the sufficiency of the evidence is to determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St. 3d 259, 574 N.E.2d 492, paragraph two of the syllabus (1991).

{¶11} Appellant was convicted of procuring as defined by R.C. 2907.23(A)(2):

{¶12} "(A) No person, knowingly and for gain, shall do either of the following:

{¶13} "(2) Procure a prostitute for another to patronize, or take or direct another at the other's request to any place for the purpose of patronizing a prostitute."

{¶14} Appellant texted Bowersock that he could get him clients. Appellant told Bowersock that he would be paid $50.00. Bowersock appeared at appellant's home in Alliance, and appellant told Bowersock what to do when the client came upstairs to the

bedroom. Bowersock was paid the $50.00 by appellant, not by the client, and appellant told Bowersock how much he would receive. Bowersock admitted that he did not know whether appellant kept any money for himself, although his "gut instinct" was that the client gave appellant more than $50.00. Bowersock testified, "Cortyco told me this is exactly what will happen. He will come. While I'm upstairs, he'll come upstairs. I'll be on the bed. I'll be naked. And then we'll have sex and then I'll come back down and get the money, and then that way there's no questions asked or whatever." Tr. 91. Bowersock understood that if he and the client intended to meet again, it would have to be arranged through appellant.

{¶15} From all of this evidence, a rational trier of fact could have concluded that appellant benefitted financially from the arrangement even though Bowersock did not know exactly how much money the client gave appellant. Further, the jury did not lose its way in concluding that appellant benefitted financially from the sexual transaction he arranged between Bowersock and the client.

{¶16} The first assignment of error is overruled.

II.

{¶17} In his second assignment of error, appellant argues that the court erred in admitting the transcript of the text messages between appellant and Bowersock prepared by Det. Shatzer. He argues the texts are inadmissible hearsay, and also argues that the transcript of the texts was not the best evidence because the cell phone itself was available.

{¶18} Appellant concedes in his brief that the text messages he wrote were admissible, but argues that the texts written by Bowersock were inadmissible hearsay.

Appellant did not object on this basis at trial, and therefore we must find plain error to reverse. Evid. R. 103. In order to prevail under a plain error analysis, appellant bears the burden of demonstrating that the outcome of the trial clearly would have been different but for the error. *State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978). Notice of plain error "is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *Id*. at paragraph three of the syllabus.

{¶19} Appellant has not demonstrated plain error in the admission of text messages sent by Bowersock to appellant. Bowersock testified regarding his conversations with appellant concerning appellant obtaining clients for him and the details of the transaction which led to the procuring charge, and the text messages were merely cumulative of his in-court testimony. Further, the text messages sent by appellant, which he admits are not hearsay pursuant to Evid. R. 801, set forth facts concerning his ability to obtain clients for Bowersock to perform sexual acts for money.

{¶20} Appellant also argues that the admission of the transcript of the text messages was error pursuant to the best evidence rule, as the cell phone itself was available. He also argues that the transcript was prepared by Det. Shatzer, who was not a neutral transcriptionist.

{¶21} Evid. R. 1002 provides, "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio." Evid. R. 1004 provides exceptions to the requirement of the admission of the original writing, recording or photograph:

> The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:
>
> (1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
>
> (2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or
>
> (3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be subject of proof at the hearing, and that party does not produce the original at the hearing; or
>
> (4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

{¶22} While the best evidence in the instant case would have been the cell phone itself rather than the typed transcript of the messages as prepared by the detective, we find that any error in the admission of the transcript rather than the cell phone was harmless. Bowersock testified that the transcript accurately reflected the text messages on his phone between himself and appellant. Further, appellant admitted that he sent the text messages set forth in the transcript. Tr. 151, 154-162. The record does not reflect any dispute concerning the accuracy of the transcript prepared from the cell phone, as both Bowersock and appellant testified to the accuracy of the text messages reflected in the transcript.

{¶23} The second assignment of error is overruled.

{¶24} The judgment of the Alliance Municipal Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.