**[Cite as *State v. Calhoun*, 2017-Ohio-8488.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
**No. 105442**

## STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

## TOREY RASHAD CALHOUN

DEFENDANT-APPELLANT

**JUDGMENT:**
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-598918-A

**BEFORE:** Boyle, J., Kilbane, P.J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** November 9, 2017

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MARY J. BOYLE, J.:

**{¶1}** Defendant-appellant, Torey Rashad Calhoun, appeals from a judgment convicting him of promoting prostitution and possessing criminal tools. He raises two assignments of error for our review:

> 1. The trial court erred by admitting improper expert testimony in violation of the Ohio Rules of Evidence, the Ohio Rules of Criminal Procedure and supporting case law.
>
> 2. The guilty verdict cannot be upheld because evidence and testimony presented at trial did not establish appellant's [guilt] beyond a reasonable doubt.

**{¶2}** Finding no merit to his appeal, we affirm.

## I. Procedural History and Factual Background

**{¶3}** In September 2015, Calhoun was indicted on two counts: promoting prostitution in violation of R.C. 2907.22(A)(2), a fourth-degree felony, and possessing criminal tools (condoms and cell phones) in violation of R.C. 2923.24(A) with a furthermore clause that the tools were intended for use in the commission of a felony, which elevated the offense from a first-degree misdemeanor to a fifth-degree felony. Calhoun pleaded not guilty to all charges and waived his right to a jury trial. The following evidence was presented to the bench.

**{¶4}** Officer Stephen Krebs of the Westlake Police Department testified that on August 28, 2015, he was investigating prostitution in the city of Westlake. He found a local ad on backpage.com in the adult section by using the keyword, "Westlake." The ad stated:

> Hello Gentlemen my name is Heavenly[.] ARE YOU READY TO HAVE THE BEST TIME OF YOUR LIFE? IF SO IM JUST THE GIRL YOU BEEN LOOK FOR!! BODY OF GODDESS. THE FACE OF AN ANGEL!!! NO NEED TO BE SHY...100% REAL & RECENT PICS[.] VERY OPEN MINDED[.] TREAT YOURSELF TO THE BEST ME!! Out calls in calls call 330-445-0002[.]

(Emojis omitted.)

**{¶5}** The ad then states that the "poster's age is 23," the "location" is "Cleveland, Westlake Cleveland." And there is a "post ID" number of "23846062 Cleveland."

**{¶6}** Officer Krebs contacted Detective James Scullin to inform him of the backpage.com ad. Detective Scullin, posing undercover as a prospective "client," sent a text message to the number posted in the ad asking for a "date." Through back and forth text messages to the number, Detective Scullin learned what "the rates were" and that he should come to the Extended Stay America ("Extended Stay") hotel on Clemens Road in Westlake for his "date."

**{¶7}** Detective Scullin testified that he has personally investigated, or has been involved in, at least 75 prostitution cases through backpage.com. He explained that when people request services on backpage.com, they do not just ask for "sex." They use "a somewhat coded language." Instead of asking for "sex," they ask for a "date." He also explained that people use the term "donation" because they do not want to say that they are "paying for services."

**{¶8}** Detective Scullin stated that when he pulled into the hotel, he could see into the lobby. He immediately recognized the desk clerk, who he had dealt with in the past. He then saw a male inside the lobby, which he said "piqued" his interest because he

knew from his experience that a "prostitute" does not usually work alone. The male appeared to be talking to the hotel desk clerk. At that point, Detective Scullin radioed to Officer Krebs and another officer, Officer Funari, to "just be aware" of the man in the lobby.

**{¶9}** Detective Scullin contacted the number posted in the ad to inform the prostitute that he was there. He got out of his vehicle when he received a call from a female telling him where to go. He saw a female come out of the hotel to meet him. He then went with the female into the building of the hotel that he said she accessed with a key card. The moment he stepped into the building, Detective Scullin identified himself as a police officer and detained the female. He also took the key card from her at that time with the intent to find out what room the key card belonged to.

**{¶10}** Detective Scullin called Officers Krebs and Funari, both nearby in marked police cars, to come to the hotel. At that time, he also saw the male who had been inside the lobby "walking in the east parking lot" from the lobby area toward the southeast corner of the property.

**{¶11}** Detective Scullin took the key card to the clerk at the front desk and learned that it belonged to room 301. The officers obtained a search warrant to search room 301. When they arrived at the room, Calhoun was in the hallway standing by room 301. Detective Scullin later learned that room 301 was registered in Calhoun's name.

