IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. W.E.A., d/o/b 10/22/94, Appellant.	))))))))))	NO. 65737-2-I DIVISION ONE UNPUBLISHED OPINION FILED: June 13, 2011

Leach, A.C.J. — W.E.A. appeals his juvenile adjudication and disposition for promoting commercial sexual abuse of a minor. W.E.A. contends that the police lacked probable cause for his arrest. He also claims that the State failed to present sufficient evidence to support a conviction and that the trial court erred by rejecting his claim for the application of nonmutual collateral estoppel. Because W.E.A. fails to demonstrate error, we affirm.

Background

On April 23, 2010, a woman reported to police that her daughter M.K. had run away and had been seen on Pacific Highway South and International Boulevard South in Tukwila, an area known for prostitution. M.K.'s mother provided a description of M.K. and her boyfriend, W.E.A. Around 6:30 p.m. on April 26, police observed a girl matching M.K.'s description standing on a corner at South 260th Street and Pacific Highway South, watching passing traffic and

paying close attention to cars with lone male drivers. The intersection is known as an area of prostitution. Police observed a male matching W.E.A.'s description walk over and speak to M.K. for a short time. Then M.K. crossed the street and began walking on the shoulder, looking back at traffic.

Over a period of two hours, police observed M.K. and W.E.A. M.K. walked back and forth along the highway while W.E.A. watched, always within one-half mile. At one point, W.E.A. waved M.K. back to him, indicating a truck in a parking lot occupied by a lone male driver. M.K. ran back toward W.E.A. and then approached the truck. When the driver got out at a DVD kiosk, M.K. walked away. On at least two occasions, M.K. approached cars with lone male drivers, got into the passenger seat, and sat in the car for a few minutes. Each time she had contact with a driver, she returned to W.E.A. When an undercover officer parked near M.K., she walked over to his car, stared at him for a long time, and then said she thought he was someone else, and walked back to W.E.A. On one occasion, M.K. rode in a truck with a lone male driver for a short distance on the highway before the driver made a U-turn and dropped M.K. off in the area where he had picked her up. Police arrested M.K. and W.E.A.

At the station, police told W.E.A. that they had arrested M.K. for prostitution loitering and that they had observed her repeatedly return to him after contacting men. W.E.A. said that M.K. doesn't do it for him, she was doing that type of thing before they met, and she does it for someone else. When

asked for an explanation of their repeated meetings, W.E.A. said, "Truthfully, we was out here hustling up some dollars."

The State charged W.E.A. with promoting commercial sexual abuse of a minor. Before and during the fact-finding hearing, defense counsel argued that the collateral estoppel doctrine should be applied to prevent the State from arguing that M.K.'s behavior constituted loitering for the purposes of prostitution because she had been charged, tried, and found not guilty. Defense counsel also filed a motion to suppress W.E.A.'s statements to police, arguing that the police lacked probable cause to arrest W.E.A. The trial court held a hearing and entered detailed findings of fact and conclusions of law and denied the motion to suppress. The trial court also ruled that the application of collateral estoppel would be unfair to the State because M.K. and W.E.A. were not tried together. After a fact-finding hearing, the trial court found W.E.A. guilty as charged.

W.E.A. appeals.

Standard of Review

Because a determination of probable cause involves both fact and law, we review challenged findings of fact for substantial evidence and review de novo the legal question of whether the facts support this determination.[1] Unchallenged findings of fact are verities on appeal.[2]

In a challenge to the sufficiency of the evidence, we view the evidence in

[1] State v. Vasquez, 109 Wn. App. 310, 318, 34 P.3d 1255 (2001).
[2] State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003).

the light most favorable to the State and decide whether any rational trier of fact could have found guilt beyond a reasonable doubt.[3] We defer to the trier of fact on issues of credibility of witnesses and persuasiveness of the evidence.[4]

The applicability of collateral estoppel is a question of law that we review de novo.[5]

Analysis

W.E.A. first contends that the trial court erred in concluding that police had probable cause to arrest him and denying his suppression motion. Both the federal and state constitutions allow warrantless arrests under certain circumstances, such as a felony arrest for criminal activity occurring in a public place, provided the arrest is supported by probable cause.[6] Probable cause to arrest exists where reasonably trustworthy facts and circumstances within the knowledge of police are sufficient to merit a belief in the mind of a reasonably cautious person that an offense has been committed.[7] Courts give consideration to the totality of facts and circumstances as well as to the special expertise of police in identifying criminal behavior.[8]

Relying on State v. Neth,[9] W.E.A. argues that the totality of facts and

---

[3] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).
[4] State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).
[5] Lynn v. Dep't of Labor & Indus., 130 Wn. App. 829, 837, 125 P.3d 202 (2005).
[6] State v. Solberg, 122 Wn.2d 688, 696, 861 P.2d 460 (1993).
[7] State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986).
[8] State v. Scott, 93 Wn.2d 7, 11, 604 P.2d 943 (1980).
[9] 165 Wn.2d 177, 196 P.3d 658 (2008).

circumstances here were too ambiguous to establish probable cause and that the State relied solely on evidence that W.E.A. and M.K. were in a high prostitution area. In Neth, the officer interacted with a driver who was extremely nervous, had no identification or documentation, told inconsistent stories, had empty plastic baggies known for use with illegal drugs, had a large sum of cash in the car, and had a criminal history, including felony drug charges.[10] Our Supreme Court held that these circumstances did not constitute probable cause to search the car, "absent some other evidence of illicit activity," such as "being in a high drug crime area, baggies with the appearance of having once contained illicit substances, or observations of transactions involving the baggies."[11]

