

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio

Court of Appeals No. H-11-015

Appellee

Trial Court No. CRI-2010-0678

v.

Yathurn A. Furqan

DECISION AND JUDGMENT

Appellant

Decided: March 22, 2013

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney,
for appellee.

Sarah A. Nation, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Yathurn Furqan, appeals the judgment of the Huron County Court of Common Pleas, where he was found guilty of compelling prostitution and sentenced to a term of four years in prison, along with a \$1,000 fine and classification as a Tier II sex offender. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} On July 14, 2010, B.G., a 15-year-old girl, left her home in Wakeman, Huron County, Ohio with her 20-year-old boyfriend, Josiah Davis, to spend time with him at his house in Copley, Ohio. Shortly after they arrived, Davis' father instructed them to leave the premises because he found them smoking marijuana in the house. They then drove to a motel about a mile away from Davis' house.

{¶ 3} After checking into the motel, Furqan approached Davis and told him that the two men could make money off of B.G. Furqan told B.G. that she was very beautiful and that she could earn some money as a prostitute. Davis and B.G. rejected Furqan's offer, and went to their room. On the way to their room, they noticed that Furqan had two rooms, one for him and one for the prostitutes he had with him that day. The women in the other room were sleeping at the time. A short time later, B.G. left her room in order to smoke a cigarette. As she did so, she struck up a conversation with the prostitutes, and was persuaded to travel to Columbus with them.

{¶ 4} As Furqan made his way to Columbus with B.G., he provided her with heroin and cocaine and had her work as a prostitute, despite knowing that she was only 14 or 15 years old. They ultimately arrived in Columbus at 3 a.m., and Furqan dropped B.G. off at a "working stroll" and told her he would pick her up at 8 a.m. During this time, B.G. contacted Davis and asked him to come pick her up. After picking B.G. up from Columbus, Davis drove back to Copley, where they called B.G.'s mother. B.G.'s mother ordered Davis to bring B.G. home.

{¶ 5} Once B.G. returned home, her mother took her to the Huron County Sheriff's Department. With the assistance of Detective Robert McLaughlin, a sting operation was setup in which B.G. made several phone calls to Furqan in order to have him pick her up so she could engage in further prostitution. Ultimately, Furqan proceeded to Wakeman and was arrested.

{¶ 6} On August 18, 2010, Furqan was indicted by the Huron County Grand Jury on one count of compelling prostitution in violation of R.C. 2907.21(A)(2)(a), a felony of the third degree. At his final pretrial on May 27, 2012, he waived his right to a jury, and a bench trial ensued. After a four-day trial, the court found Furqan guilty of the sole count in the indictment and sentenced him to a four-year prison term, along with a \$1,000 fine and classification as a Tier II sex offender.

B. Assignments of Error

{¶ 7} Furqan has timely appealed, raising the following assignments of error:

I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHERE THE DEFENDANT'S WAIVER OF JURY TRIAL WAS NOT KNOWING AND VOLUNTARY.

II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN ADMITTING "OTHER ACTS" INTO EVIDENCE.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S RULE 29 MOTION AND FURTHER ERRED IN FINDING

DEFENDANT GUILTY WITHOUT PROOF OF VENUE BEYOND A REASONABLE DOUBT.

II. Analysis

A. Waiver of Jury Trial

{¶ 8} In his first assignment of error, Furqan argues that his waiver of jury trial was not knowing and voluntary, because the court failed to inquire about the voluntariness of the waiver or inform Furqan of the rights he was giving up by waiving the jury trial.

{¶ 9} R.C. 2945.05, which provides for the waiver of a defendant's right to a jury trial in criminal prosecutions, states, in pertinent part:

In all criminal cases pending in courts of record in this state, the defendant may waive a trial by jury and be tried by the court without a jury. Such waiver by a defendant, shall be in writing, signed by the defendant, and filed in said cause and made a part of the record thereof.

* * *

Such waiver of trial by jury must be made in open court after the defendant has been arraigned and has had opportunity to consult with counsel. Such waiver may be withdrawn by the defendant at any time before the commencement of the trial.

In addition to the statutory criteria concerning waiver of a defendant's right to a jury trial, the Ohio Supreme Court has stated that the waiver must be voluntary, knowing, and

intelligent. *State v. Ruppert*, 54 Ohio St.2d 263, 271, 375 N.E.2d 1250 (1978). “Waiver may not be presumed from a silent record; however, if the record shows a jury waiver, the verdict will not be set aside except on a plain showing that the waiver was not freely and intelligently made.” *State v. Bays*, 87 Ohio St.3d 15, 19, 716 N.E.2d 1126 (1999), citing *Adams v. United States ex rel. McCann*, 317 U.S. 269, 281, 63 S.Ct. 236, 87 L.Ed. 268 (1942).

{¶ 10} Here, Furqan acknowledges that he signed a written waiver of jury trial, which was filed on the first day of trial. In addition, the record reflects that a colloquy was conducted four days prior to the commencement of the trial, in which Furqan requested a bench trial, was given an opportunity to consult with his counsel, and was asked twice whether he wished to waive his right to a jury trial. After he responded in the affirmative, Furqan signed the written waiver of jury trial.

{¶ 11} Furqan now challenges the trial court’s acceptance of his waiver on the basis that it was not knowing, voluntary, and intelligent. He argues that the trial court was required to conduct a colloquy to ascertain his knowledge of the rights that were being given up. However, the Ohio Supreme Court has stated that “[t]he Criminal Rules and the Revised Code are satisfied by a written waiver, signed by the defendant, filed with the court, and made in open court, after arraignment and opportunity to consult with counsel.” *State v. Jells*, 53 Ohio St.3d 22, 26, 559 N.E.2d 464 (1990). That is precisely what was done in this case. Once R.C. 2945.05 has been satisfied, “there is no

requirement for a trial court to interrogate a defendant in order to determine whether he or she is fully apprised of the right to a jury trial.” *Id.* at paragraph one of the syllabus.

