

Circuit Court for Anne Arundel County
Case No.: C-02-CR-19-000562

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2113

September Term, 2019

XIANGDONG TANG

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma, S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 10, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Anne Arundel County, the court found Xiangdong Tang, appellant, guilty of one count of receiving the earnings of a prostitute under Criminal Law Article (“CL”), Section 11-304(a), and four counts of violating the “House of Prostitution” statute, CL Section 11-306(a)(2) through (5). The court sentenced appellant to a term of ten years imprisonment, with five years suspended, for the count charging receiving the earnings of a prostitute, and either fully suspended or merged the sentences for the remaining counts.¹

On appeal, appellant contends that the evidence was legally insufficient. For the reasons explained below, we shall affirm.

BACKGROUND

At trial, the court admitted Detective Bernard Adkins as an expert in massage parlor operations and prostitution. He testified that, in late November 2018, he began investigating a business called “Blue Moon Wellness” located at 810 Nursery Road. When Detective Adkins went to that address to conduct surveillance, he saw appellant’s Acura SUV parked outside. Detective Adkins was familiar with this Acura SUV because he had seen it parked at 704 Nursery Road while conducting an earlier prostitution investigation. 704 Nursery Road is about a half mile from 810 Nursery Road.

¹ Specifically, the court sentenced appellant as follows: Count 1, 10 years, suspend all but five; Count 2, one year, suspended, concurrent with Count 1; Count 3, one year, suspended, concurrent with Count 1 and merged into Count 2; Count 4, one year, suspended, concurrent with Count 2 and merged into Count 5; Count 5, one year, suspended, concurrent with Count 2.

Detective Adkins then continued his investigation by entering Blue Moon Wellness for the purposes of determining the massage license status of the employees, and further investigating whether any prostitution related activity was occurring. Giufang Wu met him at the front door. Detective Adkins asked her for a half-hour massage, and gave her \$40.00. After Wu led Detective Adkins to a massage room, he disrobed, laid face down on the massage table, and received a traditional massage.

After 10 to 15 minutes Detective Adkins turned over onto his back and Wu removed the drape, exposing Adkins’s genitals. Wu covered her hands with lubrication and began touching Detective Adkins’s scrotum. Wu “kind of had like a little giggle,” which Detective Adkins believed “was the initiation, -- she’s letting me know she’s going to engage in prostitution by touching my scrotum.” Detective Adkins then pointed to his penis and asked, “How much[?]” Wu replied something to the effect of, “Whatever you want” which Detective Adkins interpreted to mean however much money he felt appropriate. Detective Adkins asked Wu whether she wanted him to pay her right then, but she told him, “No, when you finish.” Detective Adkins understood that to mean “[t]hat she was going to perform a hand job or a happy ending, which is a manual manipulation of the male penis for sexual gratification, that [he] would ejaculate and that would be me finishing.”

After this exchange, Wu “used her lubricated hand and placed it on [Detective Adkins’s] penis, as if she were about the start moving it up and down[.]” Detective Adkins then got up and said, “I’m done. I need to leave.” While Detective Adkins got dressed, Wu stood in the doorway. Detective Adkins paid her \$50.00 and she left the room. As

Detective Adkins was leaving, other detectives entered the business and detained Wu. One of the detectives, who was stationed outside the rear door of the business caught appellant attempting to flee. Appellant was brought back inside and both he and Wu were searched before they were taken to the police station. Appellant had a money order for \$500.00 and \$516.00 in cash in his jacket pocket. When asked if either of them had a key for the business, Appellant denied having a key, and Wu stated that she did. A subsequent search of appellant's phone, pursuant to a search warrant, revealed a video of appellant and Wu engaged in sexual intercourse.

Wu's driver's license indicated that she was from Flushing, New York. Detective Adkins testified that, in investigating similar unlicensed massage parlor operations, he found that the women were usually between the ages of 30 and 50, of Chinese descent, and that the majority of them had come to work in Maryland from Flushing, New York. Detective Adkins also testified that it was common for the person running an illicit massage parlor business to not put their name on the lease for the building where the business is located. According to Detective Adkins, owners of illegal massage parlors try to be discreet and handle aspects of the business in the background. In addition, he said that it is common when an illicit massage parlor is shut down for it to reopen in the same location or another area. He also testified how illegal massage parlors generally operate. He said that usually the employees give a normal massage, and then at the conclusion of it they will perform a sexual act for additional money. The money is usually given to the masseuse who, in turn, gives it to the owner or operator of the business.

