

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZI XIAO CHEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51147

FILED

APR 15 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of two counts of pandering. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. The district court sentenced appellant Zi Xiao Chen to two concurrent prison terms of 12 to 32 months, ordered the sentence to be suspended, and placed Chen on probation for a period not to exceed three years.

Chen contends that (1) the elements of pandering were not proven beyond a reasonable doubt; (2) the corroborating testimony of victims Shannon Su and Qui Xie was necessary to prove that she was a panderer; and (3) merely answering telephone calls that were made in response to advertisements, without further corroboration, was not evidence of inducing, persuading, encouraging, inveigling, enticing and/or compelling others to become prostitutes or to continue to engage in prostitution. We construe Chen's contentions as challenges to the sufficiency of the evidence that was presented at her trial.

"[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). Accordingly, the

standard of review for a challenge to the sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt.” McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). Circumstantial evidence is enough to support a conviction. Lisle v. State, 113 Nev. 679, 691-92, 941 P.2d 459, 467-68 (1997), holding limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

Here, the jury heard testimony that Detective David Hunkins called a phone number listed on a “Nicole Real Photo” advertisement that had been placed in City Life Magazine. He told the woman who answered the phone that he was looking for a massage and sex, and she directed him to a residence on Oak Mist Street. Detective Hunkins and several other detectives conducted surveillance on the residence. They observed a red Isuzu Trooper registered to Chen parked outside the residence, questioned two males who entered and left the residence, applied for a search warrant, and directed Detective Anthony Petrulli to conduct an undercover operation.

Detective Petrulli called the “Nicole Real Photo” number and was directed to the Oak Mist residence. Shannon Su greeted Detective Petrulli at the door and invited him inside. They made an agreement for sexual intercourse and oral sex for \$200, whereupon Detective Petrulli gave a bust signal and the police came in and secured the residence. Inside the residence, the police found immigration and medical paperwork in Chen’s name; photographs of Asian females that included a photograph of a woman who appeared in an advertisement in City Life Magazine;

“trick sheets,” which are used by prostitutes or panderers to track dates and money; a large amount of cash; and a sack of Crown condoms, a unique brand of condom that Detective Hunkins had never seen before. As the officers finished their search, Detective Hunkins received a call from the “Nicole Real Photo” number. Detective Hunkins recognized the caller’s voice and determined that the caller was the same woman that he had previously spoken to. She asked if he “had seen her girl because her girl wasn’t answering her phone.”

When Detective Hunkins returned to his office, he called the phone number listed on an “Asian Venus” advertisement. The woman who answered the phone was the same woman who answered the phone for the “Nicole Real Photo” advertisement. Detective Hunkins asked if the Oak Mist residence was open. The woman said that Oak Mist was not open, she stated that she had another girl that she could send him to, and she directed him to a residence on Hunt Club Street. Detective Hunkins instructed Detective Petrulli to conduct an undercover operation at that residence.

When Detective Petrulli arrived at the Hunt Club residence, Qiu Xie answered the door and invited him inside. They made an agreement for sexual intercourse and oral sex for \$200. Thereafter, a search warrant was executed on the Hunt Club residence. Inside the residence, the police found photographs of Asian females that included the photograph that appeared in the “Nicole Real Photo” advertisement, “trick sheets,” baby oil and sexual lubricants, Crown condoms, and cash. The police also found Nevada Power bills for the Oak Mist residence and a West Tropicana Avenue residence. Both of the power bills were made in

Qiu Xie's name. The police determined that Chen rented the Tropicana residence.

While Detective Hunkins applied for a warrant to search the Tropicana residence, the police conducted surveillance of the residence and observed Chen's red Isuzu Trooper parked in front of the apartment. When Detective Hunkins arrived at the residence and had an opportunity to speak with Chen, he recognized her voice and determined that she was the woman who answered his phone calls to the "Nicole Real Photo" and "Asian Venus" numbers. When Detective Hunkins called the number listed for "Asian Venus," Chen's phone began to ring and its caller ID indicated that the incoming call was from Detective Hunkins' phone. Inside the Tropicana residence, the police found cash, photographs, and a box containing hundreds of Crown condoms. After Detective Hunkins arrested Chen, she stated "that all she did was get paid to answer the phones and arrange the dates."

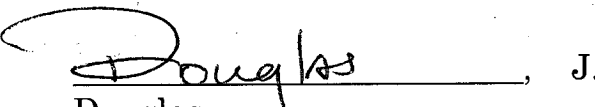
Based on this testimony, we conclude that a rational juror could infer that Chen encouraged Shannon Su and Qui Xie to continue to engage in prostitution by advertising their availability in local periodicals, answering prospective customers' phone calls, directing the customers to the residences where they worked, and furnishing the residences with the supplies necessary for engaging in prostitution. See NRS 201.300(1)(a). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

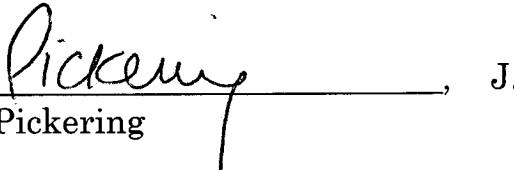
To the extent that Chen further claims that the testimony of an accomplice in a pandering case must be corroborated with independent evidence, we note that the State did not present the testimony of an accomplice in this case and therefore nothing needed to be corroborated. See NRS 175.291. And to the extent that Chen claims that she was entitled to a jury instruction on the lesser-related offense of solicitation pursuant to Stanifer v. State, 109 Nev. 304, 309, 849 P.2d 282, 286 (1993), we note that defendants are no longer entitled to jury instructions on lesser-related offenses. Peck v. State, 116 Nev. 840, 845, 7 P.3d 470, 473 (2000), overruled on other grounds by Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006).

Having considered Chen's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. James M. Bixler, District Judge
Benson Lee and Associates
Law Office of Joshua L. Harmon
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk