[Cite as *Columbus v. Myles,* 2005-Ohio-3933.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus,	:	
Plaintiff-Appellee,	:	
		No. 04AP-1255
v.	:	(M.C. No. 2004 CR B 18643)
Carla Myles,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

O P I N I O N

Rendered on August 2, 2005

Richard C. Pfeiffer, Jr., City Attorney, *Stephen L. McIntosh*, City Prosecutor*, Lara N. Baker, Matthew A. Kanai* and *Tyler J. Wilcox*, for appellee.

Lou Friscoe, for appellant.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Defendant-appellant, Carla Myles, appeals from the judgment of the Franklin County Municipal Court finding her guilty of two counts of soliciting and one count of resisting arrest, pursuant to a jury trial.

{¶2} Plaintiff-appellee, the City of Columbus, charged appellant with two counts of soliciting, first-degree misdemeanors, in violation of Columbus City Code 2307.24. The soliciting counts alleged that appellant solicited Columbus Police Detectives Smith and Oliverio to engage in vaginal intercourse for $20. Appellee also charged appellant with one count of resisting arrest, a second-degree misdemeanor, in violation of Columbus City Code 2321.33(A). Specifically, appellee alleged that appellant "[r]ecklessly and by force resist[ed] with the lawful arrest of herself * * * in the following manner, to wit: repeatedly kicked her feet, flailed both arms and scratched [Detective Smith's] right arm, refusing to be handcuffed after repeatedly being advised she was under arrest." Appellant pled not guilty and the case proceeded to a jury trial.

{¶3} Detective Smith testified at trial on appellee's behalf as follows. On August 3, 2004, Detectives Smith and Oliverio were investigating street prostitution. The detectives wore civilian clothes and used an undercover vehicle with Detective Smith driving. The detectives were investigating around Kimball Street in Columbus, Ohio, an area about which the police department had received citizen complaints regarding street prostitution. While driving around at 1 a.m., the detectives saw appellant engage them in extended eye contact, a common street prostitute practice. Appellant was wearing a sheer dress. Detective Smith stopped the vehicle about 75 feet from appellant. The detectives "[u]sually * * * stop a distance away from someone who's a suspect. It gives [the suspect] an opportunity to either not approach or disregard you, and it shows a predispostion towards engaging in soliciting for prostitution." (Tr. at 21.)

{¶4} Appellant approached the vehicle and asked: " 'What are you guys looking for?' " (Tr. at 21.) Detective Smith responded: " 'Well, I was looking for somebody to go for a ride with[.]' " (Tr. at 21.) Appellant replied: " 'Well, I don't ride in vehicles, but we can go over to my place,' " pointing to her house on a nearby street. (Tr. at 21.) Detective Smith then asked: " 'If we get to go to your house, what are we going to get to do?' " and appellant further inquired: " 'Well, how much money do you have?' " (Tr. at 22.) In response, Detective Smith stated: " 'Does pussy for $20 sound okay?' " noting that "[i]t was evident * * * what [appellant's] intentions were[.]" (Tr. at 22-23.) Appellant agreed. Detective Oliverio asked if the $20 would include him and Detective Smith, and appellant again agreed.

{¶5} Through the above conversation, Detective Smith understood that appellant had made arrangements "[t]o engage in prostitution for vaginal intercourse for $20." (Tr. at 25.) All parties agreed that Detective Smith would go first, and the detective got out of the vehicle and proceeded to follow appellant toward her house.

{¶6} Thereafter, Detective Smith showed appellant his law enforcement badge and told her that she was under arrest. Appellant tried to pull away, and the detective took her by the arm. Appellant then "began to scream and flail about[.]" (Tr. at 26.) Next, the detective placed appellant on the ground. However, appellant continued to kick and scream and, at one point, tore the detective's shirt pocket. In the course of the struggle, Detective Smith noticed that appellant was not wearing underwear.

