

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 45
v.	:	T.C. NO. 08 CR 866
KEVIN CREW	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 2nd day of July, 2010.

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Kevin Crew, filed April 30, 2009. Crew was convicted, following a trial to a jury, of one count of promoting prostitution, in violation of R.C. 2907.22(A)(2). We hereby affirm his conviction.

{¶ 2} The following witnesses from the Springfield Police Division testified at trial over a continuing objection: Detective Scott Woodruff; Officer Beau Collins; Officer Anna Fredendall; Officer Matthew Buynak; Officer Jason Via; and Officer Douglas Hobbs. Ryan Reed, a former law student and extern at the Clark County Prosecutor's Office, also testified.

{¶ 3} Crew was arrested on October 3, 2008 for the instant offense. According to Woodruff's testimony, Crew approached him in August of 2008, offering to provide Woodruff some information about a drug dealer, James "Tooky" Green, in exchange for the release of Crew's girlfriend, Margaret Hanson, from jail. According to Woodruff, Crew "had come in contact previously with James Green through an inquiry made from James Green's girlfriend. * * *

{¶ 4} "The inquiry that was made to Mr. Crew was that James Green's girlfriend, * * * wanted to have a relationship with Margaret Hanson, where in return for the oral sex that Margaret Hanson would perform on [Green's girlfriend], Margaret Hanson and Kevin Crew would receive heroin in exchange for the personal favor." After receiving the information from Crew, Woodruff testified that he arranged for Hanson's release from jail.

{¶ 5} Collins testified that he was assigned to the "Safe Streets Task Force" in the summer of 2008 in Springfield. Collins stated that he observed Hanson throughout that summer engaging in "prostitution-type activities." Collins stated that Hanson was arrested for loitering to engage in prostitution in May, June and August, 2008. Crew was not arrested during that time. According to Collins, Crew was typically with Collins when he observed her. Additionally, Collins stated that there were three "field information cards" issued to Crew on the suspicion of promoting prostitution. Finally, Collins stated that, while working

undercover in the summer of 2008, he observed Crew stop a known prostitute from getting into Collins' vehicle. According to Collins, as the prostitute approached his vehicle, Crew yelled to her, "Get away from the car you stupid fucking bitch. That's the police." One area that the task force targeted was Selma Park in Springfield. When shown a map of the area, Collins stated that there "is a ledge that you really can't see, but [Crew and Hanson] would sit on the ledge and then he would stay there, and she would walk the corner.

{¶ 6} "And this was the current theme for other females. They would walk up and down the street here * * *, but [Hanson's] main area, along with [Crew], was right in this area. If you saw [Hanson], you saw [Crew]. If you saw [Crew], you saw [Hanson]." Collins stated, "In terms of Mr. Crew, we were on a first-name basis. He knew us. We knew them. They knew our cars."

{¶ 7} Fredendall also testified that she observed Hanson throughout the summer of 2008, engaged in prostitution, and that Crew was commonly with her. According to Fredendall, based upon her knowledge, training and experience as a police officer, because prostitution is a dangerous activity, prostitutes rely on pimps to help supervise and protect them.

{¶ 8} Buynak testified that he issued warnings to Crew in the summer of 2008. The following exchange occurred regarding citizen complaints about prostitution:

{¶ 9} "Q. * * * Did you receive descriptions from these citizens' complaints that led you to key in on an individual?

{¶ 10} "A. Yes, sir.

{¶ 11} "Q. Who did those descriptions match?

{¶ 12} “A. Mr. Crew.

{¶ 13} * *

{¶ 14} “A. After several complaints came in, we stopped them at Selma Road Park, told them who we were, and that we were receiving complaints. Basically we gave them fair warning that we were out there watching, looking for any way to make an arrest.

{¶ 15} “Q. Now did [Crew] tell you * * * ‘I’m not doing anything, this is just my girlfriend?’ Did he tell you anything like that?

{¶ 16} “A. No, sir.

{¶ 17} “Q. Did he talk to you about what he was doing out there?

{¶ 18} “A. Yes sir.

{¶ 19} “Q. Tell the jury what he told you.

{¶ 20} “A. Basically just told us that they were drug users just out there making a living.

{¶ 21} “Q. Did he tell you that he was supervising them or * * * watching over them, keeping track of what was going on?