{¶ 12} Indeed, signed written waivers are presumed constitutionally valid. “[A] written waiver is presumptively voluntary, knowing, and intelligent.” *State v. Bays*, 87 Ohio St.3d 15, 19, 716 N.E.2d 1126 (1999), citing *United States v. Sammons*, 918 F.2d 592, 597 (6th Cir.1990). Technical knowledge of the jury trial right is not required for a written jury waiver to be effective. *See Sammons* at 596.

{¶ 13} Since Furqan’s signed waiver conforms to the mandates of R.C. 2945.05 and the trial court’s colloquy with Furqan was constitutionally sufficient, no error occurred. Accordingly, Furqan’s first assignment of error is not well-taken.

B. “Other Acts” Evidence

{¶ 14} In his second assignment of error, Furqan argues that the trial court erred when it allowed the state to introduce “other acts” evidence regarding the payment of money and the provision of cocaine to a prostitute he had hired named Malissia Hall. These acts allegedly occurred long after the incidents giving rise to the case sub judice. Thus, Furqan argues that the trial court should have excluded Hall’s testimony as impermissible “other acts” evidence.

{¶ 15} “The admission or exclusion of relevant evidence rests within the sound discretion of the trial court.” *State v. Sage*, 31 Ohio St.3d 173, 180, 510 N.E.2d 343 (1987). Thus, we apply an abuse of discretion standard. *See id.* A trial court abuses its

discretion when its attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 16} Regarding “other acts” evidence, Evid.R. 404(B) states in relevant part:

(B) Other crimes, wrongs or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

{¶ 17} Here, the state argues that it was merely offering Hall’s testimony to rebut Furqan’s contention that his traveling to Huron County was the result of entrapment.

{¶ 18} “The defense of entrapment is established where the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order to prosecute.” *State v. Doran*, 5 Ohio St.3d 187, 449 N.E.2d 1295 (1983), paragraph one of the syllabus. “However, entrapment is not established when government officials ‘merely afford opportunities or facilities for the commission of the offense’ and it is shown that the accused was predisposed to commit the offense.” *Id.* at 192, quoting *Sherman v. United States*, 356 U.S. 369, 372, 78 S.Ct. 819, 2 L.Ed.2d 848 (1958).

{¶ 19} While Furqan correctly states that the testimony proffered by the state “did not involve the alleged victim in the within case,” he overlooks the fact that the state was

offering it specifically for the purpose of disproving Furqan's entrapment defense. Offered for that purpose, the testimony was probative of Furqan's predisposition to engage women in order to have them work for him as prostitutes. If believed, that evidence would negate Furqan's entrapment defense. Therefore, the "other acts" about which Hall testified were introduced for a purpose other than to prove Furqan's character in order to show action in conformity therewith. As a result, Evid.R. 404(B) was not violated and the trial court did not abuse its discretion in admitting the evidence.

{¶ 20} Accordingly, Furqan's second assignment of error is not well-taken.

C. Proof of Venue

{¶ 21} In his third assignment of error, Furqan challenges the trial court's denial of his Crim.R. 29 motion for acquittal made at the end of the prosecution's case-in-chief. In that motion, Furqan argued that Huron County was not the proper venue for this case because none of the events leading up to the charge for compelling prostitution occurred in Huron County.

{¶ 22} An appellate court reviews a ruling on a Crim.R. 29(A) motion under the same standard used to determine whether the evidence was sufficient to sustain a conviction. *State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, 824 N.E.2d 959, ¶ 40. "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). "The relevant inquiry is 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 (1991), paragraph two of the syllabus.

{¶ 23} R.C. 2901.12(A) provides: “The trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element of the offense was committed.” Proper venue is also guaranteed by Section 10, Article I of the Ohio Constitution. While it is not necessary that the venue of the crime be stated in express terms, it is essential that it be proven by all the facts and circumstances, beyond a reasonable doubt, that the crime was in fact committed in the county and state alleged. *State v. Dickerson*, 77 Ohio St. 34, 82 N.E. 969 (1907), paragraph one of the syllabus. Finally, the court has broad discretion to determine the facts which would establish venue. *Toledo v. Taberner*, 61 Ohio App.3d 791, 793, 573 N.E.2d 1173 (6th Dist.1989).

{¶ 24} Here, Furqan was convicted for compelling prostitution in violation of R.C. 2907.21(A)(2)(a), which provides:

(A) No person shall knowingly do any of the following:

* * *

(2) Induce, *procure*, encourage, solicit, request, or otherwise facilitate either of the following:

(a) A minor to engage in sexual activity for hire, whether or not the offender knows the age of the minor. (Emphasis added.)

{¶ 25} Pursuant to R.C. 2901.12(A), venue is proper in the territory in which any element of the crime was committed. Specific to this case, venue is proper in the territory in which Furqan “procured” B.G. Webster’s dictionary defines “procure” as “to get and make available for promiscuous sexual intercourse.” Merriam-Webster’s Collegiate Dictionary 930 (1996). At the time he was arrested, Furqan was traveling to Wakeman, Huron County, Ohio to pick up B.G. in order to take her back to Columbus to engage in prostitution. Therefore, since the procurement of B.G. occurred in Huron County, venue was proper there.

{¶ 26} Accordingly, Furqan’s third assignment of error is not well-taken.

III. Conclusion

{¶ 27} Based on the foregoing, the judgment of the Huron County Court of Common Pleas is hereby affirmed. Costs are assessed to appellant in accordance with App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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