IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Heather Cloward, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090507-CA F I L E D (December 30, 2010) 2010 UT App 391

Third District, Salt Lake Department, 081903520
The Honorable Ann Boyden

Attorneys: Sherry Valdez, Salt Lake City, for Appellant
Mark L. Shurtleff and Brett J. DelPorto, Salt Lake City, for Appellee

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Before Judges McHugh, Orme, and Thorne.

THORNE, Judge:

Heather Cloward appeals from her conviction on one count of aggravated exploitation of prostitution, a second degree felony, see Utah Code Ann. § 76-10-1306 (2008). Cloward argues that the State presented insufficient evidence to prove that she encouraged, induced, or otherwise purposely caused sixteen-year-old C.W. to become or remain a prostitute or that Cloward had the requisite degree of awareness that C.W. was under the age of eighteen. We affirm.

"A person is guilty of exploiting prostitution if he [or she] . . . encourages, induces, or otherwise purposely causes another to become or remain a prostitute . . . ." Id. § 76-10-1305(1)(b). Exploitation of prostitution is aggravated to a second degree felony if "the person procured, transported, or persuaded . . . is under eighteen years of age." Id. § 76-10-1306(1)(b). "When reviewing a bench trial for sufficiency of the evidence, we must sustain the trial court's judgment unless it is against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made." State v. Burkinshaw, 2010 UT App 245, ¶ 10, 239 P.3d 1052 (internal quotation marks omitted). We

determine that the evidence in support of Cloward's conviction is more than ample.

As to the district court's conclusion that Cloward encouraged, induced, or otherwise purposely caused C.W. to become or remain a prostitute, C.W. testified that Cloward "talked about, like, the basics of what escorting was. Like [Cloward] talked about how there was a fee--a service fee that you go and collect and that you give a percentage to her . . . ." In addition, C.W. testified that Cloward told her that she could earn tips for "whatever you feel comfortable with . . . . [Y]ou could do anything you wanted, oral sex, you could do sex." C.W. also testified that Cloward told her to always take condoms with her "[j]ust in case you were going to have sex" and instructed her to use the condoms if she engaged in sex acts. Cloward herself acknowledged that massages provided by escorts could possibly result in a "happy ending," i.e., an orgasm, and that she never instructed her escorts not to provide such a service. Taken together, these statements more than adequately support the district court's conclusion that Cloward had, at the very least, encouraged C.W. to engage in prostitution.

The evidence also adequately supports the district court's conclusion that Cloward knew that C.W. was underage.[1] C.W. acknowledged that she lied to Cloward about her age, and Cloward presented evidence of a Utah driver license purporting to show that C.W. was twenty-three years old at the time she was hired. However, C.W. testified that it was Cloward who had provided the driver license to her so that she could get into a bar, raising the inference that Cloward knew that the driver license was a fake.[2] Even if C.W. did provide the license to Cloward as proof of age, the district court observed that the stark disparity between the date of birth and the picture on the license strongly

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[1]For purposes of this appeal, we accept Cloward's unchallenged assertion that knowledge of, or at least recklessness as to, the age of a prostitution exploitation victim is a required element to aggravate that offense under Utah Code section 76-10-1306, see Utah Code Ann. § 76-10-1306(1)(b) (2008).

[2]It is unclear from the record on appeal whether the picture on the driver license, which bore the name K.M., was actually of C.W.

suggested that the license was not valid.[3] The district court stated that the photograph on the license depicted

> a very, very young woman. Even younger than . . . the witness present[ed] [at trial]. The witness is only 17 at this time and was even younger at the time that this picture was taken. And to have this picture on the same identification card of a date of birth of 1984 is just not reasonable.

Taken together, the trial testimony, the obvious questions as to the validity of the driver license, and the district court's own observations of C.W.'s apparent age at trial all serve to convince us that the district court's conclusion that Cloward knew that C.W. was under eighteen years of age was not "against the clear weight of the evidence." See Burkinshaw, 2010 UT App 245, ¶ 10 (internal quotation marks omitted).

The clear weight of the evidence supports the district court's conclusions that Cloward encouraged, induced, or otherwise purposely caused C.W. to become or remain a prostitute and that she knew that C.W. was underage. Accordingly, we affirm Cloward's conviction.

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William A. Thorne Jr., Judge

WE CONCUR:

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Carolyn B. McHugh,
Associate Presiding Judge

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[3]The district court's conclusion in this regard is consistent with this court's decision in State v. Chism, 2005 UT App 41, 107 P.3d 706, wherein we held that the presentation of a state-issued identification card "under circumstances not amounting to a reasonable basis to question [the identification's] legitimacy" dispelled an officer's reasonable suspicion that the bearer was underage, see id. ¶ 16. Here, the disparity between the picture and the birthdate on the driver license presented such a reasonable basis to doubt that the license was legitimate.

Gregory K. Orme, Judge