

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000712-MR

LILLIE TWEEDY

APPELLANT

v. APPEAL FROM CLINTON CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 00-CR-00017

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: JOHNSON, KNOPF, AND McANULTY, JUDGES.

KNOPF, JUDGE: Lillie Tweedy appeals from a judgment entered by the Clinton Circuit Court on March 19, 2001, that convicted her of trafficking in a controlled substance in the first degree (cocaine)¹ and trafficking in a controlled substance in the second degree (hydrocodone)². We affirm.

On February 21, 2000, the Clinton County Grand Jury indicted Lillie Tweedy and her husband, James, for trafficking in a controlled substance in the first degree (cocaine) and

¹ KRS 218A.1412.

² KRS 218A.1413.

trafficking in a controlled substance in the second degree (hydrocodone). The indictment charged that the Tweedys sold one gram of cocaine and six pills containing hydrocodone to a Kentucky State Police informant during a controlled drug buy. James pled guilty to these charges, but Lillie exercised her right to a jury trial.

At trial, the primary witness against Lillie was the confidential informant, David W. Vitatoe. Vitatoe testified that he had worked as an informant for Kentucky State Police Detective Tim Jaynes during an investigation of drug trafficking in Clinton County. On March 11, 1999, Detective Jaynes met Vitatoe at Vitatoe's residence. During this meeting, Detective Jaynes gave Vitatoe \$150.00 with which to buy cocaine and prescription medication from the Tweedys and fitted him with a mini-cassette recorder so that he could record the transaction. After meeting Detective Jaynes, Vitatoe proceeded to the Tweedys' apartment and knocked on the door. Lillie answered the door and invited Vitatoe inside. Vitatoe and James went into the kitchen where James removed cocaine from a cabinet and sold it to Vitatoe for \$100.00. Further, Vitatoe purchased six hydrocodone pills from James for seven dollars each. James, however, was not able to calculate the purchase price for these pills and asked both Vitatoe and Lillie what six times seven was. Lillie responded that six times seven equaled forty-two. At that point, Vitatoe gave James \$42.00 for these six pills. This transaction was

successfully recorded on the mini-cassette recorder and played for the jury.

Vitaoe also testified concerning Lillie's conduct during this controlled drug buy. According to Vitaoe, Lillie sat on a couch in the living room while he purchased cocaine from James. Vitaoe testified that the kitchen and living room were not separated in this small apartment, allowing Lillie to clearly observe the drug transaction from the living room. When James asked what six times seven equaled, Lillie left the couch, entered the kitchen area and answered the question. After Vitaoe completed this purchase, Lillie offered to sell Vitaoe twenty xanax pills. Vitaoe did not purchase the xanax pills, left the Tweedys' residence and went home. Upon returning to his apartment, Vitaoe gave the mini-cassette recorder, the cocaine and the pills containing hydrocodone to Detective Jaynes.

After Vitaoe's testimony, Lillie moved for a directed verdict on both charges, arguing that the Commonwealth failed to present evidence that she actually sold cocaine and pills containing hydrocodone to Vitaoe. The trial court denied Lillie's motion. The jury returned a verdict of guilty on both charges. Pursuant to an agreement with the Commonwealth, Lillie waived her right for the jury to determine her sentence. The trial court, pursuant to this agreement, sentenced Lillie to five years on the first-degree trafficking charge and one year on the second-degree trafficking charge, with the sentences to be served consecutively. This appeal followed.

On appeal, Lillie renews her argument that the trial court erred by denying her motion for a directed verdict on both counts. In support of her argument, Lillie asserts that the Commonwealth never proved that Lillie actually sold cocaine and pills containing hydrocodone to Vitatoe. We disagree.

The Kentucky Supreme Court articulated the standard for determining when a directed verdict is warranted in Commonwealth v. Benham³:

On a motion for a directed verdict, the trial court must draw all reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purposes of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given such testimony.⁴

In other words, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then is the defendant entitled to a directed verdict.⁵ In this matter before us, we believe that the Commonwealth presented sufficient evidence to warrant a guilty verdict on both charges.

³ Ky., 816 S.W.2d 186 (1991).

⁴ Id., at 187.

⁵ Id.

In order to be convicted of trafficking in a controlled substance under KRS 218A.1412(1) and KRS 218A.1413(1), a defendant must "knowingly and unlawfully traffic in: a controlled substance . . ." The term "traffic" is defined by KRS 218A.010(24) as follows:

"Traffic" means to manufacture, distribute, dispense, sell, transfer or possess with intent to manufacture, distribute, dispense or sell a controlled substance.

Therefore, either the actual transfer of a controlled substance or the possession of a controlled substance with the intent to sell are sufficient to warrant a conviction for trafficking in a controlled substance in the first and second degree.

The Commonwealth presented sufficient evidence to overcome Lillie's motion for a directed verdict. Vitatoe testified that the drug transaction occurred in the kitchen of the Tweedys' apartment on March 11, 1999. While Lillie was not physically present in the kitchen area during most of the exchange, she admitted Vitatoe to the apartment, witnessed the transaction from the living room, and assisted her husband in calculating the purchase price of the six pills Vitatoe purchased while in the residence. This evidence would permit a rational juror to conclude that Lillie participated in the drug transactions. Based upon this evidence, viewed in a light most favorable to the Commonwealth, a reasonable jury could have found that Lillie, along with James, dispensed or sold cocaine and

pills containing hydrocodone. There was no need for an instruction based on possession with the intent to traffic.

For the foregoing reasons, the judgment of the Clinton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Palombi
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky