

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-002500-MR

JAMES DOOLITTLE

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NO. 05-CR-00373

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ABRAMSON AND HOWARD, JUDGES; GUIDUGLI<sup>1</sup>, SENIOR JUDGE.

ABRAMSON, JUDGE: James Doolittle appeals from a November 14, 2006, judgment

of the McCracken Circuit Court convicting him, in accord with a jury verdict, of

Complicity to First-Degree Trafficking in a Controlled Substance in violation of KRS

502.020 and sentencing him as a Second-Degree Persistent Felony Offender (PFO) to

sixteen years in prison. KRS 532.080. The Commonwealth accused Doolittle and a co-

defendant, Larry Hughes, of selling crack cocaine to two undercover police officers.

<sup>1</sup> Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Although he was present during the sale, Doolittle contends that the Commonwealth did not put forth sufficient evidence to support the complicity conviction and that the trial court erred when it denied his motion for a directed verdict. Convinced that the trial court did not err in denying Doolittle's motion for a directed verdict, we affirm.

In this case, the evidence linking Doolittle to the drug transaction came from three witnesses: Deputy Jesse Riddle, Deputy Greg Moyers, and Kimberly Bridget. Doolittle did not offer any proof to rebut the prosecution's evidence. Based on the testimony of Officers Riddle and Moyers, on the evening of July 27, 2005, they were in plainclothes, seated in a parked truck at the intersection of Seventh and Adams Street in Paducah, Kentucky, when Doolittle approached their vehicle. The officers asked Doolittle if he knew where they could find some women willing to engage in prostitution. After stating that he knew of a place, Doolittle got into their truck and led them to a house on Tennessee Street. While driving to the house, Doolittle told the officers that they needed to have drugs to give to the women inside. The officers responded that they did not have any drugs, to which Doolittle replied that he could get some for them. Once they arrived at Tennessee Street, Doolittle went inside the house. Shortly thereafter, Doolittle returned to the truck and invited the officers to come inside. The officers refused, so Doolittle went back inside the house a second time. When Doolittle returned, he was accompanied by Larry Hughes. Although Moyers' statement on his police report suggests that Hughes could have come out of the house separately from Doolittle, the fact

that the two came out together is supported by Moyers', Riddle's, and Bridget's in-court testimony.

Once the men were outside, Doolittle got into the truck while Hughes stood next to the passenger-side window. Riddle testified that Doolittle was very involved in the conversation as to the price of the drugs and at one point, asked Hughes to open up his hand and show the officers the cocaine. Then, both the money and the drugs passed through Doolittle's hands as he handed the drugs to the officers and the officers' money to Hughes. Once the drugs and money were exchanged, the officers communicated the "take down" phrase to their nearby support team, the police arrived, and Doolittle was arrested.

The officers' testimony was confirmed by that of Kimberly Bridget, a friend of Larry Hughes and his wife. Bridget testified that she had given the Hugheses a ride home and was in their house on Tennessee Street when Doolittle arrived with the officers. She stated that Doolittle came to the door of the house and told Hughes that he had two men with him who were looking for some women and who wanted some crack cocaine. After Doolittle spoke with Hughes, Doolittle went back outside, then came back to the house shortly thereafter. When Doolittle left the house the third time, Hughes went with him. Bridget's testimony confirms the statements made by the officers in so far as Doolittle did solicit the officers to buy drugs, did contact Hughes to sell the drugs, and physically helped to transfer the drugs.

Notwithstanding this testimony, Doolittle argues that he was entitled to a directed verdict because he only intended to procure the prostitutes and did not have the requisite intent to establish complicity to sell cocaine. Doolittle contends that since he did not intend for the cocaine transaction to occur, his actions at most amount to facilitation, not complicity. Although the jury did receive an instruction on Criminal Facilitation to First-Degree Trafficking, they chose to convict Doolittle of the greater charge of Criminal Complicity.

As the Commonwealth notes, “[o]n appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt . . . .” *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). In this case, it would be clearly unreasonable to find Doolittle guilty of complicity if the Commonwealth's proof did not satisfy the requirements of KRS 502.020(1), which defines complicity as follows:

- (1) A person is guilty of an offense committed by another person when, with the intention of promoting or facilitating the commission of the offense, he:
  - (a) Solicits, commands, or engages in a conspiracy with such other person to commit the offense; or
  - (b) Aids, counsels, or attempts to aid such person in planning or committing the offense . . .

Therefore, the prosecution's evidence had to show both that Doolittle aided Larry Hughes in committing the drug sale and that Doolittle intended to promote or facilitate the cocaine transaction. Doolittle clearly aided Hughes in committing the sale, for if

Doolittle had not brought the officers to Hughes' house, the drug transaction would never have taken place. However, the primary distinction between facilitation and complicity is the second element of intent. “Under the complicity statute, the defendant must intend that the crime be committed; under the facilitation statute, the defendant acts without such intent.” *Thompkins v. Commonwealth*, 54 S.W.3d 147, 150 (Ky. 2001). Doolittle argues that because his only objective was to provide the men with prostitutes, he was “a mere conduit” who did not intend for the drug transaction to occur. Although Doolittle's analysis of the distinction between “mere presence” and “purposeful intent” is correct, it is misguided in this case because the facts indicate that Doolittle was more than merely present during the drug deal.

During the trial, the prosecution showed that Doolittle told the officers that they needed to buy some crack cocaine, took them to a place where they could get it, told Hughes that he had two men with him who wanted to purchase drugs, and physically handed the drugs to the officers and the money to Hughes. Even if Doolittle's ultimate intent was to provide prostitutes, that does not mean that his actions in effecting the drug deal were done without the intent that the drug crime be committed. On the contrary, the evidence clearly shows that Doolittle intended the drug crime as a means of furthering the prostitution. Because a reasonable juror could reach that conclusion, the trial court did not err when it denied Doolittle's motion for a directed verdict.

In sum, even though the jury had the option of finding Doolittle guilty of the lesser charge of facilitation, they chose to convict him of the greater charge of

complicity. After reviewing all of the evidence, we believe it was altogether reasonable for the jury to come to that conclusion. Because a reasonable jury could find guilt on the complicity to traffic in cocaine charge, the trial judge did not err when he denied Doolittle's motion for a directed verdict. *Commonwealth v. Benham, supra*. Accordingly, we affirm the November 14, 2006, judgment of the McCracken Circuit Court.

ALL CONCUR.

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