

RENDERED: DECEMBER 22, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2010-CA-001437-MR

TERESA GOODLETT

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT  
HONORABLE STEPHEN K. MERSHON, SPECIAL JUDGE  
ACTION NO. 08-CR-00150

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, NICKELL, AND WINE, JUDGES.

WINE, JUDGE: Teresa Goodlett appeals from the July 8, 2010, trial verdict and judgment of the Shelby Circuit Court which found her guilty of one count of promoting contraband, first degree, and six counts of promoting contraband, second degree. We find no error with the trial court judgment and therefore affirm.

Goodlett was previously employed as a deputy jailer at the Shelby County Detention Center (“SCDC”). Pursuant to SCDC’s personnel policies, no contraband was to be brought into the facility without proper authorization, and all employees received training on recognizing and identifying contraband.

Contraband was defined as any item that was not permitted into the jail, such as drugs, alcohol, cigarettes, and weapons, and possession was prohibited by both inmates and on-duty employees. SCDC’s personnel policies also prohibited intimate relationships between inmates and employees.

On September 17, 2008, the Shelby County Grand Jury returned an indictment against Goodlett, alleging three counts of promoting contraband in the first degree, in violation of Kentucky Revised Statutes (KRS) 520.050, and four counts of promoting contraband in the second degree, in violation of KRS 520.060. Goodlett plead not guilty to the charges and subsequently was tried by a jury.

The evidence at trial indicated that on October 11, 2007, Deputy Jailer Chris Sloan observed Goodlett pass several cigarettes concealed in a glove to inmate Kent Skaggs. After Deputy Sloan reported the incident to a superior, an incident report was created and Goodlett was questioned by Jailer Bobby Waits. Goodlett admitted to Waits that she had brought cigarettes to Skaggs and exchanged personal phone calls with him. Jailer Waits then requested an investigation into Goodlett’s actions and Detective Jason Rice subsequently obtained a taped statement from Goodlett. In her statement to Detective Rice, Goodlett admitted that she had developed a relationship with Skaggs and had

brought him cigarettes, muscle relaxers, marijuana, photographs of herself, and various food items. She also admitted that she had brought cigarettes to two other inmates. Goodlett acknowledged that her actions were in violation of SCDC's policies and the law. A search of Skaggs's cell revealed correspondence between Goodlett and Skaggs and contraband food that had not been purchased from the facility's canteen. Phone records and call recordings from the facility, both before and after Detective Rice's investigation, illustrated an intimate relationship between Goodlett and Skaggs and also revealed Goodlett acknowledging that she was aware she had violated SCDC policy.

Goodlett did not testify at trial and did not present any witnesses on her behalf. At the close of trial, Goodlett moved for a directed verdict and argued that her confession alone was insufficient to warrant a conviction. Her motion was denied. The jury found Goodlett guilty of one count of promoting contraband, first degree, and six counts of promoting contraband, second degree. The jury's verdict was adopted by the trial court in a final verdict and judgment entered on July 8, 2010. This appeal followed.

Goodlett's first contention on appeal is that her conviction cannot be sustained in the absence of proof of the existence of actual contraband. Goodlett argues that, in order to sustain a conviction against her, the Commonwealth must present direct proof that she actually possessed some form of contraband. Goodlett further argues that her or Sloan's belief that contraband was being passed to the

inmates is insufficient to establish the truth of such beliefs, absent the existence of direct proof. For the following reasons, we do not agree.

“On 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, only then the defendant is entitled to a directed verdict of acquittal.” *Com. v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). “A reviewing court does not reevaluate the proof because its only function is to consider the decision of the trial judge in light of the proof presented.” *Id.* “[T]he trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth.” *Id.* (Citation omitted). In order to prevail over a motion for directed verdict, the prosecution must present “evidence of substance.” *Id.*

An accused can be found guilty of promoting contraband in the first degree if he or she “knowingly introduces dangerous contraband into a detention facility or a penitentiary[.]” KRS 520.050(1)(a). Furthermore, a person can be found guilty of promoting contraband in the second degree if he or she “knowingly introduces contraband into a detention facility or a penitentiary[.]” KRS 520.060(1)(a). Therefore, for the purposes of Goodlett’s convictions, it must merely be shown that she knowingly introduced contraband, or dangerous contraband, into a detention facility. *See* KRS 520.050(1)(a); KRS 520.060(1)(a). That she be caught with the actual contraband in her possession is not an essential element of her charges.

A review of the evidence presented at trial indicates that a reasonable jury could find that Goodlett was guilty beyond a reasonable doubt. Her statement to Detective Rice, along with other circumstantial evidence, is sufficient evidence of substance to support a finding that she knowingly introduced contraband, and dangerous contraband, into SCDC. We therefore conclude that the evidence, when taken in the light most favorable to the Commonwealth, was sufficient to support her convictions.

Prior to trial, Goodlett moved to suppress her statements to Jailer Waits and Detective Rice based upon their failure to Mirandize her. The trial court held that Goodlett was not subject to a custodial interrogation sufficient to trigger Mirandization and her motion was therefore denied. She now argues that the trial court erred in admitting her confessions to Jailer Waits and Detective Rice absent proof that she had been properly Mirandized. We disagree.

