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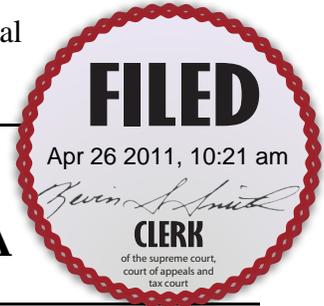
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**IN THE
COURT OF APPEALS OF INDIANA**



ALISHA GENTRY,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-1007-CR-814

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-1001-CM-1330

April 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Following a bench trial, Alisha Gentry (“Gentry”) was convicted of prostitution¹ as a Class A misdemeanor. She appeals her conviction contending that the evidence was insufficient to support her conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the conviction follow. On November 3, 2009, Indianapolis Metropolitan Police Officer Jeffrey Goodin was working “an undercover [prostitution] sting on Quest Line.” *Tr.* at 8. Quest Line is a paid phone chat line that is known to be used in connection with prostitution activity. Officer Goodin had “made several arrests off of this chat line.” *Id.* at 9. As part of the sting, Officer Goodin replied to an advertisement that stated, “[L]ooking for a generous male for a discreet encounter.” *Id.* Officer Goodin contacted a woman, later identified as Chrystal Brown (“Brown”), and asked “how generous,” to which Brown responded “fifty dollars a piece.” *Id.* After Officer Goodin agreed to the price, Brown gave him a phone number to call to arrange their meeting.

Soon thereafter, Officer Goodin called the phone number and spoke with Brown. Brown stated that she and Gentry were on the east side of town and were “looking to make some money.” *Id.* Officer Goodin agreed to meet Gentry and Brown at a nearby restaurant. After the women arrived, Brown got into Officer Goodin’s car, and Gentry went to her residence to see whether her boyfriend was still there. Finding that he had

¹ See Ind. Code § 35-45-4-2.

left, the two women took Officer Goodin to Gentry's residence.

Officer Goodin told the women that he "had never had two girls at one time, [and] wasn't really sure what was goin' on." *Id.* at 12. In response to the women's inquiry of whether Officer Goodin had the money, he handed Gentry five twenty-dollar bills, which the women said they would split later. *Id.* at 12-13. Officer Goodin also testified that, as the women started to undress, he asked them if they had condoms and whether he had to wear one. *Id.* at 14. When Officer Goodin was told that he would have to wear a condom, he offered them fifty dollars more if they would perform fellatio on him without his having to wear a condom. Both women agreed, but stated that he would "[have] to wear a condom during regular sex." *Id.* at 14. Officer Goodin testified that it was at that time that he told the women that he was a police officer and placed them under arrest. *Id.* at 15.

Gentry was charged with Class A misdemeanor prostitution. Following a bench trial, the trial court found her guilty and sentenced her to 365 days with 355 days suspended to probation. Gentry now appeals.²

DISCUSSION AND DECISION

Gentry contends that the evidence is insufficient to sustain her conviction for prostitution. Our standard of review when considering the sufficiency of evidence is well settled. *Morrison v. State*, 824 N.E.2d 734, 742 (Ind. Ct. App. 2005), *trans. denied*. We will not reweigh the evidence or assess the credibility of witnesses. *Id.* Rather, we will only consider the evidence most favorable to the judgment, together with all reasonable

² Brown was a co-defendant in this case and was found to be not guilty. *Tr.* at 66.

inferences that can be drawn therefrom. *Id.* We will uphold a conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

Indiana Code section 35-45-4-2 provides in pertinent part that “[a] person who knowingly or intentionally . . . agrees to perform sexual intercourse or deviate sexual conduct . . . for money or other property commits prostitution, a Class A misdemeanor.” Thus, to convict Gentry of prostitution as a Class A misdemeanor, the State needed to prove that (1) she knowingly or intentionally (2) agreed to perform (3) sexual intercourse or deviate sexual conduct on Officer Goodin (4) for money. Gentry argues that there is reasonable doubt whether an agreement took place between Officer Goodin and herself. Specifically, she contends that, after the officer handed her the money, “Goodin began to change the terms of the agreement in that he wanted to pay extra not to use a condom during oral sex.” *Appellant’s Br.* at 3. Moreover, Gentry contends that there was no agreement because the officer’s actions made her uncomfortable, and she “told him ‘no’ when he attempted to fondle her breasts.” *Id.* Gentry argues that because Officer Goodin changed the terms of the agreement, and she later told him “no,” the evidence of agreement was insufficient to sustain her conviction. *Appellant’s Br.* at 4. We disagree.

The issue raised by Gentry is resolved by the logic and holding in *Harwell v. State*, 821 N.E.2d 381 (Ind. Ct. App. 2004). Agreement, as used in the applicable prostitution statute, is defined as “a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances” or “a manifestation of mutual assent by two or more persons.” *Id.* at 383 (citing Black’s Law

Dictionary 74 (8th ed. 2004)).

Here, the record before us shows that Officer Goodin was conducting an undercover investigation on a paid chat line that was known for its prostitution activity. Testimonial evidence indicates that Officer Goodin responded to an advertisement that said, “[L]ooking for a generous male for a discreet encounter.” *Tr.* at 9. When Officer Goodin inquired as to how generous, he was told fifty dollars each. A meeting was planned, and Brown and Gentry arrived at the designated meeting spot. The three went to Gentry’s residence, and the women asked if he had the money. Officer Goodin handed Gentry \$100 in twenty dollar bills and was told that the women would split the money later. Officer Goodin asked if the women had condoms and whether he had to wear one. The women replied, ‘yes,’ to both questions. *Id.* at 14. Officer Goodin then stated that he would pay fifty dollars more if they would perform oral sex on him without a condom. Both women stated, “that sounds good,” but stated that he would have to “wear a condom during regular sex.” *Id.* Based on the evidence before us, we conclude that the agreement to perform sex for money was implicit in the parties’ words and actions when considered in the context in which they occurred. *Harwell*, 821 N.E.2d at 384. Here, we find that the State presented sufficient evidence to prove beyond a reasonable doubt that Gentry agreed to perform an act of sexual intercourse or deviate sexual conduct, i.e., fellatio, for money.

Gentry’s argument to this court—that there was no agreement between Officer Goodin and Gentry to engage in sexual activity for money—is based on the same evidence that she raised before the trial court. As such, Gentry’s argument is essentially

an invitation to reweigh the evidence and draw inferences in her favor, which we may not do. *Taylor v. State*, 836 N.E.2d 1024, 1028 (Ind. Ct. App. 2005), *trans. denied* (2006).

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.