

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2011-AP-31  
Lower Court Case No: 2011-MM-1056

**STATE OF FLORIDA,**

Appellant,

vs.

**NATHANIEL BELL,**

Appellee.

\_\_\_\_\_ /

Appeal from the County Court,  
for Orange County, Florida,  
Maureen Bell, County Court Judge

Lawson Lamar, State Attorney and  
David H. Margolis, Assistant State Attorney,  
for Appellant

Robert Wesley, Public Defender and  
Kathleen MacMillan, Assistant Public Defender,  
for Appellee

Before POWELL, G. ADAMS, and J. KEST, J.J.

**PER CURIAM.**

**FINAL ORDER REVERSING TRIAL COURT**

The State appeals<sup>1</sup> an order of the trial court granting a renewed defense motion for judgment of acquittal (JOA) after the jury returned a verdict of guilty as charged of Aiding and Abetting Prostitution. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and reverse.

<sup>1</sup> See Fla. R. App. P. 9.140(c)(1)(E) authorizing the State to appeal an order granting a judgment of acquittal.

In the case at bar, the State produced sufficient competent evidence to make a prima facie case. The prosecutor called a deputy sheriff, who testified that he was working undercover investigating prostitution. He pulled his unmarked vehicle into the Melody Motel located in the middle of the prostitution district, and was waved over by Appellee who was standing in the parking lot. The Appellee engaged the deputy in conversation during which Appellee said he helped his sister, the owner, manage the motel. The deputy told Appellee he was looking for a woman named Destiny who stayed there, and the Appellee replied, "Oh, you must mean Deja, she was arrested last week," and further stated, "We got plenty of other girls, don't worry about that. We have a Spanish girl ...in a room and a blonde in another room. What do you prefer?" When the deputy indicated a blonde, Appellee immediately walked over to a room, knocked loudly on the door, and yelled a name and, "Get your ass out here." As Appellee walked a short distance away, a woman emerged from the room. Appellee said, "Sorry, she's not a blonde anymore." The deputy then said, "Well, do I get a discount?" and Appellee replied, "No, means you got to pay more."

The deputy further testified that the woman came to the driver's window of his truck and after some brief casual conversation, he said to the woman, "I've got a hundred dollars." She told him, "The price for full sex with me is \$100," and he agreed. At that point the deputy gave the take-down signal, and other deputies responded and arrested both the Appellee and the woman. After the State rested its case Appellee's motion for JOA was denied.

Appellee then took the stand, the only witness called by the defense. Appellee admitted saying all the things to which the deputy had testified. But he consistently denied that any prostitution was or had ever been taking place at the motel, that he had not heard any of the conversation between the woman and the deputy, that his off-hand remarks were made only in

jest, and that his intent was solely to introduce the deputy to other women staying there who might help the deputy find Deja.

After the defense rested its case, a lengthy recess was taken which devolved into arguments after the defense renewed its motion for JOA and then a charge conference. At the outset, the prosecutor stated that he was relying on sub-subsection (b)<sup>2</sup> of section 796.07(2), Florida Statutes. The trial judge granted the renewed motion for JOA as to the remaining sub-subsections, and stated she would instruct the jury under sub-subsection (b), which she proceeded to do without objection by the defense. The jury returned a verdict of “Guilty as charged.” Appellee then renewed his motion for JOA notwithstanding the guilty verdict, which was granted, and this appeal by the State followed.

In a somewhat similar appeal reversing a JOA notwithstanding a guilty verdict, our Fifth District Court of Appeal stated:

A motion for judgment of acquittal challenges the sufficiency of the evidence. *Bufford v. State*, 844 So. 2d 812, 813 (Fla. 5th DCA 2003). The motion should be denied if the State produces competent evidence to establish each element of the offense. *Id.* In moving for a judgment of acquittal, a defendant admits not only the facts stated in the evidence, but also every conclusion favorable to the State that the fact-finder might fairly infer from the evidence. *Id.* The record is reviewed de novo to determine whether sufficient evidence supports the verdict. *Id.*

*State v. Odum*, 56 So. 3d 46, 49 (Fla. 5th DCA 2011).

As here, where the evidence as to specific intent is part direct and part circumstantial, it may be proven by circumstantial evidence, *Salter v. State*, 77 So. 3d 760 (Fla. 4th DCA 2011), and becomes an issue for the jury, *Helms v. State*. 38 So. 3d 182 (Fla. 1st DCA 2010). Viewing

---

<sup>2</sup> The Information charged Appellee with Aiding and Abetting Prostitution “in violation of Florida Statute 796.07(2)(h).” Sub-section (2)(h) Provides “It is unlawful...To aid, abet or participate in any of the things numerated in this section.” Sub-section (2)(b) provides “It is unlawful...To offer, or to offer or agree to secure, another for the purpose of prostitution....”

the total evidence in the light most favorable to the State, we conclude there was sufficient competent evidence to withstand the renewed motion for JOA and to support the jury's verdict. Consequently, we find that the trial court erred in granting the motion for JOA.

**REVERSED and REMANDED** with directions to **REINSTATE THE VERDICT** and proceed to sentencing.

**DONE AND ORDERED** at Orlando, Florida this 26th day of June, 2013.

/S/\_\_\_\_\_  
**ROM W. POWELL**  
Senior Judge

/S/\_\_\_\_\_  
**GAIL A. ADAMS**  
Circuit Judge

/S/\_\_\_\_\_  
**JOHN MARSHALL KEST**  
Circuit Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing order was furnished to **Kathleen MacMillan, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Dugald McMillan, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Maureen Bell**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this 26th day of June, 2013.

/S/\_\_\_\_\_  
Judicial Assistant