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**IN THE
COURT OF APPEALS OF INDIANA**

SUZANNE PRENTISS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0603-CR-169

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel Cruz, Judge Pro-Tempore
Cause No. 49F19-0509-CM-154137

NOVEMBER 8, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Suzanne Prentiss is appealing her conviction at a bench trial of the Class A misdemeanor of prostitution.

We affirm.

ISSUE

Prentiss states the issue as:

There is absolutely not a shred of evidence the Suzanne Prentiss “agreed” to perform deviate sexual conduct for money or property as claimed by the vice officer during his investigation.

Restated, the issue is whether there is sufficient evidence to support the conviction.

FACTS

The facts stated in a light favorable to the conviction show that Saunders, a vice officer, called a telephone number listed in a newspaper advertisement for massages. He talked to Prentiss who told him she charged \$175 for an hour and that she would meet him at an apartment complex. Saunders arrived at the apartment and was told by Prentiss to undress and lie on a table. She told Saunders to delay payment until they were finished. After massaging Saunders’ back, Prentiss told him to turn over and she massaged him for two or three minutes. She undressed and told Saunders to let her lie on the table so he could massage her. She fondled his genitals and masturbated him while Saunders massaged her breast and genitals. She said yes to the question of whether she would perform fellatio on him. She went to get a condom and on her return, as she was

attempting to place the condom on Saunders, he identified himself as a police officer and placed her under arrest.

In pertinent part, the language of the prostitution statute, Ind. Code 35-45-4-2, matches the language in the charging information, which states that “Prentiss, did knowingly or intentionally agree to perform an act of deviate sexual conduct, to-wit: fellatio for money or property, to-wit \$175.00 US currency....”

Additional facts will be disclosed as needed.

DISCUSSION AND DECISION

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 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.*

The issue raised by Prentiss 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.

A judgment will be sustained based upon circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. *Id.* An offer need not be explicit to support a conviction of prostitution. *Id.*

The evidence and the inferences to be drawn therefrom shows beyond a reasonable doubt that the vice-officer and Prentiss manifested a mutual understanding that she should perform fellatio on him and that her price was \$175 an hour. Based upon that evidence, the trial court properly concluded that an agreement was implicit from the parties' words and actions considered in the context in which they occurred.

CONCLUSION

The evidence is sufficient to support the conviction of prostitution. Judgment affirmed.

DARDEN, J., and CRONE, J., concur.