NO. 01-24-00279-CR

IN THE COURT OF APPEALS
FOR THE FIRST JUDICIAL
DISTRICT OF TEXAS
HOUSTON, TEXAS

SOHRAB MEHDI, Appellant

VS.

THE STATE OF TEXAS, Appellee

On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Cause No. 23-DCR-102394

APPELLANT'S BRIEF

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ORAL ARGUMENT IS REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38.1(a), the parties to this suit are as follows:

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Texas Rule of Appellate Procedure 39.7, Appellant hereby requests oral argument. Counsel is of the opinion that oral argument would serve to emphasize and clarify the important legal points regarding this appeal.

STATEMENT OF THE CASE

This appeal is from one conviction for Solicitation of Prostitution, in which the Appellant was sentenced to two years imprisonment in the Texas Department of Criminal Justice - State Jail Division; but that sentence was suspended, and Appellant was placed on community supervision for a period of three years.

Appellant was indicted for the felony offense of Solicitation of Prostitution in cause number 23-DCR-102394 on March 27, 2023. CR 23. A bench trial was had in the 240th District Court, Judge Surrenderan Pattel Presiding.

Following the execution of a written waiver of jury trial, the trial court found Appellant guilty as charged in the indictment on January 30, 2024. CR 61, 71. The trial court held punishment hearing on April 9, 2024. The trial court sentenced Appellant to two years imprisonment in the Texas Department of Criminal Justice - State Jail Division but suspended that sentence, and placed Appellant on community supervision for a period of three years. CR 71.

Notice of Appeal was filed on April 10, 2024. CR 81.

This brief follows.

ISSUE PRESENTED

SOLE POINT OF ERROR

The evidence is insufficient to support Appellant's conviction because no rational fact-finder could have found beyond a reasonable doubt that Appellant knowingly agreed to pay a fee to another for the purpose of engaging in sexual conduct.

STATEMENT OF FACTS

Appellant's case was scheduled for jury trial on October 17, 2023. 2 RR 4. Following a pre-trial hearing, the trial court cancelled the trial setting, agreed to appoint a defense expert to review the video evidence and scheduled a status conference for November 27, 2023. 2 RR 19-21; CR 51. At the status hearing on November 27, 2023, the trial court heard from the parties, then set this matter for a bench trial on January 30, 2024. CR 52. On January 30, 2024, prior to the commencement of the bench trial, Appellant and trial counsel executed a written waiver of his right to a jury trial. CR 61. With the prosecutor's consent, the trial court approved Appellant's request for a bench trial. *Id*.

Lieutenant Hall, investigator with the human trafficking division in the Fort Bend County District Attorney's office, testified that in January 2023 he conducted a "demand suppression operation" to "arrest sex buyers" at an "illicit massage spa." 3 RR 38-40. The "demand suppression operation" conducted on January 27, 2023 took place at "number one foot massage" which is located on Highway 6 in between Voss and West Airport, in the city of Sugar Land, in Fort Bend County, Texas. 3 RR 48-9. Hall reported that his group previously ran an undercover

operation in that same massage spa that resulted in a prostitution case. 3 RR 40. As a result, the Fort Bend County Attorney's Office shut the business down, obtained permission to conduct his operation, and he began preparing the location. 3 RR 43-5. Hall testified that in preparation for this operation, his group posted an "open" sign out front, moved-in furniture, and posted illicit sexual photos on the wall "to set the mood." 3 RR 45-6.

In this operation, one female undercover officer would pose as a receptionist. 3 RR 50. This officer was responsible for greeting "clients" and taking them back to the massage room. *Id*. The front door remained locked to protect the officers and prevent others from entering the spa when the officers were not ready for them. 3 RR 50-1. The individuals who entered the spa were taken to the first room which was equipped with audio/video recording devices. 3 RR 55. The hallway was also equipped with audio/video recording devices, as was the reception area. 3 RR 54-55. Inside the first room there was a table, towels, lotions, oils, and a photo of a nude woman. 3 RR 55-7. The undercover officers were dressed in nighttime or lingerie clothing items in order to convey the message that this was an illicit spa. 3 RR 57.

For this operation, another female undercover officer would enter the room and meet with the individuals who entered the spa. 3 RR 58-61. Hall testified that Appellant was arrested during this operation on January 27, 2023. 3 RR 62.

Detective Kiki Wang, of the Human Trafficking Unit at the Houston Police Department, participated in this investigation as a female undercover officer. 3 RR 70, 72. Specifically, Wang's role was that of a female manager of the spa called a "mama-san." 3 RR 74. In this role, Wang was responsible for the first contact with the individual who entered the spa. 3 RR 75. Wang would greet them and ascertain the specific type of girl that person was looking for. *Id*. Wang worked in this operation alongside officer Melanie Jones and Tiffany Juarez. 3 RR 75. Jones and Juarez served as "decoy officers" which means they were the ones who entered the rooms with the visitors. 3 RR 75. Wang testified that she made contact with Appellant on January 27, 2023. 3 RR 76. Wang testified that Appellant first entered the spa around 1:40 and then entered again around 6:30. 3 RR 76-7. The first time, Wang testified that she brought Appellant to the room and Appellant asked if there were any black ladies. *Id*. According to Wang, she left the room for Juarez but Appellant left the spa. 3 RR 78-79.

