

RENDERED: February 11, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2003-CA-001358-MR

GERALD CONLEY WILLIAMS, JR.

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NO. 02-CR-00221

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; BARBER, JUDGE; MILLER, SENIOR  
JUDGE.<sup>1</sup>

BARBER, JUDGE: Appellant, Gerald Conley Williams Jr.

(Williams), appeals his McCracken Circuit Court conviction for  
criminal facilitation to first degree robbery. We affirm the  
Appellant's conviction.

Williams and two friends went to a bingo hall on the  
night of June 8, 2002. One of the friends, a minor, was denied  
admission to the bingo hall because of his age. The minor

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

borrowed Williams' car while the other two men played bingo. When Williams ended his bingo evening, he claimed that the car was back, but the minor was not. Williams testified that he drove to the home of friends looking for the minor and then returned to the bingo hall to see if the minor had returned. The evidence shows that while Williams was in the bingo hall the minor attempted to snatch the purse of one woman, and did in fact rob a second woman of her purse, injuring her in the process. The minor testified at trial that Williams did not know he was planning the robbery and took no part in it. The parties did admit that robbery had been discussed in the past, but claimed that there was no plan on the night the burglary took place.

Williams claims that he found the minor on the road near the bingo hall when he returned from looking for him. The minor jumped out in front of his car and flagged him down. Williams saw various bingo players rushing at his car. The minor jumped into the car and urged him to get away. At some point after Williams left the scene, the minor informed Williams that he had taken a woman's purse. One statement made by Williams indicated that the minor told him that he had just taken a lady's purse as soon as he jumped into the car. Williams' later statement was that he did not know that the purse had been taken until later that night. Williams admitted

that he took an unusual route away from the bingo hall after picking up the minor, rather than going straight to his final destination. Williams also admitted that bingo players were chasing the vehicle as he drove away with the minor.

One witness to the purse snatching testified at trial that she believed Williams had circled the parking lot several times in his car before the purse snatching occurred. She stated that the car returned after the purse was taken, and picked up the minor. Williams testified that he left the area to look for the minor, returned and circled the parking lot looking for the minor again, and that the minor jumped out at the car as he left the parking lot. He claimed that he had no intent to aid the minor in escaping with the purse, and that he was just confused as to why people were chasing the teen.

When the parties reached a friend's house later that evening, the minor gave Williams and the other man \$100 each from the purse. Williams also pocketed a silver chain he found on the floor of his car, which had spilled out of the purse. One witness at the home where the men went after bingo claimed that Williams went through the purse, taking various items including some pills and the chain. Williams claimed to have found the chain on the floor of his car.

Williams argues that he was entitled to a directed verdict on the charges against him. Williams claims that there was insufficient evidence produced during the Commonwealth's case to support the charges. The law requires that on a motion for directed verdict:

The trial court must draw all fair and 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.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1983).

Facilitation is the knowledge that an offense will be or has been committed, and indifference to the outcome of the offense. Such knowledge may be inferred from the defendant's conduct. Young v. Commonwealth, 50 S.W.3d 158, 165 (Ky. 2001). The facts presented during the Commonwealth's case in chief showed conflicting claims as to Williams' knowledge of the commission of the offense, and the aid offered by him to the minor. Under such circumstances, the motion for directed verdict was properly denied, as a juror could potentially have found in favor of the non-moving party. Lambert v. Franklin Real Estate Co., 37 S.W.3d 770, 775 (Ky.App. 2000). On review, the appellate court must draw all reasonable inferences which support the claims of the prevailing party. Banks v. Fritsch,

39 S.W.3d 474, 478 (Ky.App. 2000). There was no reversible error in the denial of the motion for directed verdict.

Williams asserts that he was denied due process when he was convicted of facilitation to commit first degree robbery in the absence of evidence proving his guilt on every element of that offense. KRS 506.080 defines facilitation as some type of aid in the commission of a crime. Criminal facilitation "occurs when a defendant, with no intent to promote or commit the crime himself, provides the means or opportunity for another to do so." Gabow v. Commonwealth, 34 S.W.3d 63, 72 (Ky. 2000).

Williams appears to argue that because he did not pick up the minor until after the crime was committed, and he had no knowledge that the offense had been committed, he did not facilitate the offense.

The instruction under which Williams was convicted states that the jury should find Williams guilty of facilitation if the jury believed beyond a reasonable doubt that:

A. That in this county on or about June 8, 2002, and before the finding of the Indictment herein, the Defendant, Gerald, Williams, Jr., helped [the minor] escape from the robbery;

and

B. That [the minor] intended to escape from the robbery scene;

C. That when he helped the [minor] escape from the robbery scene, Gerald Williams, Jr. knew [the minor] was escaping from the robbery;

and

D. That [the minor] escaped from the scene of the robbery.

Williams contends that the instruction did not properly address his mental state, such that he could properly be found guilty of facilitation of the offense. The instruction details that the jury must find that Williams knew the minor was engaging in robbery when he helped him leave the scene. While not artfully prepared, the instruction addresses the culpable mental state sufficiently. Whether Williams knew of the robbery at the time he picked up the minor was an issue of fact properly before the jury.

Williams also contends that the instruction improperly uses the word "escape," which should not have been used in this context. We agree that the word "escape" could most properly have been replaced with a different word, but the use of "escape" does not constitute reversible error.

Williams claims that the trial court committed reversible error when it denied the facilitation instruction provided by defense counsel, and gave a different facilitation instruction. Williams argues that the instruction given by the court did not correctly state the elements of that offense. The Commonwealth asserts that this issue is not preserved for review because Williams merely adopted his co-defendant's objection to

the instruction given by the court. The Commonwealth also asserts that as the instruction tendered by Williams was not appropriate, the tendering of that instruction and the request that it be given instead of the one proffered by the court were insufficient to preserve the issue. We disagree.

Where a party offers an instruction of his own, makes a motion for a certain instruction, or objects to the instructions given, such action preserves the party's objections for review by the appellate courts. Ellison v. R & B Contracting, Inc., 32 S.W.3d 66, 72 (Ky. 2000). Any act which calls the trial court's attention to the point made by the defendant permits review of the instructions on appeal. Burgess v. Taylor, 44 S.W.3d 806, 813 (Ky.App. 2001). Defense counsel drew attention to the instruction he felt most appropriate. After discussion and review, the trial court chose to give an instruction prepared by the court, rather than those prepared by counsel. The defendant preserved this issue for appellate review, but upon review, it does not constitute reversible error.

The conviction is affirmed.

ALL CONCUR.

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