{¶7} On cross-examination, appellant's attorney asked Detective Smith if appellant was wearing a shirt under her dress. The detective indicated that he could not recall whether appellant was wearing a shirt under her dress.

{¶8} Detective Oliverio also testified on appellee's behalf. The detective confirmed that he and Detective Smith were investigating street prostitution on August 3, 2004. He verified that appellant was on the street and that appellant approached the detectives. Detective Oliverio further stated that appellant made arrangements for "[s]exual activity for hire, vaginal intercourse for $20[.]" (Tr. at 52.) Detective Oliverio also testified that he asked whether the $20 would include both undercover detectives, and appellant agreed. Next, according to Detective Oliverio, appellant and Detective Smith proceeded to walk toward appellant's house. Thereafter, Detective Oliverio noted that he saw Detective Smith initiate the arrest of appellant. Detective Oliverio described that appellant would pull away and twist and flail, "resisting that arrest[.]" (Tr. at 57.) Detective Oliverio also testified that Detective Smith had to place appellant on the ground and that appellant was then kicking and screaming.

{¶9} On cross-examination, appellant's attorney asked Detective Oliverio if appellant was wearing a shirt under her dress. Detective Oliverio stated that he did not remember appellant wearing a shirt, but he remembered appellant wearing a sheer dress.

{¶10} After the detectives' testimonies, appellee rested its case. Appellant moved for an acquittal, pursuant to Crim.R. 29, and the trial court denied the motion.

{¶11} Subsequently, appellant testified on her own behalf as follows. Appellant was using a pay phone around 1 a.m. on August 3, 2004. She called a friend, Pierre Rollins, to invite him over to her house for a barbeque. After talking with Rollins, appellant walked back to her home. While walking home, an individual in the driver's seat of a vehicle, earlier identified as Detective Smith, asked appellant if she knew

someone named Star. Appellant responded: " 'No, I don't know anybody.' " (Tr. at 106.) Detective Smith then asked: " 'Well, what are you up to?' " and appellant responded: " 'I'm about to go back home, finish barbequing and finish partying.' " (Tr. at 106.) Not knowing that the individuals in the vehicle were police detectives, appellant agreed to allow them to come to her house. As appellant walked toward her house, Detective Smith grabbed her and threw her down on the concrete. Ultimately, the detectives took appellant to "an abandoned building * * * where they showed [her] a picture of a guy and said this is the guy who killed Star, that's why we asked you, did you know a Star." (Tr. at 109-110.) When appellant threatened to sue the detectives for false arrest, the detectives remarked: " 'Oh, we got pictures,' " and took appellant to jail. (Tr. at 110.)

{¶12} During her testimony, appellant stated that she was wearing a shirt underneath her dress. Appellant identified a photograph as "Exhibit A" that depicted her wearing a shirt underneath her dress. Appellant testified that the photograph represents the outfit that she was wearing during the August 3, 2004 incident.

{¶13} Pierre Rollins testified on appellant's behalf and stated that appellant invited him to a barbeque during the early morning hours on August 3, 2004. Rollins claimed that appellant told him she was calling from a pay phone on the street near her house. According to Rollins, appellant called him "sometime between 12 and one" in the morning. (Tr. at 88.) Rollins also testified that he got off work after 12 midnight.

{¶14} At the close of her case, appellant moved for admission of "Exhibit A," and the trial court admitted the exhibit into evidence. In addition, appellant again moved for an acquittal, pursuant to Crim.R. 29, and the trial court denied the motion. Ultimately,

the jury found appellant guilty as charged, and the trial court sentenced appellant accordingly.

{¶15} Appellant appeals, raising one assignment of error:

> The trial court erred in overruling defendant's motion for judgment of acquittal at the close of the state's case as provided in Rule 29 of the Ohio Rules of Criminal Procedure.