**{¶12}** Detective Scullin stated that Calhoun denied knowing the female at first, but then eventually admitted to knowing her. Calhoun told the officers that he met the

female in Arizona and drove her from Arizona to Ohio. Calhoun also stated that he purchased a cell phone for the female. The officers found an empty cell phone box and condoms in the room. They also confiscated the female's cell phone as well as Calhoun's cell phone.

**{¶13}** Officer Krebs testified that while searching room 301, he found a copy of directions from Phoenix, Arizona to Westlake, Ohio that someone had printed from Rand McNally driving directions and maps. On the printed directions, someone had written: "Can't miss out new girl best." Officer Krebs also found handwritten notes in the hotel room. The notes were admitted into evidence. The notes stated:

> Hello Gentlemen
> Are you read have the best
> time of your life?
> If so I'm just the girl
> you've been looking for!!
> Body of a godess
> The face of an angel!!!
>
> No need to be shy...
> 100% real and recent pics
> very open minded
> f.e.t.i.s.h. friendly
> ...No games
> Treat yourself to the best
> Me!!
>
> I only cater to clean
> respectful, generous
> gentlemen.
>
> A high class
> class companionship
> at it finest! I'm
> an extremely down

to earth, smart, sexy
girl who just love 2
have fun!

Allow me 2 pamper
you with my limiless
skill and sensual
charm...
I provide the
ultimate experience

Available now
Pretty face + seductive brow eye
Spanish 120 ~ 32 Ds's
clean, cozy (friendly)
always look/smells amazing
100% me recent & real Ph
Available am/pm

Your lucky day 80 qk 23
120 lbs 32 Ds's
Spanish

**{¶14}** The officers also found marijuana, a scale, and a marijuana "grinder" in the room that the female admitted belonged to her.

**{¶15}** Detective Scullin testified that he gave the cell phones to Officer Richard Johnson to conduct a forensic examination on them. Officer Johnson testified that he works in the digital forensics lab as an examiner. He said that he processes cell phones for the Westlake Police Department and reports on those findings. Officer Johnson obtained his training through Cellebrite that also makes the software that the police department uses to extract information from cell phones and computers. Officer Johnson obtained several certifications from Cellebrite, including certified logical operator and certified physical analyst. Officer Johnson also was a Cellebrite certified

mobile examiner, which he stated was the highest level of training an officer can obtain. He also stated that he was "one of the first 25 to attain that certification in the world."

**{¶16}** Officer Johnson was able to extract 41 images from the female's cell phone. Twenty of the images were taken between August 24 and August 28, 2015. The 20 images consisted of provocative photos of the female wearing only lingerie.[1] Officer Johnson was able to determine from the "geotag" locations of the 20 images that most of them were associated with the area of the Extended Stay hotel. Officer Johnson further stated that the first call received on the female's phone was on August 24, 2015, and the last call was received on August 28, 2015.

**{¶17}** Officer Johnson testified that he was able to "associate" a contact name and number in the female's cell phone that matched the cell phone that was taken from Calhoun; the contact name was "Tracy." Officer Johnson stated that there was only one text "chat" between the female and "Tracy" found on both phones. The "chat" began on August 24, 2015, with the female sending four photos of herself to "Tracy." On August 25, the following text exchange occurred between the female and "Tracy":

> The female: "I post it again"
> Tracy: "Cool be patient sexy"
> The female: "Ok"
> Tracy: "How long he say he would be"

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[1]The 20 images are not in the record before us. According to the testimony presented at trial, they were contained on a DVD that was admitted into evidence as state's exhibit No. 5. But the transcript indicates that state's exhibit No. 5 was "returned to the Westlake Police Department." There are, however, three provocative photos of the female wearing only lingerie contained in state's exhibit No. 1 and three similar photos contained in state's exhibit No. 16. Officer Johnson testified that the 20 images were "consistent with" the three images contained in state's exhibit No. 16.

The female: “I going check right now”
Tracy: “You don’t know”

**{¶18}** The female sent two more text messages to “Tracy,” but not until two and three days later. On August 27, 2015, the female texted “Tracy”: “He trying to spend a 100[.]” And then on August 28, the female texted “Jelly” to “Tracy.”

**{¶19}** Officer Johnson also extracted the internet browsing history from each phone. Both phones contained a search history of backpage.com. Calhoun’s phone also contained searches for backpage.com in four other cities as well as several escort services.