{¶ 22} “A. He told us he was watching out for them, writing down the license plates of the cars the girls got into.”

{¶ 23} Buynak testified as follows regarding an incident involving Crew while Buynak monitored Selma Park:

{¶ 24} “A. I was headed down York Street. I observed a car stopped by the park. I pulled up next to the car, observed a male in the driver’s seat and a female in the passenger seat. I observed Mr. Crew sitting on the sidewalk right next to the car and another female

with him.

{¶ 25} “Q. Do you remember who that other female was?”

{¶ 26} “A. I believe it was Una Gail Timmons.

{¶ 27} “Q. And when we talk about known prostitutes and prostitutes who are legendary in our community, is Una Gail Timmons one of those prostitutes?”

{¶ 28} “A. Yes, sir.

{¶ 29} “Q. What happened when you observed this defendant and Una Gail?”

{¶ 30} “A. Una Gail started yelling at the male in the car that he needed to pay Mr. Crew.

{¶ 31} “Ms. Neuherz: Objection, Your Honor. This is clearly hearsay.

{¶ 32} “THE COURT: Overruled.”

{¶ 33} Via testified that he also observed Hanson engaging in “prostitution-type activities” throughout the summer of 2008, and that Hanson was typically with Crew when Via observed her. Via stated that Crew was also observed in the company of other known prostitutes. According to Via, “There would be numerous times over the course of the summer in the area of York and Selma Road when Mr. Crew, Ms. Hanson, and other prostitutes such as Una Gail Timmons or Alana Spink would be hanging out in front of the basketball courts. There is a concrete ledge that practically had their names on it where they would sit or they’d pace up and down the block.

{¶ 34} “* * *

{¶ 35} “Q. And when you’re talking about these observations, again, the defendant is present and actively participating in what you’re observing?”

{¶ 36} “A. That’s correct.”

{¶ 37} Hobbs testified that he arrested Crew on October 3, 2008, and that he removed a crack pipe from Crew’s person at the time.

{¶ 38} Finally, Reed testified that he volunteered to participate in the Safe Streets Task Force while an extern at the prosecutor’s office. On October 3, 2008, Reed went undercover, “trolling” for prostitutes. According to Reed, he “was briefed by the task force. They just wanted me to drive around; and if I was flagged, waved, I was to pull over in the general vicinity of whoever waved me or flagged me down. I was told not to instigate anything, to let them come to me with information.” Reed drove a vehicle provided by the Springfield Police Department, and he wore a recording device. Reed wore jeans with holes in them, a gray sweatshirt, a black ball cap and sunglasses. The following exchange occurred regarding Reed’s encounter with Crew on October 3rd:

{¶ 39} “Q. Now, when you first saw these two, where were they at and what did they do? * * *

{¶ 40} “A. [Hanson], she was trailing the defendant. * * * She stopped to sit right here on that side by the park on like a little ledge. [Crew] continued northbound, walking.

{¶ 41} “I was coming southbound in a car in this direction, and I stopped somewhere in that area * * *. And I had my window rolled down, and I don’t remember if [Crew] said something to me first or I said, ‘Hi.’

{¶ 42} “He just gave a casual, ‘Hey, what’s up?’ And I said, ‘Hey, what’s going on,’ something to that effect, and he continued northbound.

{¶ 43} “* * *

{¶ 44} “A. At that point, I waited there for a couple of minutes to see if I would get any activity. I didn’t, so what I did is I continued southbound. I’m not sure which direction I turned, but I turned and I came back so I would be going northbound on York.

{¶ 45} “At that point, [Hanson] is still sitting on that ledge there. And that’s when I pulled up, I’d say, probably 10 yards from her on the right-hand side of York Street on the curb.

{¶ 46} “* * *

{¶ 47} “A. When you pulled up in that area, what happened?

{¶ 48} “A. I sat there for maybe ten to fifteen seconds, and that’s when I was approached by [Hanson]. And that’s when she asked me what I was doing there, and I said I was looking for some companionship.

{¶ 49} “* * *

{¶ 50} “Q. * * * Does she get in the car?

{¶ 51} “A. Yes, she does.

{¶ 52} * *

{¶ 53} “Q. At some point are you approached by [Crew]?

{¶ 54} “A. Yes.

