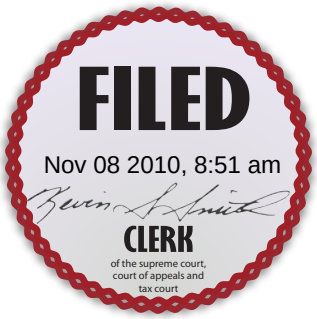

ATTORNEY FOR APPELLANT:

BARBARA J. SIMMONS
Oldenburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

ALAN AKERS,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 49A02-1003-CR-357
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0909-CM-79370

November 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Alan Akers appeals his conviction following a bench trial for patronizing a prostitute, a class A misdemeanor.[1] Concluding the State presented sufficient evidence to rebut Akers' claim of entrapment, we affirm.

FACTS AND PROCEDURAL HISTORY

On September 9, 2009, Indianapolis Metropolitan Police Department Detective Tabatha Forehand was working undercover as a prostitute. While Detective Forehand was standing on the corner of 12th Street and Tibbs on the westside of Indianapolis, Akers drove up in his car with the window down and asked her what she was doing. Detective Forehand replied that she was trying to make some money. Akers asked her if she had a place they could go. Detective Forehand responded that she did, and Akers offered her $20.00. The detective agreed to Akers' $20.00 offer, and asked him if he was looking for "head," which is street terminology for fellatio. Tr. 8. Akers responded, "yes, come on." Tr. 8. Akers agreed to meet Detective Forehand at a nearby abandoned house that was located about a block east of Tibbs. Akers, whose car was facing westbound, turned north on Tibbs. He was arrested as he was about to turn east on 16th Street.

The State charged Akers with patronizing a prostitute. At a bench trial, Akers testified he had just cashed his paycheck when he saw Detective Forehand standing on the corner of 12th Street and Tibbs waving at the traffic. Akers pulled over to see if she needed a ride. The detective told him she was trying to make some money and offered to give him a "blow job" for $20.00. Tr. 17. According to Akers, he declined the detective's offer and drove away to

[1] Ind. Code § 35-45-4-3 (2009).

the north. The trial court convicted Akers as charged, and he appeals.

DISCUSSION AND DECISION

Akers's sole argument is that there is insufficient evidence to support his conviction. Specifically, he contends that there is insufficient evidence to rebut his defense of entrapment. We apply the same standard of review to claims of entrapment as we do to a challenge to the sufficiency of the evidence. *Ferge v. State*, 764 N.E.2d 268, 270 (Ind. Ct. App. 2002). That is, we consider only the evidence supporting the verdict and all reasonable inferences to be drawn therefrom. *Id.* We will not reweigh evidence or judge the credibility of witnesses. *Id.* We will uphold a conviction if there is substantial evidence of probative value from reach a reasonable trier of fact could infer the appellant was guilty beyond a reasonable doubt. *Id.*

Indiana Code section 35-41-3-9 (2009) 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.
> (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.

The entrapment defense is raised once the evidence indicates that the police were involved in the criminal activity. *Sheldon v. State*, 679 N.E.2d 499, 501 (Ind. Ct. App. 1997). Once the defendant has indicated his intent to rely on the entrapment defense and has established police inducement, the burden shifts to the State to show the defendant's predisposition to commit the crime. *Id.* at 502. Whether the defendant was predisposed to

commit the crime charged is a question for the trier of fact. *Dockery v. State*, 644 N.E.2d 573, 578 (Ind. 1994).

Here, Akers contends there is insufficient evidence that he was predisposed to commit the crime of patronizing a prostitute. In support of his contention, Akers directs us to *Ferge*, 764 N.E.2d at 268. There, Ferge was driving southbound on Euclid Avenue when he made eye contact with Officer Genae Gehring, who was working an undercover vice detail as a prostitute. Ferge offered the officer a ride, and told her to get into the car. When the officer asked Ferge if he was looking for a little "head," Ferge responded that he was. *Id.* at 270. When the officer asked, "twenty bucks?," Ferge responded that was okay. The officer told Ferge to meet her in an alley behind a building on the northeast corner of the intersection and proceeded to walk towards the alley. However, instead of circling around the block to return to Euclid Avenue to meet the officer, Ferge proceeded west on Washington Street for seven blocks. At the intersection of Washington Street and Sherman Drive, Ferge turned north onto Sherman Drive. He was arrested two blocks north at the intersection of Sherman Drive and Michigan Street. He was subsequently convicted by jury of patronizing a prostitute.

On appeal, Ferge argued that the State failed to prove he was predisposed to commit the crime. This court concluded that the suggestion of criminal activity was made by the officer after Ferge offered her a ride. Ferge's action in driving away from the alley where the officer told him to meet her was evidence that he did not intend to make a deal with the officer for sexual activity, as well as evidence that he was not predisposed to commit the crime of patronizing a prostitute. *Id.* at 272. We therefore concluded that Ferge established

the defense of entrapment as a matter of law. *Id.*

However, our review of the evidence in this case reveals that the facts before us are distinguishable from those in *Ferge*. Here, the police stopped Akers a few blocks from the location of his conversation with Detective Forehand after he made one right turn and was about to make another. We agree with the State that the trial court could properly have inferred from Akers' route that he was circling back to the abandoned house to meet the detective. The State presented sufficient evidence to rebut Akers' claim of entrapment.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.