



Following a jury trial Eric E. Fields (Fields) was convicted of Sexual Misconduct with a Minor, as a Class C felony. He was sentenced on January 3, 2006, to an aggravated sentence of eight years with four years suspended to probation. One of the conditions of probation was that he not be “arrested for any criminal offenses.” (Emphasis supplied) (Tr. at 5). When the probation condition was imposed, no challenge was raised by Fields as to its validity; nor is any such challenge belatedly made in this matter.<sup>1</sup>

An amended Petition to Revoke Probation was filed January 27, 2009, alleging that “[t]he defendant was arrested in Allen County on 8/2/08 for committing the offense of Patronizing a Prostitute. . . .” (Emphasis supplied)<sup>2</sup> (App. at 24).

Fields appeals his probation revocation upon grounds that entrapment was established as a matter of law. I.C. 35-41-3-9 provides:

- (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

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<sup>1</sup> It may be noted that there is abundant case law that holds a mere arrest is an inadequate basis for probation revocation. See Hoffa v. State, 267 Ind. 133, 368 N.E.2d 250, 252 (1977); Patterson v. State, 659 N.E.2d 220, 222 (Ind. Ct. App. 1995). Nevertheless, if at the probation revocation hearing the evidence reflects and the court finds that the offense was indeed committed, a probation revocation will lie. See Hoffa v. State, id.

Numerous cases have somewhat relaxed the requirement that there must be a finding that the offense was actually committed. It appears that current law permits a probation revocation if the court finds “probable cause to believe the defendant had violated a criminal law.” Gee v. State, 454 N.E.2d 1265, 1267 (Ind. Ct. App. 1983); See Martin v. State, 813 N.E.2d 388, 399 (Ind. Ct. App. 2004); Johnson v. State, 692 N.E.2d 485, 487 (Ind. Ct. App. 1998).

<sup>2</sup> I.C. 35-45-4-3 defines the crime as follows: “A person who knowingly or intentionally pays or offers or agrees to pay, money or other property to another person . . . on the understanding that the other person will engage in, sexual intercourse or deviate sexual conduct . . . commits a Class A misdemeanor.”

commit the offense does not constitute entrapment.

A defense of entrapment is presented when it is shown that a law enforcement officer was involved in the criminal activity. See Lahr v. State, 640 N.E.2d 756 (Ind. Ct. App. 1994), trans denied. When that involvement is demonstrated, the burden falls upon the State to prove that the defendant was predisposed to commit the offense. Scott v. State, 772 N.E.2d 473 (Ind. Ct. App. 2002). In dealing with an entrapment challenge to a criminal conviction, the State must prove predisposition beyond a reasonable doubt. Id.; Ferge v. State, 764 N.E.2d 268 (Ind. Ct. App. 2002). When, however, we are concerned with an entrapment claim to an offense qualifying as a violation of probation, the State need prove the violation by only a preponderance of the evidence. Martin v. State, 813 N.E.2d 388 (Ind. Ct. App. 2004); Patterson v. State, 659 N.E.2d 220 (Ind. Ct. App. 1995). There is not dispute that in the case before us a law enforcement officer was involved in the criminal conduct. The only question therefore, is whether it was established that Fields had a predisposition to commit the offense.

Here, an undercover police officer was posing as a street prostitute as part of a sting operation. She was standing near an outdoor pay-phone next to a liquor store in an area in which there was a high incidence of prostitution arrests. She was pretending to be on the phone when Fields drove up in his car. They engaged in conversation and she indicated that she needed money. The officer testified that the conversation then “turned sexual” (Tr. at 53) and that she told him “he could have whatever he wanted,” (Tr. at 53) but that there was no response. (Tr. at 62). She said, “The end result of the conversation

was that he agreed to pay me twenty dollars” for oral sex. Id. She directed him to a nearby alley where she said she would meet him. He drove there, where he was arrested by hidden uniformed officers.

Other than engaging in conversation with the officer because Fields thought she may have “flagged him down” because she needed help, he denied the officers’ version of events. He stated that after the officer’s conversation turned sexual, he suspected she might be police and he drove away. (Tr. at 81). He said he cut through the adjacent alley, where the arresting officers were waiting, rather than leave by way of traveled streets because it was the most direct route to the street to his home. (Tr. at 82).

The probation revocation court found that under the preponderance of evidence standard, the issue was one of credibility. The court went on to state that he did not believe the version of events proffered by Fields and concluded that Fields had indeed violated his probation by patronizing a prostitute. We are unable to say that as a matter of law, the court was in error.

It was not unreasonable for the trial court to conclude and find that Fields was not entrapped, that he had a predisposition to patronize a prostitute, and that he did, in fact, commit that offense.

Affirmed.

KIRSCH, J., and BROWN, J., concur.