**[Cite as *State v. Coleman*, 2011-Ohio-4564.]**

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

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| STATE OF OHIO, | : | |
| Plaintiff-Appellee, | : | CASE NO. CA2010-12-329 |
| | : | O P I N I O N |
| - vs - | | 9/12/2011 |
| | : | |
| ARRICK COLEMAN, | : | |
| Defendant-Appellant. | : | |

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2009-11-1944

Michael T. Gmoser, Butler County Prosecuting Attorney, Donald R. Caster, Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Charles M. Conliff, P.O. Box 18424, Fairfield, Ohio 45018-0424, for defendant-appellant

**RINGLAND, J.**

**{¶1}** Defendant-appellant, Arrick Coleman, appeals from his conviction in the Butler County Court of Common Pleas for one count of complicity to trafficking in cocaine. For the reasons outlined below, we affirm.

**{¶2}** Appellant was charged with one count of complicity to trafficking in cocaine after he allegedly aided and abetted his childhood friend, Donald Collins, in selling crack cocaine to a confidential informant outside a retail store located in the city of Hamilton, Butler

County, Ohio. Following a jury trial, appellant was found guilty, sentenced to three years of community control, and ordered to pay a fine of $500.

**{¶3}** Appellant now appeals from his conviction, raising two assignments of error for review.

**{¶4}** Assignment of Error No. 1:

**{¶5}** "THE STATE'S EVIDENCE WAS INSUFFICIENT TO SUPPORT THE CONVICTION FOR COMPLICITY TO TRAFFICKING."

**{¶6}** In his first assignment of error, appellant argues that the state provided insufficient evidence to support his conviction. We disagree.

**{¶7}** Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Lazier*, Warren App. No. CA2009-02-015, 2009-Ohio-5928, ¶9; *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In reviewing the sufficiency of the evidence, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, ¶113, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

**{¶8}** Appellant was charged with complicity to trafficking in cocaine after he allegedly aided and abetted Collins, his childhood friend, in selling crack cocaine to a confidential informant in violation of R.C. 2923.03(A)(2) and R.C. 2925.03(A)(1), a fourth-degree felony. To support a conviction for complicity by aiding and abetting under R.C. 2923.03(A)(2), "the evidence must show that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant

shared the criminal intent of the principal." *State v. Gragg*, 173 Ohio App.3d 270, 2007-Ohio-4731, ¶20, quoting *State v. Johnson*, 93 Ohio St.3d 240, 2001-Ohio-1336, syllabus.

**{¶9}** Evidence of aiding and abetting may be shown by direct or circumstantial evidence, and participation in criminal intent may be inferred from presence, companionship, and conduct before or after the offense is committed. *State v. Israel*, Butler App. No. CA2010-07-170, 2011-Ohio-1474, ¶33, citing *Gragg* at ¶21; *State v. Mota*, Warren App. No. CA2007-06-082, 2008-Ohio-4163, ¶19. Aiding and abetting may also be established by overt acts of assistance such as driving a getaway car or serving as a lookout. *State v. Salyer*, Warren App. No. CA2006-03-039, 2007-Ohio-1659, ¶26, citing *State v. Lett*, 160 Ohio App.3d 46, 2005-Ohio-1308, ¶29. However, "the mere presence of an accused at the scene of a crime is not sufficient to prove, in and of itself, that the accused was an aider and abettor." *State v. Widner* (1982), 69 Ohio St.2d 267, 269. Instead, "there must be some level of active participation by way of providing assistance or encouragement." *State v. Nievas* (1997), 121 Ohio App.3d 451, 456; *State v. Brown*, Warren App. No. CA2006-10-120, 2007-Ohio-5787, ¶13.

**{¶10}** At trial, Detective Robert Horton of the Hamilton Police Department testified that on the afternoon of September 22, 2009, a confidential informant informed him that she could purchase crack cocaine from Collins. Since he had worked with this confidential informant previously, Detective Horton testified that he told her to contact Collins and set up the deal. Thereafter, once Collins agreed to meet the confidential informant outside Marsh's, a local retail store, Detective Horton testified that Collins told the confidential informant that "they were there, and that they were in a white van."

**{¶11}** Detective Horton testified that upon arriving at the scene, which was being monitored by other officers, he saw a white van with two occupants parked outside Marsh's. After parking next to the white van, Detective Horton then testified that the confidential

informant exited the vehicle when he "observed the informant hand the monies to Mr. Collins, and Mr. Collins proceeded to hand the informant an envelope at which point in time, the informant returned to my vehicle and handed the envelope over to me." Inside the envelope, which came from a one-hour photo center and had appellant's surname printed on its accompanying receipt, Detective Horton discovered "two off white rocks." Tests later revealed the substance to be crack cocaine. According to Detective Horton's testimony, the entire transaction took "[s]omewhere in the area of 10 to 15 minutes."

**{¶12}** Also at trial, Detective Daniel Stevenson, who was assigned to run surveillance and security for Detective Horton, testified that upon arriving at the scene he also saw the white van parked outside Marsh's. According to Detective Stevenson's testimony, Collins, "as well as another African-American male that was driving the vehicle that I did not know," were in the van. Detective Stevenson then testified that he drove past the van and parked his vehicle in an area where he could monitor the scene.

**{¶13}** Detective Stevenson testified that approximately ten minutes later, during which time neither Collins nor appellant exited the van, he saw Detective Horton pull up next to the van and watched as the confidential informant exited the vehicle and stood next to the van for "maybe 30 seconds to a minute." After seeing Detective Horton and the confidential informant exit, Detective Stevenson continued monitoring the van as it left the parking lot and drove down the street to the Dollar Tree store. It is undisputed that appellant was driving the van that day.

**{¶14}** Detective Stevenson testified that, upon arriving at the Dollar Tree store, he saw both Collins and appellant exit the van and go into the store. Shortly thereafter, Detective Stevenson saw Collins leave the store and approach the van while "talking on a cell phone." Continuing, Detective Stevenson then "observed a male white subject in a pickup truck" pull up next "to the white van and Mr. Collins and the male white subject in the

truck conducted some type of transaction[.]" Detective Stevenson testified that, after observing this transaction, and upon getting the "takedown signal," appellant and Collins were arrested.

**{¶15}** In addition, Detective Joey Thompson, who had also been assigned to run surveillance and security for Detective Horton, testified that after Collins and appellant were arrested, he searched the van and located a "baggie" containing an additional 17 smaller individually packaged bags of crack cocaine in a "drawer" underneath the front passenger seat. According to Detective Thompson, appellant began to "struggle" when he "went over to the van to retrieve the crack cocaine."

**{¶16}** In appellant's defense, Collins, who claims to have "lied" two weeks earlier when he told appellant's trial counsel that appellant "did the deal," that appellant provided him with the envelope, and that appellant "was the one who was involved with handing drugs to Suzy," testified that he called appellant and asked him to come pick him up "at a lady's friend's house" so that they could play video games. After appellant arrived, Collins testified that appellant drove back to his apartment to get money to purchase items for a barbecue. According to Collins, after appellant exited the van and went inside his apartment for "three to five minutes," he "sat in the vehicle and put the cocaine under the seat." When asked if he told appellant that he had put crack cocaine under the seat, Collins testified, "No, sir. I wouldn't tell him this, sir."

**{¶17}** Continuing, Collins then testified that appellant drove to the Dollar General store to purchase items for the barbecue. Collins, who claims to have stayed in the van while appellant went into the store, testified that while appellant was in the store, he received a call from "Suzy" asking if she could purchase crack cocaine. Agreeing to sell the drugs to her, Collins, who had been convicted of felony trafficking three times before, testified that he set up a meeting with "Suzy" outside Marsh's. Collins then testified that he placed two crack

cocaine rocks into an envelope that he found on the floor of the van.

**{¶18}** Shortly after setting up the deal, and once appellant returned from the store, Collins asked appellant if they could "hold up for a few seconds" so that his "friend" could come meet him. Collins testified that appellant agreed and pulled the van up through the parking lot and stopped outside Marsh's. When asked "approximately how long did the two of you have to wait" for his "friend" to arrive, Collins testified that "she probably pulled up there about 30 seconds after that[.]"

**{¶19}** Collins testified that, once "Suzy" arrived at the scene, he sat the envelope containing the two crack cocaine rocks on his lap prior to making the exchange. According to Collins, although the transaction was done "just out in the open," and although appellant was in the van during the transaction, appellant "probably wasn't paying no attention" to him because he was "fiddling with the radio or something." Thereafter, once the transaction was complete, they exited the parking lot and drove to the nearby Dollar Tree store.

**{¶20}** Collins testified that, upon arriving at the Dollar Tree store, he received another call from a man asking to purchase crack cocaine. After setting up another deal, Collins and appellant went into the store to purchase items for the barbecue. Once he realized that he "forgot [his] cell phone" in the car, Collins left the store, met up with the man who had called previously, and provided him with a compact disc case containing crack cocaine. According to Collins, he never told appellant that he was selling drugs that day. In addition, when asked whose crack cocaine was located in the van, Collins testified that "[t]hey were mine."