Wang testified that Appellant returned to the spa that night, after 6:00 P.M., and she greeted him in the front lobby along with Jones. 3 RR 87. Wang admitted that Appellant did not request or agree to any sexual services with her. 3 RR 94.

Detective Melanie Jones, of the vice division at the Houston Police Department, was the female undercover "decoy officer" who entered the room with Appellant the second time he visited the spa. 3 RR 102-05; 106-110; 113. While in the room together, Jones stated that she had a conversation with Appellant designed

to give him the opportunity to state what he wanted. 3 RR 117. Appellant told Jones that he paid $100 last time. 5 RR 33. Jones admitted that she was having a difficult time doing so because she could not hear him very well. *Id*. Jones stated that Appellant then grabbed her breast. *Id*. Appellant paid $100. 3 RR 119. Subsequently, Jones told Appellant that he had to use a condom for the "fuck and suck." 3 RR 120. Jones testified that Appellant nodded his head. 3 RR 121. In her opinion, this constituted an agreement, then Jones left the room. 3 RR 121-2.

Jones confirmed that when asked what he wanted, Appellant did not say anything specific. 3 RR 123. After her memory was refreshed by a photo admitted into evidence by the prosecutor, Jones admitted that the spa was advertised as a massage entity. 3 RR 124. Jones also stated that — since no particular service was negotiated — it would have been reasonable to believe that one (who entered that establishment under these circumstances) would be receiving a massage. *Id*. Jones reiterated that at no point did Appellant verbally request a sexual act or service. *Id*. Jones believed that when he touched her breast and buttocks that he was "asking for something sexual." 3 RR 124-5. Jones later admitted that she actually touched Appellant first — having reached out and touched Appellant's arm right before he touched her. *Id*. Jones left the room about 30 seconds after she spoke the words "fuck and suck." 3 RR 126. Appellant then picked up his $100 and a condom on the floor, and put them both in his pocket. 3 RR 126-8. Officers entered moments later and arrested him. 3 RR 147-9. The first thing the Defendant said to the

uniformed officers who entered the room to arrest him is that "he was leaving." 3 RR 148.

SUMMARY OF THE ARGUMENT

Appellant made an agreement to pay a fee to another for massage services. Seconds before leaving the room, the undercover officer noted that Appellant would have to wear a condom for the "fuck and suck." There was no additional fee agreed upon; nor was this additional offer for sexual conduct incorporated into the fee previously agreed upon and paid. This final comment led Appellant to grab the money he previously paid for the massage service and attempt to leave the premises. For these reasons, a rational fact-finder could not have found beyond a reasonable doubt that Appellant agreed to pay a fee to another to engage in sexual conduct.

ARGUMENT AND AUTHORITIES

SOLE POINT OF ERROR

The evidence is insufficient to support Appellant's conviction because no rational fact-finder could have found beyond a reasonable doubt that Appellant knowingly agreed to pay a fee to another for the purpose of engaging in sexual conduct.

Authorities

In assessing the sufficiency of the evidence to support a criminal conviction, appellate courts should consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact-finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Alfaro-Jimenez v. State*, 577 S.W.3d 240, 243–44 (Tex. Crim. App. 2019). This standard requires deference "to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Zuniga v. State*, 551 S.W.3d 729, 732 (Tex. Crim. App. 2018) (citing *Jackson*, 443 U.S. at 319).

Section 43.021 of the Texas Penal Code provides that a person commits the offense of solicitation of prostitution if the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another. *See* TEX. PENAL CODE 43.021(a).

Argument

Appellant knowingly agreed to pay a fee for a massage service by another. Engaging in sexual conduct was not discussed or alluded to leading up to or at the time of this agreement. Subsequent thereto, officer Jones offered to engaged in a "fuck and suck." Appellant then reclaimed his money and tried to leave the premises but he was arrested before he could do so. As such, no rational fact-finder could have found beyond a reasonable doubt that Appellant knowingly agreed to pay a fee to another for the purpose of engaging in sexual conduct because officer Jones offered to engage in sexual conduct only after she and Appellant had discussed a fee, agreed upon a fee, and Appellant handed her the money.