**{¶20}** Officer Johnson also extracted many text exchanges on the female’s phone to the female’s phone from what appears to be many different prospective clients. Thirty-five pages of these exchanges were entered into evidence.

**{¶21}** At the close of the state’s case, Calhoun moved for a Crim.R. 29 acquittal. The trial court denied it as to both counts, but granted it as to the furthermore clause attached to the charge of possessing criminal tools (making the charge a first-degree misdemeanor).

**{¶22}** The trial court found Calhoun guilty of both counts. It sentenced him to two years of community control sanctions for promoting prostitution, a fourth-degree felony, and notified him that he would be sentenced to six months in prison if he violated the terms of his sanctions. The trial court then sentenced him to 30 days in jail for possessing criminal tools, a first-degree misdemeanor, which it then suspended. The trial court further notified him that he would be subject to a mandatory five years of

postrelease control if he ended up going to prison. It further notified him that he would be classified as a Tier I sex offender. It is from this judgment that Calhoun now appeals.

## II. Expert Testimony

**{¶23}** In his first assignment of error, Calhoun claims that the trial court erred when it admitted improper expert testimony through the testimony of Officer Richard Johnson in violation of Crim.R. 16(K) and Evid.R. 702.

**{¶24}** The admission or exclusion of evidence lies in the trial court's sound discretion. *State v. Taylor*, 8th Dist. Cuyahoga No. 98107, 2012-Ohio-5421, ¶ 22, citing *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343 (1987). To find that a trial court abused that discretion, "the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, not the exercise of reason but instead passion or bias." *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 662 N.E.2d 1 (1996). Further, this abuse of discretion must have materially prejudiced the defendant. *State v. Lowe*, 69 Ohio St.3d 527, 532, 634 N.E.2d 616 (1994), citing *State v. Maurer*, 15 Ohio St.3d 239, 473 N.E.2d 768 (1984).

**{¶25}** The state set forth Officer Johnson's qualifications regarding cell phone extractions and requested the trial court to qualify him as an expert. Over Calhoun's objection, the trial court found Officer Johnson to be an expert in the field and permitted him to give expert testimony.

**{¶26}** Evid.R. 702 provides in relevant part that "[a] witness may testify as an

expert if all of the following apply:

> (A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;
>
> (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;
>
> (C) The witness' testimony is based on reliable scientific, technical, or other specialized information.

**{¶27}** Crim.R. 16(K) states the following:

> An expert witness for either side shall prepare a written report summarizing the expert witness's testimony, findings, analysis, conclusions, or opinion, and shall include a summary of the expert's qualifications. The written report and summary of qualifications shall be subject to disclosure under this rule no later than twenty-one days prior to trial, which period may be modified by the court for good cause shown, which does not prejudice any other party. Failure to disclose the written report to opposing counsel shall preclude the expert's testimony at trial.

**{¶28}** In this case, Calhoun does not challenge Officer Johnson's qualifications regarding cell phone data extraction, nor does he argue that Officer Johnson is not an expert in extracting information from a cell phone. Calhoun also admits that the state provided his trial counsel with a copy of Officer Johnson's cell phone extraction report and a copy of Officer Johnson's curriculum vitae. Calhoun's sole argument is that the written report the state gave to him did not comply with Crim.R. 16(K) because it only included the results of Officer Johnson's extraction and not a summary of his "testimony, findings, analysis, conclusions, or opinion."

**{¶29}** Officer Johnson's report was not admitted into evidence and Calhoun did

not proffer the report into the record. A DVD of the extraction was admitted into evidence as state's exhibit No. 5, but we do not have that DVD in the record before us either because the transcript indicates that it was "returned to the Westlake Police Department." Thus, we cannot independently review the extraction report.

**{¶30}** The appellant in an appeal has the responsibility of ensuring that the record is complete and contains a transcript of all "evidence" relevant to the issues raised. *State v. Price*, 11th Dist. Trumbull No. 94-T-5056, 1995 Ohio App. LEXIS 2977, *6-7 (July 14, 1995), quoting *Columbus v. Hodge*, 37 Ohio App.3d 68, 68-69, 523 N.E.2d 515 (10th Dist.1987). In the "'absence of documents demonstrating the error complained of, we must presume regularity in the proceedings.'" *State v. Goines*, 8th Dist. Cuyahoga No. 105436, 2017-Ohio-8172, ¶ 30, quoting *Brandimarte v. Packard*, 8th Dist. Cuyahoga No. 67872, 1995 Ohio App. LEXIS 2095 (May 18, 1995).

**{¶31}** Nonetheless, Officer Johnson testified that on page three of his report, it states: "The overwhelming majority of these images were associated with the geotag derived from the area of the Extended Stay hotel in Westlake." Officer Johnson's conclusion may not have been in the form of a narrative summary, but Calhoun was certainly aware of his conclusion. We therefore disagree with Calhoun that Officer Johnson's "conclusion" was an "unwarranted surprise" or that Calhoun was prejudiced in any way. Thus, even assuming for the sake of argument that the state failed to comply with Crim.R. 16(K) and that the trial court erred when it permitted Officer Johnson to give expert testimony, we would not reverse Calhoun's convictions because Crim.R.

16(K) is subject to a "harmless error" analysis. *See State v. Lewers*, 5th Dist. Stark No. 2009-CA-00289, 2010-Ohio-5336, ¶ 125-128.

**{¶32}** Moreover, even if the trial court should not have permitted Officer Johnson to give expert testimony regarding the cell phone extractions, it could have permitted him to give lay witness testimony. Lay witness testimony is defined in Evid.R. 701 as:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

**{¶33}** "Under Evid.R. 701, courts have permitted lay witnesses to express their opinions in areas in which it would ordinarily be expected that an expert must be qualified under Evid.R. 702." *State v. Primeau*, 8th Dist. Cuyahoga No. 97901, 2012-Ohio-5172, ¶ 74, citing *State v. McKee*, 91 Ohio St.3d 292, 744 N.E.2d 737 (2001). In *McKee* at 297, the Ohio Supreme Court explained:

> Although these cases are of a technical nature in that they allow lay opinion testimony on a subject outside the realm of common knowledge, they still fall within the ambit of the rule's requirement that a lay witness's opinion be rationally based on firsthand observations and helpful in determining a fact in issue. These cases are not based on specialized knowledge within the scope of Evid.R. 702, but rather are based upon a layperson's personal knowledge and experience.

**{¶34}** Indeed, this court has consistently recognized that the testimony of a state's witness who is not presented as an expert is properly admitted under Evid.R. 701 when (1) the testimony is based on the witness's training or experience, (2) the testimony relates to the witness's personal observations with the investigation, and (3) the testimony

is helpful to determine a fact at issue. *See, e.g.*, *State v. Wilkinson*, 8th Dist. Cuyahoga No. 100859, 2014-Ohio-5791, ¶ 52-53; *Primeau* at ¶ 75; *State v. Cooper*, 8th Dist. Cuyahoga No. 86437, 2006-Ohio-817, ¶ 18.

**{¶35}** Other appellate courts have similarly determined that "some testimony offered by [police] officers is lay person witness testimony even though it is based on the [officer's] specialized knowledge." *State v. Johnson*, 7th Dist. Jefferson No. 13JE5, 2014-Ohio-1226, ¶ 57 (detective's testimony as to gang activity was permissible under Evid.R. 701 based on detective's personal knowledge and experience in the field); *see also State v. McClain*, 6th Dist. Lucas No. L-10-1088, 2012-Ohio-5264, ¶ 13 (detective's testimony that quantities of narcotics recovered during the execution of the search warrant suggested that they were for sale as opposed to personal use was admissible under Evid.R. 701 as lay person opinion testimony because his testimony was based on his training and experience); *State v. Williams*, 9th Dist. Summit No. 25716, 2011-Ohio-6604, ¶ 11 (officer's testimony that the location was a methamphetamine lab was proper Evid.R. 701 testimony because it was based on personal observation from items taken from garbage and found in the house).

**{¶36}** Our review of the record reveals that the state properly laid a foundation for Officer Johnson's testimony and that his testimony was directly related to the actions that he personally undertook in the investigation. Specifically, Officer Johnson testified to his training and experience through Cellebrite. He obtained a master certification from the company as a Cellebrite certified mobile examiner. He said that he was one of the

first 25 people in the world to obtain a master certification from them. Therefore, Officer Johnson's testimony — that the 20 relevant images extracted from the female's phone were "associated" with the Extended Stay hotel in Westlake — was based on his own personal knowledge and experience as established by the state. Additionally, Officer Johnson's testimony related specifically to his own forensic analysis and report. Further, Officer Johnson's testimony was helpful to determine a fact in issue — where the images were taken. Accordingly, the trial court did not abuse its discretion in allowing him to testify on these matters.

