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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed April 30, 1985

vs.)

BRUCE EDWARD BURT,) 5-144
84-869

Defendant-Appellant.)

Appeal from the Iowa District Court for Black Hawk County - Peter Van Metre, Judge.

Defendant appeals from conviction and sentence for pimping, in violation of Iowa Code section 725.2 (1981). AFFIRMED.

Charles Harrington, Appellate Defender, and Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Valencia Voyd McCown, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., Donielson, and Hayden, JJ.

HAYDEN, J.

Defendant claims on appeal there was insufficient evidence to support his conviction of pimping in violation of Iowa Code section 725.2 (1981) and the evidence was insufficient to corroborate the accomplice's testimony to justify a conviction under Iowa Rule of Criminal Procedure 20(3).

The State asserts that there was sufficient evidence to convict the defendant of pimping and the prostitute who testified against the defendant was not an accomplice and alternatively, her testimony was sufficiently corroborated. Trial was to the court. We affirm.

At trial, Gaetana Walker testified that she was a prostitute and that she lived in the same house with Burt and other prostitutes. She stated that she and the other prostitutes gave their earnings to Burt to pay for food and rent. She maintained that Burt was not a pimp. Walker stated that Burt arranged massage and nude dancing assignments for all the women. Walker admitted that she set up other girls in the business of prostitution. She stated that she had been threatened with prosecution if she did not testify against Burt.

After his motion for directed verdict was overruled, Burt testified that he lived in a home with four women and that all the residents pooled their funds for groceries and bills. He admitted setting up dancing jobs for the women but denied lining up prostitution customers.

Each of the other women who resided with Burt denied being prostitutes or that Burt was their pimp. One of the women testified that she was arrested and offered a deal to implicate Burt as a pimp.

Officer Jack Stainbrook testified on rebuttal concerning a newspaper ad for an outcall service at Burt's address. He also recalled seeing Burt in an area known for prostitution.

At the close of all the evidence, the defendant renewed his motion for dismissal and motion for directed verdict on the grounds now raised on appeal. The motions were overruled.

I. Our scope of review is for correction of errors at law, and findings of fact in jury-waived cases have the effect of a special verdict. See Iowa R. App. P. 4. On appellate review, the evidence is viewed in the light most favorable to the State, and all reasonable inferences tending to support the conviction are accepted as established. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). All the evidence must be considered in weighing the sufficiency of the evidence for conviction. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). The credibility of witnesses remains the judgment of the factfinder. Robinson, 288 N.W.2d at 341. Review is to determine if the result below is supported by substantial evidence. Robinson, 288 N.W.2d at 339.

II. Defendant's primary argument is that the evidence is insufficient because the State's chief witness, Gaetana Walker, was not credible as a matter of law. One of the points that defendant raises in support of this argument is that there was conflicting evidence presented at trial. However, because defendant's challenge is to the sufficiency of the evidence, this Court views the evidence without regard to contradictions or inconsistencies. Fryer v. State, 325 N.W.2d 400, 405 (Iowa 1982). The fact that conflicting evidence exists only raises a credibility issue which is a question for the factfinder. State v. Robinson, 228 N.W.2d 337, 341 (Iowa 1980). There is sufficient evidence in this case if the factfinder accepts Walker's testimony.

Gaetana Walker acknowledged openly that she was a prostitute and that she had lived with defendant and other prostitutes. Walker testified that defendant had an outcall service which involved her and the other women performing sex acts for money, and that at least on one occasion defendant set up a trick (customer) for her. Defendant also used his vehicle to transport Walker and the other women to various lounges and bars where they solicited their clients whom they occasionally took to the home they shared with defendant. Walker testified

that she and the other women gave the money they earned from prostitution to defendant.

Additional evidence in the record is that two of the women defendant lived with were known prostitutes. One admitted to being a prostitute and the other had recently been found guilty of prostitution. Defendant had frequently been seen in the presence of these and the other alleged prostitutes in an area known for its ongoing problem with prostitution. This evidence viewed together with Walker's testimony, supports the court's conclusions that defendant was pimping. A rational trier of fact could find beyond a reasonable doubt that defendant solicited patrons for prostitutes, provided a place to be used for the purpose of prostitution, and took or shared in the earnings of prostitutes.

Defendant argues, however, that Walker's evidence cannot be accepted as true due to the alleged inconsistencies in her testimony and her motives for testifying. At trial Walker related testimony of her relationship with Burt. Burt's conduct in this relationship was consistent with those of a pimp. However, throughout Walker's testimony, she insisted that Burt's actions were not that of a pimp and that he was not pimping her. It is this inconsistency defendant relies on to negate the reliability of Walker's testimony, and we find it to be without merit.

The crime of pimping is set out in Iowa Code section 725.2 (1981):

> A person who solicits a patron for a prostitute, or who knowingly takes or shares in the earnings of a prostitute, or who knowingly furnishes a room or other place to be used for the purpose of prostitution, whether for compensation or not, commits a class "D" felony.

Defendant could be found guilty of pimping if he solicited another to engage in a sex act with a prostitute or if he knowingly shared in the earnings of a prostitute. Iowa Code § 725.2 (1981). We hold, either by direct testimony or inference from circumstantial evidence, the State provided sufficient evidence of pimping.

III. Assuming without deciding Walker was an accomplice, we find there was sufficient evidence to corroborate her testimony.

Corroborative evidence need not be strong and it need not be entirely inconsistent with innocence. State v. Vesey, 241 N.W.2d 888, 890 (Iowa 1976). The requirement of corroborative evidence is met if it can fairly be said the accomplice is corroborated in some material fact tending to connect the defendant with the commission of the crime. State v. Martin, 274 N.W.2d 348, 349-50 (Iowa 1979) (emphasis added).

Defendant's testimony corroborated Walker's testimony in part. State v. Martin, 274 N.W.2d 348, 349-50 (Iowa 1979). Defendant testified he knew Walker and the others and that some of them might be prostitutes, that he lived with them at the places testified to by Walker, and that he arranged exotic dancing dates for Walker.

Other corroborative evidence includes testimony that defendant was observed transporting these women in his car to areas in Waterloo known for its ongoing problem with prostitution. Defendant's car was accurately described by Walker.

AFFIRMED.