{¶16} In her single assignment of error, appellant claims that appellee introduced insufficient evidence to establish that she engaged in solicitation. Thus, appellant contends that the trial court erred by denying her Crim.R. 29 motion for acquittal at the close of appellee's case. We disagree.

{¶17} A trial court grants a Crim.R. 29 motion for acquittal if the evidence is insufficient to sustain a conviction. *State v. Woodward*, Franklin App. No. 03AP-398, 2004-Ohio-4418, at ¶11; Crim.R. 29. Conversely, a trial court shall not grant a motion for acquittal if reasonable minds can reach different conclusions as to whether the prosecution has proved each material element beyond a reasonable doubt. *Woodward* at ¶11. In considering a motion for acquittal, the trial court must construe the evidence in a light most favorable to the prosecution. Id.

{¶18} We apply de novo review to the trial court's decision on a Crim.R. 29 motion for acquittal. *State v. Neptune* (Apr. 21, 2000), Athens App. No. 99CA25. We will only reverse a trial court's decision to deny a motion for acquittal if, after viewing the evidence in a light most favorable to the prosecution, we conclude that "reasonable minds could only reach the conclusion that the evidence failed to prove all the elements of the crime beyond a reasonable doubt." Id., citing *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶19} Likewise, a motion for acquittal focuses on the legal sufficiency of the evidence, not its weight or credibility. *State v. Harcourt* (1988), 46 Ohio App.3d 52, 56; *State v. Dunaway* (Feb. 18, 1997), Butler App. No. CA96-08-152. Therefore, in reviewing a trial court's decision to deny a motion for acquittal, " 'our analysis of the evidence focuses not upon its weight or credibility * * * but rather its quantitative sufficiency to establish beyond a reasonable doubt each element of the offense.' " *State v. Jackson* (Feb. 20, 2001), Franklin App. No. 00AP-183, quoting *State v. Kline* (1983), 11 Ohio App.3d 208, 213; see, also, *State v. Carlisle* (Sept. 29, 1997), Lawrence App. No. 97 CA 13, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386 (acknowledging that the appellate court does not address the issue of whether it should believe the evidence when reviewing the sufficiency of such evidence).

{¶20} Here, appellee charged appellant with soliciting under Columbus City Code 2307.24(A), which states that "[n]o person shall solicit another to engage with such other person in sexual activity for hire." Courts have defined "solicit" in similarly worded statutes as " 'to entice, urge, lure or ask.' " See *State v. Swann* (2001), 142 Ohio App.3d 88, 89, citing 4 Ohio Jury Instructions (1997) 199, Section 507.24 (defining "solicit" in similarly worded R.C. 2907.24[A]); *City of Akron v. Tyler* (Sept. 2, 1992), Summit App. No. 15513, quoting *State v. Howard* (1983), 7 Ohio Misc.2d 45 (defining "solicit" in similarly worded Akron City Code 133.09[A]); *State v. Goff* (Jan. 13, 1988), Summit App. No. 13244, quoting *Howard* (defining "solicit" in similarly worded Akron City Code 133.09); *Howard* at 45, citing 4 Ohio Jury Instructions, Section 507.24 (defining "solicit" in similarly worded R.C. 2907.24[A]). As noted above, appellant's two

soliciting counts stem from appellant soliciting Detectives Smith and Oliverio to engage in vaginal intercourse for $20.

{¶21} Appellant claims that the trial court erred by denying her Crim.R. 29 motion at the close of appellee's case because Detective Smith, not appellant, suggested the particular sexual activity and price when he asked: " 'Does pussy for $20 sound okay?' " (Tr. at 22.) In support, appellant relies on *Howard* and *Swann*.

{¶22} *Howard* is a Hamilton County Municipal Court case. In *Howard*, the trial court found defendant not guilty of soliciting. Id. at 45. The trial court noted that the undercover law enforcement officer, not the defendant, made initial contact by approaching the defendant and asking him if he was dating. The trial court further acknowledged that the officer proceeded to ask the defendant what he would do for $15, and the officer ultimately asked for oral sex. Id. Lastly, the trial court recognized that the defendant merely agreed to the officer's advances.