At the police station, after Detective Adkins obtained appellant's key ring, he explained to appellant that he could keep any of the keys that did not unlock the business. Appellant again denied that he had a key to the business. Based on Detective Adkins's experience with appellant, and his understanding of appellant's role in the business, he did not believe appellant's denial. As a result, Detective Adkins gave the keys to another detective to take to the business and try each of the keys on the locks on the doors. When the detective reported back that none of the keys worked, Detective Adkins checked the interview room where appellant had been left alone for a period of time. After checking the room, Detective Adkins found a key on the floor which another detective took back to the business and found out that it worked the lock. A subsequent review of a surveillance video of the interview room showed that, as soon as appellant was left alone in the room, he immediately reached into his jacket pocket, manipulated an object, and threw an object into the corner of room that made a clanging noise when it hit the floor.

Scott Shineman, a sales associate and listing agent for the vacancies in the shopping center located at 810 Nursery Road, identified appellant, who he knew as "Sean Tang," as a person that he negotiated a lease with for Suite M in that shopping center starting in the spring of 2018. During those negotiations, which involved, among other things, the amount of rent and the specifications of the build-out of the interior of Suite M, appellant sent an email to Shineman stating that he would neither be the "tenant nor the guarantor." Shineman believed that a physical therapy business would be operated out of Suite M called TK Therapy. When the signed lease was sent to Shineman, TK Therapy's name appeared on the lease instead of appellant's. Sometime in September 2018, Shineman

delivered the keys for Suite M to appellant. By late October of 2018, because appellant had fallen into arrears with the landlord, and because the landlord's calls and emails to appellant were not being responded to, the landlord asked Shineman to contact appellant, which he did by text message. That was the last contact Shineman had with appellant. The landlord evicted appellant sometime after that.

Shineman returned to Suite M during the winter of 2018 because it needed to be re-listed. He noticed that additional construction had been done in the interior of Suite M, and it was not how the landlord had built it out for appellant. Among other things, several private rooms and a shower were added.

At trial, the parties agreed to the following stipulation:

[T]he Defendant agrees that he pled guilty to prostitution by any means as it relates to the business of 8840 Belair Road in Nottingham, Baltimore County. He certainly got a PBJ. That's not really the relevant portion of it, but that he acknowledged and pled guilty to prostitution regarding solicitation that occurred at that business.

8840 Belair Road and 704 Nursery Road were massage parlor businesses and he placed ads for women to work there. He would pick the women up from the bus stop. He would give them an apartment to live in and transport them to the massage parlors to work.

Both 8840 Belair Road and 704 Nursery Road were shut down due to prostitution arrests of females and the fact that they were not properly licensed for massage therapy.

And the full quote in a statement to Detective Latow of Baltimore County and Detective Adkins was present, the Defendant would explain the business plan to the women, but he does not tell the women workers to give sexual favors. He added, "They are experienced and know what to do. I don't have to tell them to do anything." And he would collect the money from the girls after they worked.

Subsequent investigation revealed that neither appellant nor Wu had ever been licensed to practice massage therapy in Maryland.

DISCUSSION

In reviewing the sufficiency of the evidence, we review the record to determine whether, ““after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”” *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Appellate review of the sufficiency of the evidence at a court trial is of both the law and the evidence. *Elias v. State*, 339 Md. 169, 185 (1995); Maryland Rule 8-131.

In Count 1, the State charged that appellant “did acquire money or proceeds from the earnings of Guifang Wu engaged in prostitution with the intent to promote a crime under Title 11, subtitle 3 of the Criminal Law Article.” CL Section 11-304(a) provides as follows:

(a) A person may not receive or acquire money or proceeds from the earnings of a person engaged in prostitution with the intent to:

- (1) promote a crime under this subtitle;
- (2) profit from a crime under this subtitle; or
- (3) conceal or disguise the nature, location, source, ownership, or control of money or proceeds of a crime under this subtitle.

The State charged appellant, in Counts 2 through 5 with violating CL Section 11-306(a) (2002). At the time of appellant’s arrest, Section 11-306(a), titled “House of Prostitution” provided that a person may not knowingly:

- (1) engage in prostitution or assignation by any means;
- (2) keep, set up, occupy, maintain, or operate a building, structure, or conveyance for prostitution or assignation;
- (3) allow a building, structure, or conveyance owned or under the person’s control to be used for prostitution or assignation;
- (4) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or
- (5) procure or solicit or offer to procure or solicit for prostitution or assignation.

CL Section 11-301(b) defines “assignation” as “making of an appointment or engagement for prostitution or any act in furtherance of the appointment or engagement.”

CL Section 11-301 (c) defines “prostitution” as “the performance of a sexual act, sexual contact, or vaginal intercourse for hire.”

The State charged appellant with four violations of CL Section 11-306(a), as follows:

- Count 2: Did knowingly maintain a building for prostitution
- Count 3: Did knowingly maintain a building for assignation
- Count 4: Did knowingly allow a building under a person’s control to be used for prostitution
- Count 5: Did knowingly allow a building under a person’s control to be used for assignation

The uncontroverted evidence at trial showed that Detective Adkins negotiated with Wu to engage in sexual contact for money. Appellant contends that the evidence is insufficient to support Count 1 because there was no connection between him and the money received by Wu, and because there was no evidence that he was aware of Wu’s act of prostitution. Appellant contends that the evidence is insufficient for Counts 2 through

5 because the evidence did not show that appellant had control of the business or knowledge of the prostitution. We disagree.

First, the evidence showed that appellant was heavily involved in negotiating the lease for Suite M, and that he continued to be involved at least through November 2018. Moreover, he was present at the business the day of Wu’s arrest and attempted to flee out of the back door. Then, after his arrest, he lied to the police about having a key to the business and then tried to discard that key in the interview room. Given that evidence of consciousness of guilt may be considered in determining guilt, *Thompson v. State*, 393 Md. 291, 303 (2006), all of the aforementioned evidence and the inferences drawn from it clearly support a finding that appellant ran the massage business.

In addition, it was stipulated to at trial that appellant had previously pleaded guilty to prostitution by any means. It was also stipulated to that

8840 Belair Road and 704 Nursery Road were massage parlor businesses and he placed ads for women to work there. He would pick the women up from the bus stop. He would give them an apartment to live in and transport them to the massage parlors to work.

Both 8840 Belair Road and 704 Nursery Road were shut down due to prostitution arrests of females and the fact that they were not properly licensed for massage therapy.

[The] Defendant would explain the business plan to the women, but he does not tell the women workers to give sexual favors. He added, “They are experienced and know what to do. I don’t have to tell them to do anything.” And he would collect the money from the girls after they worked

Given Detective Adkins’s expert testimony that illicit massage parlors frequently re-open after being shut down, it could rationally be inferred that appellant had opened up a new massage parlor offering prostitution services.

Moreover, the evidence of appellant’s prior history with similar businesses, his relationship with Wu, his actions that conveyed a consciousness of guilt, the alterations to the interior of the business, and his presence at the business at the time that Wu agreed to perform sex acts with Detective Adkins all supported the conclusion that appellant was aware of the prostitution Wu was engaged in at the business.

There also was sufficient circumstantial evidence to permit the inference that appellant received earnings from a person who was engaged in prostitution. Detective Adkins testified that the money given to the masseuse is usually given to the owner or operator of the massage parlor. Appellant also stipulated that, in reference to his prior illegal massage parlors that he collected money from the employees after they worked. Appellant also had over \$1,000 in his pocket at the time of his arrest after he attempted to flee. All of the foregoing evidence, circumstantial and direct, supported the rational inference that appellant received the earnings of a prostitute. The evidence may have supported other inferences too, but “[c]hoosing between competing inferences is classic grist for the jury mill.” *Cerrato-Molina v. State*, 223 Md. App. 329, 337 (2015).

Consequently, we shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**