

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-06-042
- vs -	:	<u>OPINION</u> 2/7/2011
HOWARD G. RENNER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY MUNICIPAL COURT
Case No. 2009CRB7641

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 N. Third Street, Batavia, Ohio 45103, for plaintiff-appellee

R. Daniel Hannon, Robert F. Benintendi, 10 S. Third Street, Batavia, Ohio 45103, for defendant-appellant

HENDRICKSON, J.

{¶1} Defendant-appellant, Howard G. Renner, appeals his conviction and sentence in the Clermont County Municipal Court for soliciting. For the reasons that follow, we affirm the decision of the trial court.

{¶2} Appellant's conviction is based on events occurring on June 17, 2009, when appellant called 911 to report a robbery in his home. When responding Officer Chris Holden

of the Union Township Police Department entered appellant's home, he noticed no signs of forced entry. Based upon his observation, Officer Holden asked appellant how the robbery occurred. At that time, appellant produced a flyer depicting the lower half of a bikini-clad woman, in addition to a phone number and the words: "Girls, Girls, Girls!!! Check Out Our Specials!!!" Appellant explained he called the number, believing it to be an escort service, and arranged to have sex with a female for \$150. When two women and two men subsequently arrived at appellant's home, appellant took one of the women into his bedroom. However, appellant exited his bedroom to determine why the other three individuals were present, at which time they explained they accompanied the woman to ensure appellant paid for his services. After appellant paid \$150, the men sprayed him with mace, punched him, and declared they were going to "trash" his apartment and take his belongings.

{¶3} As a result of the events on June 17, 2009, appellant was charged with soliciting in violation of R.C. 2907.24(A), a third-degree misdemeanor.

{¶4} On March 22, 2010, appellant's case was tried to the bench. During trial, appellant objected to Officer Holden's testimony regarding his confession on the grounds that the state failed to present any independent, corroborative evidence to establish the corpus delicti of soliciting. The court overruled appellant's objection, but noted his continuing objection for the record. Additionally, at the close of all evidence, appellant moved for acquittal on identical grounds pursuant to Crim.R. 29. The court overruled appellant's motion and found him guilty of one count of soliciting in violation of R.C. 2907.24(A).

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

{¶6} "THE TRIAL COURT ERRED IN FAILING TO EXCLUDE APPELLANT'S STATEMENT PURSUANT TO THE CORPUS DELICTI RULE."

{¶7} In his sole assignment of error, appellant challenges the admissibility of his confession on the grounds that the state failed to establish the corpus delicti of soliciting.

{¶8} The corpus delicti of a crime consists of two elements: the act and the criminal agency of the act. *State v. Van Hook* (1988), 39 Ohio St.3d 256, 261; *State v. Maranda* (1916), 94 Ohio St. 364. Before an out-of-court confession will be admitted, the corpus delicti must be established by evidence outside the confession. *Van Hook* at 261. "The quantum or weight of such outside or extraneous evidence is not of itself to be equal to proof beyond a reasonable doubt, nor even enough to make it a prima facie case." *Maranda* at paragraph two of the syllabus. The rule does not require evidence upon all elements of the crime, but only "some material element of the crime charged." *Id.* (Emphasis added). Additionally, direct and positive proof that a crime was committed is not required; circumstantial evidence may be relied upon. *State v. Nobles* (1995), 106 Ohio App.3d 246, 262.

{¶9} An appellate court reviews a trial court's ruling on the admissibility of evidence for an abuse of discretion. See, e.g., *State v. Lortz*, Summit App. No. 23762, 2008-Ohio-3108, ¶11. An abuse of discretion is more than an error of judgment; it means the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *State v. Ghee*, Madison App. No. CA2008-08-017, 2009-Ohio-2630, ¶32; *State v. Brown*, 100 Ohio St.3d 51, 2003-Ohio-5059, ¶27.

{¶10} In the case at bar, appellant was convicted of soliciting in violation of R.C. 2907.24(A), which states "[n]o person shall solicit another to engage with such other person in sexual activity for hire." The elements constituting the offense are: (1) the accused's solicitation, (2) of another, (3) to engage in sexual activity, (4) for hire. See, e.g., *State v. Jennings* (Oct. 29, 1974), Franklin App. No. 74AP-260, 1974 WL 184392, at *2. "Solicit" is further defined as "to entice, urge, lure, or ask." *State v. Swann* (2001) 142 Ohio App.3d 88, 89, citing 4 Ohio Jury Instructions (1997) 199, Section 507.24.

{¶11} At trial, the state's evidence consisted of Officer Holden's testimony and the "Girls, Girls, Girls" flyer. Due to the de minimus nature of the corpus delicti rule, we find the

flyer tends to corroborate appellant's confession in a manner sufficient to prove that a crime was committed. Particularly, we find the phone number on the flyer corroborates, or supplements, appellant's confessed use of the phone number to engage in solicitation. See *Maranda*, 94 Ohio St. at 370.

{¶12} In so holding, we note how the corpus delicti doctrine has evolved over time. The original purpose of requiring the evidence of the corpus delicti as a foundation for admitting an alleged confession was clarified by the *Maranda* court: "The doctrine * * * was born out of great caution by the courts, in consideration of certain cases of homicide wherein it had turned out that by reason of the failure of the government to prove the death of the person charged as having been murdered it so happened that such person sometimes survived the person accused as his murderer." *Id.*; *Van Hook*, 39 Ohio St. at 261. However, in light of procedural safeguards granted defendants in modern criminal practice, courts today refuse to apply the rule with "a dogmatic vengeance." *Van Hook* at 261. This concept is particularly essential in the case at bar, where the state produced minimal outside evidence tending to prove appellant's "guilty participation." See *Maranda* at 370.

{¶13} Accordingly, we hold the trial court's finding that the state satisfied the corpus delicti rule is supported by some competent credible evidence. Thus, the trial court did not abuse its discretion in permitting Officer Holden to testify regarding appellant's confession.

{¶14} Appellant's sole assignment of error is overruled.

{¶15} Judgment affirmed.

POWELL, P.J., and YOUNG, J., concur.

[Cite as *State v. Renner*, 2011-Ohio-539.]