{¶23} Similarly, in *Swann*, the First District Court of Appeals reversed a defendant's soliciting conviction, noting that the undercover law enforcement officer approached the defendant, invited the defendant into his car and asked the defendant if she wanted money or crack cocaine in exchange for oral sex. Id. at 89-90. The appellate court acknowledged that the defendant merely agreed to the officer's advances. Id. at 89.

{¶24} In determining that the defendants in *Swann* and *Howard* were not guilty of soliciting, the courts stated that, in a soliciting case, the crime is in the asking. *Swann* at 90; *Howard* at 45. However, these courts did not limit soliciting cases to situations where a defendant explicitly asks for sexual activity for hire, as appellant suggests. See

Swann at 89; *Howard* at 45. Instead, the courts in *Swann* and *Howard* recognized that soliciting may also involve a defendant enticing, urging or luring another to engage in sex for hire. See *Swann* at 89; *Howard* at 45. Likewise, the courts in *Swann* and *Howard* did not exonerate the defendants on the basis that the undercover law enforcement officers, and not the defendants, suggested the particular sexual activity and price. Rather, these courts concluded that the defendants were not guilty of soliciting because they merely agreed to the law enforcement officers' advances and did nothing more that rose to the level of enticing, urging, luring or asking the officers to engage in sex for hire. See *Swann* at 90; *Howard* at 45.

{¶25} Thus, we reject appellant's contention that *Swann* and *Howard* compel us to reverse her convictions because Detective Smith, and not appellant, suggested the particular sexual activity and price. Indeed, in *Goff*, the Ninth District Court of Appeals rejected a similar argument where the defendant claimed that he could not be found guilty of soliciting because he "never offered to pay [the law enforcement officer] for anything." In *Goff*, the court upheld the defendant's soliciting conviction, recognizing that the defendant: (1) approached the law enforcement officer on the street and asked if she was "going out"; (2) asked the law enforcement officer to get in his car to " 'get naked' " and to " 'get laid' "; and (3) asked the law enforcement officer how much money she wanted.

{¶26} Likewise, in *Tyler*, the Ninth District Court of Appeals upheld a defendant's soliciting conviction even though the undercover law enforcement officer, not the defendant, suggested the particular sexual activity and price. In *Tyler*, the court concluded that the defendant engaged in soliciting, noting that she initiated the

conversation by stating that she did not do anything "kinky" and that she asked the undercover law enforcement officer what he wanted to do and how much money he had.

{¶27} Here, appellant's conduct is akin to the defendants in *Goff* and *Tyler* and not the acquiescing defendants in *Swann* and *Howard*. Thus, construing the evidence in favor of appellee, pursuant to *Woodward*, and reviewing the evidence without focusing on credibility or weight issues, pursuant to *Harcourt*, *Dunaway*, and *Jackson*, we conclude that appellee introduced sufficient evidence to establish that appellant solicited the detectives in violation of Columbus City Code 2307.24(A) by luring, urging, and enticing the detectives into sexual activity for hire.

{¶28} Specifically, appellant lured and enticed the detectives by approaching them on the street at 1 a.m. wearing a sheer dress and no underwear. Additionally, prior to approaching the detectives, appellant engaged them in extended eye contact, a common street prostitute practice. Appellant continued to lure, entice, and urge the detectives by initiating the conversation and asking: " 'What are you guys looking for?' " and by inviting them to her place. (Tr. at 21.)

{¶29} Moreover, appellant brought up the subject of money. In particular, after Detective Smith inquired: " 'If we get to go to your house, what are we going to get to do?' " appellant asked: " 'Well, how much money do you have?' " (Tr. at 22.) Understanding appellant's intentions, Detective Smith responded: " 'Does pussy for $20 sound okay?' " (Tr. at 22.) Having steered the conversation in this manner, appellant agreed and stated that the $20 would cover both detectives.