**{¶37}** We also note that Ohio courts have often found that the wrongful admission of evidence that is cumulative evidence is harmless error. *See State v. Davis*, 9th Dist. Summit No. 22724, 2005-Ohio-6224, ¶ 15; *State v. Jones*, 4th Dist. Scioto No. 06CA3116, 2008-Ohio-968, ¶ 23; *State v. Kingery*, 12th Dist. Fayette No. CA2009-08-014, 2010-Ohio-1813, ¶ 35. In this case, Officer Johnson's testimony that the 20 images were associated in the area of the Extended Stay hotel was cumulative evidence. Officer Krebs testified that the photos of the female in the backpage.com ad appeared to have been taken in room 301 in the kitchen and near the bed. Thus, assuming for the sake of argument that the trial court should not have permitted Officer Johnson to give expert testimony, the error was harmless for yet another reason.

**{¶38}** Finally, we note that this was a bench trial. In a bench trial, the trial court is presumed to consider only reliable, relevant, and competent evidence in rendering its decision unless it affirmatively appears to the contrary. *State v. White*, 15 Ohio St.2d

146, 151, 239 N.E.2d 65 (1968). There is nothing in the record before us to indicate that the trial court in this case considered improper evidence.

**{¶39}** Calhoun's first assignment of error is overruled.

## III. Manifest Weight of the Evidence

**{¶40}** In his second assignment of error, Calhoun challenges his promoting prostitution and possessing criminal tools convictions, arguing that his convictions were against the weight of the evidence because "the greater amount of credible evidence did not support the verdict."

**{¶41}** Unlike sufficiency of the evidence, a challenge to the manifest weight of the evidence attacks the credibility of the evidence presented. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Because it is a broader review, a reviewing court may determine that a judgment of a trial court is sustained by sufficient evidence, but nevertheless conclude that the judgment is against the weight of the evidence. *Id*., citing *State v. Robinson*, 162 Ohio St. 486, 124 N.E.2d 148 (1955).

**{¶42}** In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as a "thirteenth juror." *Id*. In doing so, it must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine "'whether in resolving conflicts in the 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.'" *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983). Reversing a conviction

as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the "exceptional case in which the evidence weighs heavily against the conviction." *Id*.

**{¶43}** Calhoun was convicted of promoting prostitution under R.C. 2907.22(A)(2), which provides that "[n]o person shall knowingly * * * [s]upervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire[.]"

**{¶44}** In *State v. Satterfield*, 2d Dist. Montgomery No. 27180, 2017-Ohio-5616, the court explained:

> R.C. 2907.22 does not define "supervise, manage, or control." Black's Law Dictionary defines "supervise" in part as follows: "[t]o have general oversight over * * *." *Id*., 1290 (5th Ed.1979). "Manage" is defined in pertinent part as follows: "[t]o control and direct, to administer, to take charge of." *Id*. at 865. Lastly, Black's Law Dictionary defines "control" as the "power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee." *Id*. at 298.

*Id*. at ¶ 20.

**{¶45}** In *State v. McGlothin*, 2d Dist. Montgomery No. 14687, 1995 Ohio App. LEXIS 3228, *2 (Aug. 2, 1995), the court stated the following:

> The plain language of R.C. 2907.22(A)(2) indicates that the actions which form the basis of the offense are supervision, management, or control. In our view, the statute does not require that the prostitute complete a sexual act in order for the "supervisor" to have committed the offense. All that is necessary is that the supervision, management, or control of the prostitute's activities was for the purpose of the prostitute's providing sexual activity for hire.
>
> Obviously, the supervision, management, or control required by the statute is not limited in time or scope to the sexual activity itself. It may begin with making assignments and giving instructions, and continue through the time that the prostitute completes an assignment and concludes

> financial arrangements with the "supervisor." Likewise, "the activities of a prostitute in engaging in sexual activity for hire" are not limited to the actual sexual activity itself. Those activities may consist of activities that both precede and follow the actual sexual activity. Here, for example, [the prostitute] solicited money from [the undercover detective], pursuant to her conversation with McGlothin. While the solicitation of money is not itself sexual activity, it is an activity of a prostitute in engaging in sexual activity for hire.
>
> The statute is clearly aimed at those who promote sexual activity for hire, as opposed to those who engage in the sexual activity. We do not think that a reasonable reading of the statute requires that sexual activity be completed.