When reviewing a trials court's judgment on a motion to suppress, this Court utilizes a two-part evaluation. "[W]e will apply a 'clear error standard of review for factual findings and a *de novo* standard of review for conclusions of law.'" *Bishop v. Com.*, 237 S.W.3d 567, 568-69 (Ky. App. 2007)(Citation omitted). *See also* Kentucky Rules of Criminal Procedure (RCr) 9.78. The discretion to assess the credibility of witnesses and to draw reasonable inferences from the testimony is firmly vested in the trial court. *Com. v. Whitmore*, 92 S.W.3d 76, 79 (Ky. 2002).

*Miranda* warnings are required only when the party being questioned is found to be “in custody.” *Com. v. Lucas*, 195 S.W.3d 403, 405 (Ky. 2006). A person is determined to be in custody when there is a “restraint of his freedom” or “a restraint on freedom of movement to the degree associated with formal arrest.” *Id.* Jailer Waits testified that Goodlett was never in custody and was free to leave while he was questioning her. Detective Rice also testified that Goodlett was not in custody and was free to leave while she was giving her taped statement. Furthermore, Detective Rice testified that he had, in fact, advised Goodlett of her rights and inquired as to whether she understood her rights, to which she responded affirmatively. Of relevant inquiry is whether “a reasonable person in the position of the defendant would not have believed he was in custody.” *Id.* at 406. Goodlett failed to testify at trial or offer any evidence which would indicate that she believed herself to be in custody. After evaluating the evidence presented to the trial court, we find no error with its conclusion that Goodlett was not subject to a custodial interrogation. Accordingly, its denial of Goodlett’s motion to suppress is sound.

Goodlett next argues that there was insufficient proof to corroborate her out-of-court confessions. RCr 9.60 provides that “[a] confession of a defendant, unless made in open court, will not warrant a conviction unless accompanied by other proof that such an offense was committed.” The Supreme Court of Kentucky has clarified that “the requirement of corroboration relates only

to proof that a crime was committed, not to whether the defendant committed it.”

*Lofthouse v. Com.*, 13 S.W.3d 236, 242 (Ky. 2000). The Court explained:

the corroborative evidence need not be such that, independent of the confession, would prove the corpus delicti beyond a reasonable doubt; and *proof of the corpus delicti may be established by considering the confession as well as the corroborating evidence.*

(Emphasis added). Goodlett argues that no other proof of her alleged offenses was provided, and therefore her conviction must be reversed. Again, we disagree.

The evidence presented at trial included several taped phone conversations between Goodlett and Skaggs. During these conversations, Goodlett indicated that she had acted in violation of SCDC policies and procedures; that she had taken a “chance”; that she knew she was in trouble; that she had supplied cigarettes to inmates; that she had supplied food items to Skaggs; that she had provided Skaggs with muscle relaxers; and that she had provided Skaggs with another, unnamed, item. The search of Skaggs’s cell revealed certain specific food items which Goodlett had admitted to providing to Skaggs. Also found in Skaggs’s cell were letters between him and Goodlett, which confirmed their intimate relationship. Further, Deputy Sloan testified that he had witnessed Goodlett passing something to Skaggs. The entirety of this evidence was sufficient circumstantial evidence to corroborate Goodlett’s confessions and to overcome the limits of RCr 9.60. Her argument is therefore without merit.

Goodlett’s final argument on appeal is that the trial court’s introduction of her out-of-court conversations with Skaggs violated her right of

confrontation. The right to which Goodlett refers is the confrontation clause of the United States Constitution, which provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]” U.S. Const. Amend. VI – Jury Trials.

The Kentucky Supreme Court has clarified that the confrontation clause prohibits the admission of testimonial statements unless the declarant is unavailable to testify at trial and the defendant had a prior opportunity to cross-examine the declarant. *Rankins v. Com.*, 237 S.W.3d 128, 130 (Ky. 2007) (adopting *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)). Our inquiry thus becomes whether the conversations between Goodlett and Skaggs are testimonial in nature and therefore subject to the Confrontation Clause. Fortunately, the Kentucky Supreme Court has provided us with guidance in determining what constitutes a testimonial statement.

The text of the Confrontation Clause . . . applies to “witnesses” against the accused—in other words, those who “bear testimony.” “Testimony,” in turn, is typically “[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact.” An accuser who makes a formal statement to government officers bears testimony *in a sense that a person who makes a casual remark to an acquaintance does not.*

*Com. v. Walther*, 189 S.W.3d 570, 574 (Ky. 2006) (citing *Crawford*, 541 U.S. at 51, 124 S. Ct. at 1364) (emphasis added).

The telephone conversations between Goodlett and Skaggs contained casual remarks that do not meet the definition of “testimony” for purposes of the



Confrontation Clause. The remarks were not made for the purpose of bearing witness against Goodlett or establishing her guilt, but were instead part of a personal conversation between intimate individuals. Goodlett argues that the statements are testimonial because Skaggs had been advised that his calls would be monitored and recorded, making him aware that they could later be used in a legal proceeding. We disagree. The very fact that Skaggs's comments *may* be available for use at trial does not change their nature or the context in which they were made. Accordingly, Goodlett's argument fails.

For the foregoing reasons, the July 8, 2010, trial verdict and judgment of the Shelby Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

James C. Nicholson  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Bryan D. Morrow  
Assistant Attorney General  
Frankfort, Kentucky