{¶30} Although appellant did not explicitly ask the detectives to engage in sex for hire, and although the detective, not appellant, suggested the particular sexual activity and price, we reiterate that such explicit conduct is not required to establish soliciting so long as the defendant's conduct, as here, conforms with the alternative means of soliciting, i.e., luring, urging or enticing another into sex for hire. See *Swann* at 89; *Tyler*; *Howard* at 45; *Goff*.

{¶31} In so concluding, we reject appellant's assertion from oral argument that we should not give much weight to Detective Smith's testimony that extended eye contact is a common street prostitute practice. Appellant argues that we should consider an alternative explanation that appellant was making eye contact with the detectives because she was walking around a high-crime area at 1 a.m. As noted above, we do not consider such weight and credibility issues when reviewing a Crim.R. 29 motion for acquittal because the motion only focuses on the "quantitative sufficiency" of the evidence. See *Jackson*. As such, we may properly review the sufficiency of appellee's evidence by considering Detective Smith's contention that appellant's extended eye contact is a common street prostitute practice.

{¶32} Additionally, we further reject appellant's claim from oral argument that we should consider that appellant was wearing a large shirt under her sheer dress, as depicted in appellant's "Exhibit A." The detectives testified during appellee's case that they could not remember if appellant wore a shirt under her dress, and, again, we do not assess the credibility or weight of such testimony when considering the sufficiency of appellee's evidence. *Harcourt*; *Dunaway*; *Jackson*. Moreover, we need not consider the exhibit because appellant has limited her appeal to the Crim.R. 29 motion for

acquittal at the close of appellee's case, and appellant did not admit the exhibit into evidence until she subsequently presented her case.

{¶33} Therefore, based on the above, we conclude that the trial court did not err by denying appellant's Crim.R. 29 motion for acquittal at the close of appellee's case as the motion relates to the two soliciting counts. Next, we note that appellant does not specifically challenge in her brief the resisting arrest count. Rather, as noted above, appellant focuses on the soliciting counts, the charges upon which Detective Smith arrested her. Nonetheless, the language of appellant's assignment of error challenges the trial court's decision to deny appellant's Crim.R. 29 motion for acquittal in its entirety, and we will address the motion as it relates to the resisting arrest count.

{¶34} As noted, appellee charged appellant for resisting arrest under Columbus City Code 2321.33(A), which states that "[n]o person, recklessly or by force, shall resist or interfere with a lawful arrest of himself or another." "Although the arrest for the underlying offense must be 'lawful,' it is not necessary for the prosecution to prove that the defendant was in fact guilty of that offense to uphold a conviction for resisting arrest." *Columbus v. Harbuck* (Nov. 30, 2000), Franklin App. No. 99AP-1420, citing *State v. Sansalone* (1991), 71 Ohio App.3d 284, 285. "An arrest is 'lawful' if the surrounding circumstances would give a reasonable police officer cause to believe that an offense has been or is being committed." *Harbuck*, citing *Sansalone* at 285. Here, our above analysis on the soliciting charges demonstrates that Detective Smith not only had reasonable cause to believe that appellant committed soliciting, but that appellee introduced sufficient evidence to support the soliciting convictions. Therefore, recognizing that appellant resisted her arrest, we also conclude that Detective Smith

lawfully arrested appellant. As such, we conclude that appellee introduced sufficient evidence to establish that appellant resisted arrest in violation of Columbus City Code 2321.33(A), and that the trial court did not err by denying appellant's Crim.R. 29 motion for acquittal as it relates to the resisting arrest count.

{¶35} In summary, we conclude that the trial court did not err by denying appellant's Crim.R. 29 motion for acquittal at the end of appellee's case. As such, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BROWN, P.J., and McGRATH, J., concur.

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