But here, W.E.A. does not dispute the trial court's findings that officers observed M.K. and W.E.A. for two hours in an area known for chronic prostitution activity. W.E.A. does not challenge the trial court's findings that officers credibly testified that in their training and experience, M.K.'s behavior was consistent with prostitution, in that she walked along the highway paying attention to lone male drivers, sucked on a lollipop in a manner that may have been an indicator or code for sexual activity, and approached or got into cars with lone male drivers. And W.E.A. does not challenge the trial court's findings that over the course of two hours, M.K. approached a lone male driver pointed

[10] Neth, 165 Wn.2d at 183-84.
[11] Neth, 165 Wn.2d at 185 & n.3.

out by W.E.A., M.K. repeatedly returned to W.E.A. and never walked farther than about one-half mile from him, and W.E.A. kept watch over M.K. throughout the two hours. Under these circumstances, the trial court properly concluded that the officers had probable cause to arrest M.K. for loitering for the purposes of prostitution and to arrest W.E.A. for aiding or abetting a minor in loitering for the purposes of prostitution. Because the arrest was supported by probable cause, the trial court properly denied the motion to suppress.

W.E.A. next contends that the State presented insufficient evidence to support a conviction for promoting commercial sexual abuse of a minor. He argues that the behavior described by police was too ambiguous to establish guilt beyond a reasonable doubt, particularly when searches incident to the arrests of M.K. and W.E.A. did not reveal any evidence that police testified they would expect to find on a suspected prostitute or pimp, such as cell phones, money, and condoms. He also claims that his statements to police were just as consistent with legal activity and did not establish that M.K. was attempting to prostitute herself or that W.E.A. knew or participated in her efforts.

To prove the charge of promoting commercial sexual abuse of a minor, the State offered evidence that W.E.A. engaged in "conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor."[12] W.E.A. stipulated at trial that M.K. was a minor and did not

[12] RCW 9.68A.101(3)(a).

contend that he was unaware of her age. The police testified that M.K. behaved in a manner consistent with prostitution in an area of chronic prostitution for a period of two hours. M.K. repeatedly returned to W.E.A., appeared to follow W.E.A.'s direction to approach at least one man, and stayed within W.E.A.'s line of sight. The police testified that W.E.A. kept watch over M.K., sitting nearby or standing to look down the sidewalk to her location. In his statement to the police, W.E.A. admitted that M.K. had been "doing this stuff" before he met her, that M.K. "does it for someone else," and that "we" were "hustlin' up some dollars." Despite the lack of physical evidence, potential alternative explanations of M.K.'s behavior, or any ambiguity in W.E.A.'s statements, when viewed in the light most favorable to the State, this evidence is sufficient to allow a reasonable trier of fact to find guilt beyond a reasonable doubt.

Finally, W.E.A. argues that the principle of collateral estoppel prevents the State from proving his guilt based on alleged prostitution loitering which it could not prove in M.K.'s fact-finding hearing. A party asserting collateral estoppel must show (1) the issue decided in a previous adjudication is identical to that presented in the current action, (2) the first adjudication must have resulted in a final judgment on the merits, (3) the opposing party must be the same or in privity with a party to the prior litigation, and (4) application of collateral estoppel must not work an injustice.[13] Collateral estoppel applies in

[13] State v. Bryant, 146 Wn.2d 90, 98-99, 42 P.3d 1278 (2002).

criminal law through the Fifth Amendment prohibition against double jeopardy.[14] But this case does not implicate either pure collateral estoppel or double jeopardy because W.E.A. relies on the verdict in M.K.'s case, in which he did not face jeopardy.[15] And our Supreme Court held in State v. Mullin-Coston,[16] "[O]ne jury verdict may not impact prosecution of a second criminal defendant, even if the conviction of the second defendant would result in inconsistent jury verdicts."

W.E.A. argues that the holding of Mullin-Coston only applies to jury verdicts and not to a nonjury adjudication of juvenile charges. Even assuming, without deciding, that a nonjury verdict could impact the prosecution of a different defendant, W.E.A. fails to establish that collateral estoppel should apply here. First, the issues are not identical. The first trial court acquitted M.K. of "remain[ing] in or near any street, sidewalk, alleyway or other place open to the public with the intent of committing, or inducing, enticing, soliciting or procuring another to commit, an act of prostitution."[17] But W.E.A.'s trial involved only W.E.A.'s intent.[18] The State was not required to prove M.K.'s intent to establish W.E.A.'s intent or guilt.[19] Also, as the trial court observed, application

---

[14] State v. Mullin-Coston, 152 Wn.2d 107, 113, 95 P.3d 321 (2004).

[15] Mullon-Coston, 152 Wn.2d at 113.

[16] 152 Wn.2d 107, 121, 95 P.3d 321 (2004).

[17] King County Code 12.63.010(G).

[18] RCW 9.68A.101(1) provides, "A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse of a minor."

[19] Cf. Mullins-Coston, 152 Wn.2d at 112 (State argued defendant guilty of premeditation based on accomplice liability after codefendant was convicted by jury of only second degree murder).

of collateral estoppel here would be unfair to the State. The State was not allowed to present W.E.A.'s statements to the police at M.K.'s fact-finding hearing, but those same statements were admissible against W.E.A. and were relevant to his intent.[20] Under these circumstances, the trial court properly rejected W.E.A.'s collateral estoppel claim.

Affirmed.

WE CONCUR:

Leach, A.C.J.

Ellington, J.

Cox, J.

[20] See Mullins-Coston, 152 Wn.2d at 115-16 (citing with approval Standefer v. United States, 447 U.S. 10, 24, 100 S. Ct. 1999, 64 L. Ed. 2d 689 (1980), which held, "[W]here evidentiary rules prevent the Government from presenting all its proof in the first case, application of nonmutual estoppel would be plainly unwarranted.").