

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DERRICK HIGGINS,

Defendant-Appellee.

UNPUBLISHED

October 6, 2000

No. 220697

Wayne Circuit Court

LC No. 98-007593

Before: Hoekstra, P.J., and Cavanagh and White, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. While a remand to the trial court for a more complete explanation regarding its reasons for distinguishing the two buys might be in order, I cannot, on this record, join the conclusion that the court's findings were clearly erroneous or that its decision to dismiss the case based on the second buy was an abuse of discretion.

The "cooperating witness," James King, the officer handling the witness, Detective Balthuis, and defendant all testified before the court. The court also had transcripts of tape-recordings of conversations between King and defendant. While King testified to numerous prior purchases of cocaine from defendant in amounts up to a kilo, defendant testified that he obtained cocaine for King about four times over the twenty years they knew each other, and that the amounts involved were from one ounce to 3 ½ ounces. Defendant testified that he had conversations with King that were not taped. He testified that when King called him in early November, he initially told King that he was not in the drug business and that King should find someone else to obtain drugs for him. He testified that King called him frequently, at home and at work, at all hours of the day and night. Because King sounded like he was in trouble, and because he thought it would get King off his back, defendant agreed to try to obtain some cocaine for King. He was, however, unsuccessful. King continued to call him, and in February, he obtained four ounces for King, although King wanted more. King continued to call, and defendant told him that he was not in the business and that he should not call him. Defendant did not call King, but King resumed calling defendant, who did not return his calls. Eventually, defendant agreed to obtain eight ounces of cocaine for King.

The trial court found that King was not credible regarding the history of his dealings with defendant. The court found that the only reason King was able to procure the cocaine was because of his long-term relationship with defendant. The court noted that it took three months before King was able to obtain any drugs from defendant. The court found that King kept trying to obtain a greater quantity of cocaine from defendant, that defendant was not disposed to deal in greater quantities, and that he was not ready and willing to deal in greater quantities and would not have done so were it not for King's persistent phone calls and his appeal to their friendship.

The court rejected the claim of entrapment with respect to the first transaction on the basis that while defendant did not seem anxious to engage in the first transaction, he did appear willing based on the tapes. It is not entirely clear on what basis the court distinguished the second transaction. However, there was some basis to do so in the record. While the first transaction was in an amount only slightly greater than the amount defendant conceded he had obtained for King in the past, the second transaction was for double that amount. On the other hand, the transcripts do not reveal the reluctance to which defendant testified or defendant's alleged statements to King regarding his reluctance. The trial court did not explicitly state the extent to which it accepted or rejected defendant's account of the transactions or the conversations. On this record, I would remand for further findings rather than reverse and reinstate the charge.

/s/ Helene N. White