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ATTORNEY FOR APPELLANT:

WILLIAM F. THOMS, JR.
Thoms & Thoms
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KELLY A. MIKLOS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KIMBERLY FAULKNER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0811-CR-994
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0701-CM-220148

June 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Kimberly Faulkner ("Faulkner") appeals her conviction of Prostitution, as a Class A misdemeanor.[1] We affirm.

Issue

On appeal, Faulkner raises one issue, which we restate as whether there was sufficient evidence that she committed Prostitution.

Facts and Procedural History

On October 16, 2007, Indianapolis Metropolitan Police Officer Jeffrey Goodin ("Officer Goodin") was conducting an undercover investigation. As he drove on a city street, Faulkner waved at him. He stopped and, at Faulkner's request, gave her a ride. Faulkner immediately asked whether he was a police officer; he said he was not. Faulkner asked what he was doing; Officer Goodin responded that he was "looking to have a little bit of fun." Transcript at 7. When she asked what he was looking for, he stated fellatio. Faulkner said, "great," and asked how much money he was talking about. Id. at 8. Officer Goodin stated that he had twenty-five dollars and asked if that was adequate. Faulkner agreed.

In a bench trial, Faulkner was found guilty as charged. She now appeals.

Discussion and Decision

Faulkner argues that "she was entrapped." Appellant's Brief at 3. A person who knowingly or intentionally agrees to perform deviate sexual conduct for money or other

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[1] Ind. Code § 35-45-4-2.

property commits Prostitution, as a Class A misdemeanor. Ind. Code § 35-34-4-2. Deviate sexual conduct means, among other things, an act involving a sex organ of one and the mouth of another. Ind. Code § 35-41-1-9(a). Statute also defines the entrapment defense:

> (a) It is a defense that:
> (1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and
> (2) the person was not predisposed to commit the offense.
>
> (b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

Ind. Code § 35-41-3-9.

Where one asserts the defense of entrapment, the State may prove either: (1) that the defendant's prohibited conduct was not the product of police efforts; or (2) that the defendant was predisposed to engage in such conduct. Albaugh v. State, 721 N.E.2d 1233, 1235 (Ind. 1999). When reviewing this defense, we apply the same standard of review as that applied to other challenges to the sufficiency of the evidence. Bell v. State, 881 N.E.2d 1080, 1085 (Ind. Ct. App. 2008), trans. denied. We do not reweigh the evidence or judge the credibility of witnesses; instead, we consider only the evidence supporting the judgment and the reasonable inferences that may be drawn therefrom. Id. at 1085-86.

Faulkner asserts that the State failed to produce evidence sufficient for the trial court to find beyond a reasonable doubt that her conduct "was not the product of the police officer's efforts" or that she "was predisposed to commit the crime." Appellant's Br. at 3. To the contrary, in reviewing the evidence most favorable to the judgment, Faulkner flagged

down Officer Goodin to ask for a ride. She "jumped in" the car and immediately asked whether he was a police officer. Tr. at 7. She then asked what Officer Goodin was doing. He responded that he was "out looking to have a little bit of fun" on his lunch hour. Id. At trial, he testified that "have a little bit of fun" was understood to mean a sexual act. Id. When Faulkner asked what Officer Goodin was "out looking for," he stated, "a blow job." Id. at 8. Finally, they agreed on a price.

Thus, after initiating the conversation, Faulkner quickly acknowledged her predisposition to committing a criminal offense by asking Officer Goodin whether he was a police officer. Finally, she agreed to perform fellatio for twenty-five dollars. Effectively, Faulkner asks this Court to reweigh the evidence, which we do not do. See Bell, 881 N.E.2d at 1085. There was sufficient evidence for the trial court to find beyond a reasonable doubt that Faulkner was predisposed to commit deviate sexual conduct for money. See Webb v. State, 575 N.E.2d 1066, 1072 (Ind. Ct. App. 1991), trans. denied.

Affirmed.

DARDEN, J., and ROBB, J., concur.