{¶ 55} “Q. Could you tell the jury what happened there and how that came about?

{¶ 56} “A. When [Hanson] got into the vehicle with me, we sat there for several minutes and worked out price and just generally what she was willing to do. At that time, [Crew] was seated maybe 50 to 60 yards up just right north of the park a little bit.

{¶ 57} “At that time, I was sitting there and I was talking to [Hanson], and that’s

when I began to pull away from the curb and to head northbound on York, and that's when [Crew] stepped out from where he was sitting and he came out in the street probably 3 to 4 feet and that's where he met the vehicle."

{¶ 58} The State then played the audio recording of Reed's conversation with Hanson and Crew. The following testimony was then elicited:

{¶ 59} "Q. Let me ask you this, based on that part of the conversation when she says, 'I can't [have] sex because I'm bleeding but I can do other things,' and she asked you what kind of things you're into, and you're talking to her and she's talking about money, any doubt in your mind as you're having that conversation that you're talking to this woman about engaging in sexual activity for money?

{¶ 60} "A. There's no doubt.

{¶ 61} "* * *

{¶ 62} "Q. Now, at some point, we hear a man's voice. Well actually, you asked a couple of times, you said, 'Is that your boyfriend?'

{¶ 63} "A. When you said, 'Is that your boyfriend,' what was her response?

{¶ 64} "A. 'No. He's just watching out for me.'

{¶ 65} "* * *

{¶ 66} "Q. Now, he comes up to the car, and it sounds like the first question out of his mouth was actually to [Hanson] * * * 'Did you check him out?' * * *

{¶ 67} "A. Yes.

{¶ 68} "Q. And it sounds like she said, 'Yeah.' And it sounds, again, like he said, 'Is he the police?' And she says something to the effect of, 'No, it's cool.' Do you

remember hearing that?

{¶ 69} “A. Yes, I do.

{¶ 70} “Q. As soon as he asked her that, it sounds like he started directing his questions to you. Did that happen?

{¶ 71} “A. Yes.

{¶ 72} “* * *

{¶ 73} “Q. * * * what kind of things did he ask you?

{¶ 74} “A. He asked me if I was the police.

{¶ 75} “Q. What was your answer to that?

{¶ 76} “A. The first time I said , ‘No.’ And then he asked me again, ‘You sure you’re not the police?’ I said, ‘No, I’m a young guy.’ And he made the statement that he was suspect [sic] of me because I had on a backwards dark cap and dark sunglasses.

{¶ 77} “Q. Again, once he said that, did you make efforts to convince him that you weren’t the police?

{¶ 78} “A. Yes.

{¶ 79} “Q. Let me ask you this, at any point in that conversation with the defendant, did he ask you anything about weapons? * * *

{¶ 80} “A. No.

{¶ 81} “Q. At any point did he say, ‘Hey, are you going to hurt my girl?’

{¶ 82} “A. No, he did not.

{¶ 83} “Q. Were his only questions to you whether or not you were the police or whether or not you were law enforcement?

{¶ 84} “A. That’s correct.”

{¶ 85} Reed testified that he and Hanson pulled away from Crew, and about a minute later they were pulled over by Springfield police officers.

{¶ 86} On cross-examination, Collins, who observed the above events and arrested Hanson, testified consistently with Reed. According to Collins, once Crew realized that Hanson had gotten into Reed’s vehicle, Crew “hightailed it down to the car.” When asked if Crew “might have just been checking to make sure she was safe,” Collins responded, “I don’t know what his intentions are. If they’re based upon what he’d done all summer, my answer would be no.”

{¶ 87} Crew asserts two assignments of error. His first assignment of error is as follows:

{¶ 88} “THE STATE PRESENTED INSUFFICIENT EVIDENCE TO SUSTAIN A VERDICT OF GUILT AGAINST CREW ON A CHARGE OF PROMOTION [OF] PROSTITUTION.”

{¶ 89} “In reviewing a claim of insufficient evidence, ‘[t]he relevant inquiry is whether, after reviewing 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* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, * * * .” *State v. McKnight*, 107 Ohio St.3d 101, 112, 2005-Ohio-6046, ¶ 70.

{¶ 90} R.C. 2907.22(A)(2) provides, “No person shall knowingly: * * * (2)

Supervise, manage, or control the activities of a prostitute engaging in sexual activity for hire.” “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). 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.*, Sixth Edition (1990), 1438.

