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IN THE
COURT OF APPEALS OF INDIANA

NELISA GLOVER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0911-CR-620
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda Brown, Judge
Cause No. 49F10-0904-CM-40383

May 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Nelisa Glover appeals her conviction for class A misdemeanor prostitution, contending that the State failed to present sufficient evidence to support the conviction and rebut her entrapment defense. We affirm.

The facts most favorable to the trial court's judgment indicate that on March 15, 2009, Indianapolis Metropolitan Police Department Vice Branch Detective Ernest Witten was conducting an investigation of "a phone chat line that ha[d] prostitution on it[.]" Tr. at 7. Detective Witten dialed a phone number that he had received from the chat line, and Glover answered. Glover asked what Detective Witten wanted, and he "stated [he] wanted some head and to f**k." *Id*. at 8.[1] Glover asked if Detective Witten was "generous[.]" *Id*. at 9. Detective Witten asked if $100 was "okay[,]" and Glover "stated yes." *Id*. Detective Witten asked if he needed to bring condoms, and Glover "stated no, I have them." *Id*.

Detective Witten went to Glover's apartment and gave her $100. She took it from him, counted it out, and put it in a safe. Detective Witten "stated to her again that [he] just wanted some head and to f**k doggy style[,]" and "she stated yes." *Id*. At that point, Detective Witten identified himself as a police officer and told Glover that she was going to receive a summons for prostitution. On October 6, 2009, the trial court found Glover guilty of class A misdemeanor prostitution.

On appeal, Glover first contends that the State failed to present sufficient evidence to support her conviction. Our standard of review is well settled:

[1] Detective Witten testified that "[h]ead is the street term for fellatio, and f**k is the street term for intercourse." Tr. at 8-9.

> We do not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt.

Gomez v. State, 907 N.E.2d 607, 611 (Ind. Ct. App. 2009) (citations omitted), *trans. denied*. The evidence need not overcome every reasonable hypothesis of innocence. *Street v. State*, 911 N.E.2d 654, 656 (Ind. Ct. App. 2009), *trans. denied*. The evidence is sufficient if an inference may reasonably be drawn therefrom to support the judgment. *Id*.

The State alleged that Glover committed class A misdemeanor prostitution by knowingly or intentionally agreeing to perform sexual intercourse for $100 in U.S. currency. Appellant's App. at 15 (charging information); *see also* Ind. Code § 35-45-4-2 (defining prostitution in pertinent part as knowingly or intentionally agreeing to perform sexual intercourse for money). Glover's argument that the State failed to prove that she agreed to perform sexual intercourse for money is merely an invitation to reweigh evidence and draw inferences in her favor, which we may not do.

Glover also contends that the State failed to present sufficient evidence to rebut her entrapment defense. Indiana Code Section 35-41-3-9 states,

> (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.

"Entrapment is a defense of justification, which admits that the facts of the crime occurred but contends that the acts were justified." *Bell v. State*, 881 N.E.2d 1080, 1086 (Ind. Ct. App. 2008) (citation, alterations, and quotation marks omitted), *trans. denied.* "The defense of entrapment is raised once the evidence indicates that the police were involved in the criminal activity." *Kats v. State*, 559 N.E.2d 348, 352-53 (Ind. Ct. App. 1990) (citation and quotation marks omitted), *trans. denied* (1991). Once the defense is raised, the State bears the burden of negating at least one element beyond a reasonable doubt. *Moon v. State*, 823 N.E.2d 710, 716 (Ind. Ct. App. 2005), *trans. denied*.

> To rebut a defense of entrapment, the State must prove either that the accused's conduct was not the product of law enforcement efforts or that the accused was predisposed to engage in the prohibited conduct. If the accused had the predisposition to commit the crime and the police merely afford[ed] the accused an opportunity to do so, then the defense of entrapment is unavailable.

Salama v. State, 690 N.E.2d 762, 764 (Ind. Ct. App. 1998) (citation omitted), *trans. denied*.

"The entrapment defense turns upon the defendant's state of mind, i.e., whether the criminal intent originated with the defendant." *Kats*, 559 N.E.2d at 352 (citation, alteration, and quotation marks omitted). "Specifically, the theory focuses upon the defendant's state of mind and inclinations before initial exposure to government conduct. In other words, the question is whether criminal intent was deliberately implanted in the mind of an innocent person." *Id*. (citations, alterations, and quotation marks omitted). The following factors are important in determining whether the defendant was predisposed to commit the crime:

> "(1) the character or reputation of the defendant; (2) whether the suggestion of criminal activity was originally made by the government; (3) whether the defendant was engaged in criminal activity for a profit; (4) whether the

> defendant evidenced reluctance to commit the offense, overcome by government persuasion; and (5) the nature of the inducement or persuasion offered by the government."

Id. (quoting *U.S. v. Fusko*, 869 F.2d 1048, 1052 (7th Cir. 1989)). "The predisposition of the defendant is a question of fact; thus, the standard upon review is that used to address sufficiency claims." *Id*.

Glover asserts, and the State does not dispute, that her prohibited conduct was the product of law enforcement efforts. As for her assertion that "the record does not demonstrate a predisposition to commit the offense[,]" Appellant's Br. at 8, we disagree. When Detective Witten called Glover, she asked what he wanted. When he expressed interest in sexual activity, she asked if he was "generous[.]" Tr. at 9. When he asked if $100 was "okay[,]" she "stated yes." *Id*. Glover indicated that she had condoms, gave Detective Witten her address, took the cash he gave her and put it in a safe, and then assented to his request for sexual activity. In sum, Glover was engaged in criminal activity for profit and expressed no reluctance to commit the crime of prostitution. Viewed most favorably to the trial court's judgment, this evidence is sufficient to establish that Glover was predisposed to commit the offense and that Detective Witten merely offered her an opportunity to do so, i.e., that he did not entrap her. Therefore, we affirm her conviction.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.