At an establishment clearly advertised as a foot massage business, Officer Jones only casually mentioned — *after* an agreement was made for services (presumably massage under the circumstances), a price set, and money exchanged — that Appellant would need to wear a condom if he wanted to participate in a "fuck and suck." 3 RR 113-4; 119; 120; 123-4. In other words, after the agreement had been made for services and a fee agreed upon and money exchanged, the undercover officer then changed the terms of the services by adding sexual conduct services. At that point, Defendant initially nods in response to this statement, but then reclaims his money and positions himself to leave the room. An agreement to pay a fee to engage in sexual conduct with another, this does not make.

Officer Jones admitted that it would be reasonable under the circumstances for Appellant to believe that he paid to receive a massage. 3 RR 120. This is because the storefront signage advertised this establishment as a massage business, nothing sexual had been discussed, a price had been negotiated and agreed upon, and money had been exchanged before either party mentioned that sexual conduct was being included as a service. 3 RR 113-4; 119; 120; 123-4.

Appellant did not knowingly agree to pay a fee of U.S. currency to another person for the purpose of engaging in sexual conduct with that person. Appellant entered a massage establishment and agreed to pay a fee for the massage service; no sexual conduct was discussed or alluded to. That is the extent of the agreement; that is the breadth of the meeting of the minds in that massage room. Just because the officer subsequently offered to engage in a "fuck and suck" with Appellant, does not mean that the nature of the agreement is automatically transformed and Appellant is now guilty of solicitation of prostitution under 43.021 of the Texas Penal Code. At most Appellant nodded that he understood her comment. But mere seconds later — in response to this material change to the offer for services — Appellant reclaimed his money and began to exit the massage room.

If this conviction is upheld, it would lead to absurd results. This conviction should not be upheld simply because Appellant nodded in response to officer Jones' last second comment that Appellant would have to wear a condom for a "fuck and suck." Whether Appellant responded with an uneasy "Okay…" or a

confused "Alright…" or nodded his head as he bewilderingly processed the comment — none of these represent a true agreement to pay a fee to another person for the purpose of engaging in sexual conduct with that person. It would be absurd to encourage officers to make an agreement with a visitor in a clearly marked massage establishment for a service, then at the last second, offer to engage in sexual conduct, and then arrest the visitor so long as he responds in some manner that could possibly be construed as assent — whether or not the person truly made an agreement or not[1].

Two decisions by the Court of Criminal Appeals are useful here. In *Trippell v. State*, the Court reversed a judgment of conviction for aggravated promotion of prostitution against a spa owner. *See Trippell v. State*, 535 S.W.2d 178 (Tex. Crim. App. 1976). In that case, undercover officers paid the spa owner a fee and then subsequently engaged in sexual conduct with the "masseuse." The Court wrote in dicta that it was difficult to characterize as prostitution the sexual act of a masseuse that was outside the scope of the massage for which the individual had paid, without further money being exchanged. *Id*. In *Roper v. State*, the Court found the evidence insufficient to show the defendants engaged in sexual conduct "for a fee" because a) the money was not exchanged between the undercover officers and the defendants personally; b) the money paid for two "contact sessions" with the defendants were not interpreted as payment for sexual conduct in which the

[1] "I don't know what he would have thought." 3 RR 124.

defendants engaged in later; and c) there was no evidence that the defendants negotiated a price for sexual favors or received money for them. *Roper v. State*, 652 S.W.2d 398 (Tex. Crim. App. 1983).

To be sure, these decisions include different scenarios and slightly different offenses. However, these decisions are helpful in that they seem to stand for the proposition that where a stated price is agreed upon in exchange for services that are not explicitly sexual in nature (such as massage), some additional fee must be agreed upon in order to render any subsequent agreement for sexual services prostitution because engaged in for a fee.

Here, there was an agreement to pay a fee for services at an establishment clearly marked as a foot massage business. The agreement did not include any explicitly sexual services. At the very last second, and subsequent to the agreement being made, the undercover officer casually referred to sexual conduct. There was no additional fee agreed upon. There was no additional discussion or reiteration of the fee including the sexual conduct. In fact, a few seconds after the undercover office made this statement, Appellant reclaimed his money and turned to leave the premises. But he was arrested before he could exit the room.

A rational fact-finder could not have found all of the essential elements of this offense beyond a reasonable doubt. *See Jackson, supra*; *see also Alfaro-Jimenez, supra*. Specifically, a rational fact-finder could not have found beyond a reasonable doubt that Appellant made an **agreement** to **pay a fee for sexual**

conduct with another. For all of these reasons, the evidence is insufficient to support Appellant's conviction.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Appellant prays that this Court reverse Appellant's conviction and sentence, order a judgment of acquittal, and grant any other relief that may be appropriate.

Respectfully submitted,

/s/ Daniel Lazarine

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CERTIFICATE OF SERVICE

This is to certify that on September 9, 2024, a true and correct copy of the above and foregoing Appellant's Brief was served on the Fort Bend County District Attorney's Office by electronic service through e-filing.

/s/ Daniel Lazarine
DANIEL LAZARINE

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