**{¶46}** Calhoun argues that his promoting prostitution conviction was against the manifest weight of the evidence because there was no evidence establishing: (1) that he drove the female from Arizona to Ohio for the purpose of her engaging in prostitution, (2) that he was "in 'or frankly near' the hotel room" when the female was soliciting sex, (3) that he posted the backpage.com ad or was any way involved in creating the ad or responding to potential customers, or (4) that he was involved in arranging the sex-for-hire "transaction."

**{¶47}** Calhoun's argument, however, conveniently ignores the fact that circumstantial evidence and direct evidence possess the same probative value, and therefore circumstantial evidence, like direct evidence, can support a finding of proof beyond a reasonable doubt if the trier of fact so finds. *State v. Jenks*, 61 Ohio St.3d 259, 272, 574 N.E.2d 492 (1991). Circumstantial evidence is proof of a fact from which the existence of other facts reasonably may be inferred. *Id.* Moreover, a conviction based solely on circumstantial evidence is no less sound than one based on direct evidence. *State v. Begley*, 12th Dist. Butler No. CA92-05-076, 1992 Ohio App. LEXIS

6457, *6 (Dec. 21, 1992), citing *State v. Apanovitch*, 33 Ohio St.3d 19, 514 N.E.2d 394 (1987). Indeed, a conviction based upon purely circumstantial evidence may be just as reliable as a conviction based on direct evidence, if not more so. *Michalic v. Cleveland Tankers, Inc.*, 364 U.S. 325, 330, 81 S.Ct. 6, 5 L.Ed.2d 20 (1960), citing *Rogers v. Missouri Pacific RR. Co.*, 352 U.S. 500, 77 S.Ct. 443, 1 L.Ed.2d 493 (1957).

**{¶48}** The state's evidence demonstrates that Calhoun drove the female from Arizona to Westlake. Calhoun purchased a cell phone for the female, which had the same cell phone number that was posted in the ad and that the female used to communicate with prospective clients. The hotel room where the female intended to take Detective Scullin for sexual acts was registered in Calhoun's name. And when Detective Scullin showed up at the hotel and met with the female, Calhoun was in the hotel lobby talking to the desk clerk. Detective Scullin explained that based on his experience, prostitutes "usually [work] with somebody" or have "somebody watching out" for them who is always nearby. The internet history on Calhoun's cell phone also included searches for backpage.com in four different cities as well as searches for escort services in those cities.

**{¶49}** Moreover, Officer Krebs testified that it appeared to him from viewing the inside of room 301 that the provocative photos of the female were taken in that room — the room that was registered to Calhoun. The officers also testified that the photos of the female are not "selfies," meaning that it appears that someone else took the photos. Although there is no evidence that Calhoun took them, Calhoun purchased the phone that

captured the photos, and the photos were taken in his hotel room.

**{¶50}** Further, when the female sent Calhoun a text message with a photo of herself wearing lingerie and stated, "I post it again," Calhoun responded, "Cool be patient sexy." Calhoun then asked the female, "How long he say he would be?" The female replied that she was going to "check right now." Calhoun replied, "You don't no." A couple of days later, the female texted Calhoun again, stating, "He tryin spend a 100" and then the next day, she texted, "Jelly."

**{¶51}** Calhoun argues that these text messages establish that the female was acting on her own, attempting to make Calhoun jealous. We disagree. These text exchanges, along with the other evidence in the case, support the fact that Calhoun was, at a minimum, supervising or managing the female, if not controlling her.

**{¶52}** Finally, when police first spoke to Calhoun, he denied knowing the female. Later, not only did he admit to knowing her, he also admitted that he drove her from Arizona to Ohio and purchased a cell phone for her.

**{¶53}** After reviewing the entire record, weighing the evidence and all reasonable inferences, considering the credibility of witnesses, and determining "'whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered,'" we find that this is not the "exceptional case in which the [promoting prostitution] evidence weighs heavily against the conviction." *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717.

**{¶54}** Calhoun was also convicted of possessing criminal tools (cell phones and condoms) under R.C. 2923.24(A), which provides that "[n]o person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally." For this argument, Calhoun incorporates the same arguments that he made for promoting prostitution. For the same reasons, we find no merit to his claim.

**{¶55}** Accordingly, Calhoun's convictions are not against the manifest weight of the evidence, and his second assignment of error is overruled.

**{¶56}** Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR