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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1111**

State of Minnesota,
Respondent,

vs.

Dontania Danielle Petrie,
Appellant.

**Filed July 2, 2018
Affirmed
Schellhas, Judge**

Olmsted County District Court
File No. 55-CR-16-5394

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James Spencer, Senior Assistant County Attorney, Jennifer D. Plante, Associate County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Lynn Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges her conviction of promoting prostitution, arguing that the district court abused its discretion by admitting recorded out-of-court statements as nonhearsay statements of a co-conspirator. We affirm.

FACTS

While a special investigative unit of the Rochester Police Department conducted an undercover sting operation targeted at prostitution, a police officer responded to an “escort” advertisement on Backpage.com and arranged to meet the “escort” at a hotel. The officer waited in an agreed-upon room at the hotel and was equipped with a hidden recording device and accompanied by additional officers on standby in an adjoining room. Appellant Dontania Petrie visited the room and confirmed that the officer would pay \$200 for one hour of services. When the officer asked if Petrie would do “anything bareback,” referring to sex without a condom, Petrie responded, “I don’t do none of that, no.” Then Petrie told the officer, “I’m just gonna let her in,” and admitted another woman, B.H., to the room. Petrie also told the officer, “Yeah, you deal with her. Yeah, I’m just the one who collects the money. . . . I’m the Madam. . . . I’m in charge.”

Petrie collected the money from the officer and instructed B.H., as follows: “[W]hen you come into hotels, make sure you, um, check, like, everywhere. You got to check facilities and stuff like that. And, like, the closet and stuff and just make sure that there’s, like, no – no one’s there.” The officer assured Petrie, “It’s just me,” and asked if she wanted

to stay. Petrie told the officer it would cost an additional \$150 if she stayed; he declined to pay more, and Petrie left the room.

The officer asked B.H. if she had any condoms. She said, “No, I don’t. Let me try to” The officer suggested, “I’ll just finish on you,” and B.H. agreed. The officer then knocked on the door to the adjacent room to signal the other officers for an arrest, telling B.H. that a friend would be joining them. Before they responded, Petrie knocked on the door from the hallway to ask about the officer’s knock. As the officer interacted with Petrie, he noticed his voice echoing through a phone that she held, and the officer understood that Petrie was monitoring his activities in the room with the phone. Petrie and B.H. then discussed condoms, and Petrie either indicated that she would get some for B.H. or that B.H. had them. Petrie went back into the hallway, and B.H. told the officer that he would have to give Petrie additional money for the “friend.” The officers from the adjacent room then entered and arrested B.H. and Petrie.

Respondent State of Minnesota charged Petrie with promoting prostitution and receiving profits from prostitution. At Petrie’s jury trial, the state sought to present the recorded conversation between Petrie, the officer, and B.H. Petrie objected to the admission of B.H.’s statements as hearsay. The district court admitted the statements as nonhearsay statements of a co-conspirator under Minn. R. Evid. 801(d)(2). The jury found Petrie guilty of both charges, and the district court convicted Petrie of promoting prostitution.

This appeal follows.

DECISION

“Evidentiary rulings lie within the sound discretion of the district court.” *State v. Ahmed*, 782 N.W.2d 253, 258 (Minn. App. 2010). “On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Evidentiary error does not warrant reversal unless there is a “reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006) (quotation omitted).

A co-conspirator’s out-of-court statement may be admissible as a nonhearsay statement by a party-opponent. Minn. R. Evid. 801(d)(2)(E). A statement by a co-conspirator may be admitted if the proponent of the evidence shows “by a preponderance of the evidence, (i) that there was a conspiracy involving both the declarant and the party against whom the statement is offered, and (ii) that the statement was made in the course of and in furtherance of the conspiracy.” *Id.* The district court may consider the statement itself in determining whether this standard is met, so long as additional evidence also demonstrates the conspiracy. *Id.*; see also *State v. Hines*, 458 N.W.2d 721, 724 (Minn. App. 1990) (stating that “[i]n determining whether a conspiracy exists, a [district] court may . . . consider the statements of the alleged co-conspirator”), review denied (Minn. Sept. 28, 1990).

A conspiracy requires an agreement to commit a crime and at least one party’s “overt act” in furtherance of that agreement. Minn. Stat. § 609.175, subd. 2 (2014). Minnesota law makes it a crime to engage in, solicit, induce, promote, or profit from

prostitution—hiring, or offering or agreeing to hire, an individual to engage in sexual penetration or contact. Minn. Stat. §§ 609.321, subd. 9, .322, .324 (2014).

Petrie argues that the state failed to satisfy the first prong of rule 801(d)(2)(E) because it presented insufficient evidence of a prostitution conspiracy between B.H. and her. Petrie does not dispute that she and B.H. had a prior agreement to meet at the hotel in response to the officer’s request for one hour of services. She contends instead that this agreement does not indicate criminal conduct because there was no “conversation or other overt acts between [Petrie] and B.H. verifying that the ‘services’ involved sexual contact or prostitution,” rather than noncriminal conduct such as “dancing or stripping, as was regularly promoted [on Backpage].” We disagree.

The undercover officer testified that Backpage hosts advertisements for dancers and strippers. But he also testified that within the “adult section” there are distinct sections for “strippers” and for “escorts.” Petrie and B.H. were at the hotel related to an “escort” advertisement, not a dancing or stripping advertisement. And their conduct was consistent with that advertisement. Petrie told the officer, in front of B.H., that she is “the Madam,” the one in charge who collects the money. When the officer asked B.H. about a condom, she indicated that she did not have one but agreed that the officer could “finish on [her].” And then when Petrie returned to the room a short time later, she also discussed condoms. This evidence as a whole amply established that Petrie and B.H. conspired to offer B.H. for hire for sexual penetration or contact, justifying the admission of B.H.’s statements under rule 801(d)(2)(E).

Moreover, any error in admitting B.H.'s statements was harmless, as those statements accounted for only a small portion of the evidence against Petrie. The undercover officer's testimony and Petrie's own recorded statements independently established that Petrie promoted B.H.'s prostitution by soliciting or procuring patrons for her via online advertising, text messaging, and personal supervision. *See* Minn. Stat. § 609.321, subd. 7(1) (2014) (defining promoting prostitution to include soliciting or procuring patrons). On this record, no reasonable possibility existed that B.H.'s few incriminating statements significantly affected the verdict.

Petrie submitted a pro se supplemental brief in which she emphasizes or explains various factual issues and refers to a written statement from B.H. that is not in the record. She presents no legal arguments and cites no legal authority. To the extent that she suggests that certain testimony or other evidence should have been discredited or weighed differently, appellate courts defer to a jury's determinations on such matters. *See State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016) (noting that appellate court defers to fact-finder's credibility determinations). Petrie's pro se supplemental brief does not establish a basis for relief.

Affirmed.