{¶ 91} “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.

{¶ 92} “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, 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.” *State v. McGlothin*, Montgomery App. No. CA 14687.

{¶ 93} Reed observed Crew, who admitted he knew that Hanson was a prostitute, with Hanson, together in an area known for prostitution. While Crew continued walking down the street, Hanson sat on the ledge near the park, and shortly thereafter Hanson got into Reed’s vehicle when he circled back to her vicinity. Reed testified that he and Hanson discussed engaging in sexual activity for hire. When Reed pulled away, Crew, who was

seated approximately 50 yards away, walked into the street and stopped the vehicle. Hanson told Reed that Crew was not her boyfriend but was “watching out” for her. Crew asked Hanson, “did you check him out,” and she told him that Reed was not a police officer. Crew then asked Reed twice if he was a police officer, and he indicated to Reed that he was suspicious of him because of his clothing.

{¶ 94} Crew did not inquire if Reed had weapons or intended to harm Hanson, suggesting that he acted to protect his financial interest in the transaction Hanson and Reed negotiated rather than Hanson herself. In other words, there was evidence presented from which the jury could conclude that Crew’s conduct in trying to keep Hanson from the police amounted to, at a minimum, a form of supervision of the activities of a prostitute engaging in sexual activity for hire. Further, as discussed more fully below, the testimony of the other officers regarding Crew’s activities over the summer demonstrates an ongoing motivational conduct demonstrating that Crew served as a pimp for Hanson and other prostitutes for financial gain.

{¶ 95} Having reviewed the evidence in a light most favorable to the State, we find no merit to Crew’s first assigned error, and it is overruled.

{¶ 96} Crew’s second assigned error is as follows:

{¶ 97} “THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ADMITTED EVIDENCE OF PRIOR BAD ACTS THAT PREJUDICED CREW’S CASE.”

{¶ 98} “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evid.R. 401. “Although relevant,

evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.” Evid.R. 403(A). “Evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion * * * .” Evid.R. 404(A). “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.” Evid.R. 404(B). R.C. 2945.59 provides, “In any case in which the defendant’s motive or intent, * * * in doing an act is material, any acts of the defendant which tend to show his motive or intent * * * may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show to tend to show the commission of another crime by the defendant.”

{¶ 99} “The trial court has broad discretion regarding the admissibility of evidence. (Citation omitted). Evid.R. 404 generally prohibits the circumstantial use of prior acts evidence, that is, character as proof of conduct. If the evidence is not offered to prove that the defendant acted in conformity with a pertinent character trait, however, then the rule does not apply. (Citation omitted). Moreover, Evid.R. 404(B) does not apply if the acts in question are intrinsic as opposed to extrinsic, i.e. the acts are part of the events in question or form part of the immediate background of the alleged act which forms the basis for the crime charged. (Citation omitted).” *State v. Bogan*, (Aug. 6, 1998), Cuyahoga App. No. 72278 (“* * * the testimony about defendant’s supervision of the prostitutes prior to August 13, 1996 was not presented to prove that defendant acted in conformity with any particular

character trait. Rather, the testimony demonstrated a continuing course of action regarding defendant's activities as a pimp.”)

{¶ 100} “‘Abuse of discretion’ has been defined as an attitude that is unreasonable, arbitrary or unconscionable. (Internal citation omitted). It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary.

{¶ 101} “A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue *de novo*, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result.” AAAA *Enterprises, Inc. v. River Place Community Redevelopment* (1990), 50 Ohio St.3d 157, 161.

{¶ 102} Again, Crew admitted to his knowledge that Hanson worked as a prostitute. As in *Bogan*, the State's evidence was not presented to show that Crew's conduct on the date of his arrest conformed to a particular character trait, but instead that Crew intended to serve as Hanson's pimp and was motivated by financial gain. For example, Crew told Buynak that he and Hanson were “making a living.” In other words, the evidence showed the nature of Crew and Hanson's relationship at the time of the offense, and it was admitted for a permissible purpose. Accordingly, Crew's second assignment of error lacks merit and is overruled.

Judgment affirmed.

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FAIN, J. and KLINE, J., concur.

(Hon. Roger L. Kline, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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