**{¶21}** Also in his defense, appellant testified that while he was "driving around" and "expanding [his] mind," Collins, whom he had known since middle school, and whom he was still on "good terms" with even though he had "lied" about his involvement in the crime, called and asked if he wanted to play video games. Appellant, who had taken the day off work to have a barbecue, testified that he agreed to play video games and went to pick up Collins

from the local market. After picking up Collins, who, according to appellant, was not wearing a jacket or carrying anything that "cool" September day, appellant drove back to his apartment so that he could get money to purchase items for the barbecue at the local Dollar General store. According to appellant, Collins stayed in the van while he went into his apartment to get the money.

**{¶22}** Upon arriving at the Dollar General store, which was located next to Marsh's, appellant went into the store while Collins stayed in the van. Afterwards, once he realized that he "really didn't like the prices" at the Dollar General store, appellant went back to the van when Collins informed him that he "had somebody to come and see [him]."

**{¶23}** Appellant then testified that as they were leaving, "a car pulls up in front of us, and [Collins] let me know that is who was coming to see him, and she come over to the [van] for a brief second." According to appellant, he "really wasn't paying no attention to what was going on" because he was "paying attention to the scenery" and was distracted by a "nice-looking young lady going in the store." Appellant also testified that he did not know Collins had placed any drugs under the passenger seat, did not see Collins place any drugs into the envelope, did not see Collins hand the woman anything, and did not hear any conversation about drugs that day. In addition, when asked if the envelope used in the deal belonged to him, appellant testified that although his surname was printed on its accompanying receipt, the envelope was not his.

**{¶24}** Continuing, appellant testified that after the woman left, he drove to the Dollar Tree store to get items for the barbecue. Once they arrived at the Dollar Tree store, appellant and Collins both entered the store, but Collins left moments later to get a compact disc from the van. When asked if he knew what Collins wanted with the CD, appellant testified he "[didn't] know what he wanted to do with it," but "figured he was going out to listen to it * * *[w]hile [he] was in the store." Thereafter, upon bringing his items to the cash

register, Detective Stevenson entered the store, escorted appellant outside, and placed him under arrest. According to appellant, he simply did not know Collins was selling crack cocaine that day.

**{¶25}** After a thorough review of the record, we find the evidence, when viewed in a light most favorable to the state, was sufficient to support appellant's conviction for complicity to trafficking in cocaine. As noted above, the state presented uncontroverted evidence that appellant drove Collins, whom he had known since middle school, to a local discount retail store where Collins, whom appellant was still on "good terms" with even though he had "lied" about his involvement in the crime previously, openly sold drugs that had been placed in an envelope with appellant's surname printed on the accompanying receipt to a confidential informant. In addition, the state provided uncontroverted evidence that once this deal was complete, appellant, who struggled with officers once they went to retrieve the drugs from the van, drove Collins to another discount retail store where an additional drug transaction took place. This evidence, albeit circumstantial, was sufficient to support the jury's finding appellant aided and abetted Collins as he trafficked drugs. See *State v. Adams*, Butler App. No. CA2009-11-293, 2011-Ohio-536, ¶10 ("circumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant's guilt beyond a reasonable doubt").

**{¶26}** Despite this, appellant claims that the state "utterly failed" to establish his guilt for there was no evidence that he was "involved in setting up the transaction", that he "exchanged drugs or money," or that he "made any statements indicating that he knew about the transaction." However, while appellant did present some evidence indicating he was simply uninvolved and unaware that Collins was trafficking crack cocaine as they drove from one discount retail store to the next, the jury clearly found these claims so incredible that they defied all belief. As this court has said previously, the jury, as the trier of fact, is "free to

believe all, part, or none of the testimony of each witness who appears before it." *State v. Jones* (Oct. 21, 1996), Warren App. No. CA95-12-122, at 13-14, citing *State v. Caldwell* (1992), 79 Ohio App.3d 667, 679. Therefore, although we do find this case to be closer than most, because we find the state provided sufficient evidence, albeit circumstantial, from which a rational jury could find appellant guilty of complicity to trafficking in cocaine beyond a reasonable doubt, appellant's first assignment of error is overruled.

**{¶27}** Assignment of Error No. 2:

**{¶28}** "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY VIOLATING THE ATTORNEY-CLIENT PRIVILEGE."

**{¶29}** In his second assignment of error, appellant argues that the trial court erred by admitting certain evidence, which, according to him, was protected by the attorney-client privilege and irrelevant. We disagree.

**{¶30}** A trial court's decision to admit or exclude evidence will not be reversed absent an abuse of discretion. *State v. Craft*, Butler App. No. CA2006-06-145, 2007-Ohio-4116, ¶48; *State v. Barnes*, 94 Ohio St.3d 121, 123, 2002-Ohio-68. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶130.

**{¶31}** Initially, appellant argues that the trial court erred by permitting the state to elicit alleged privileged attorney-client communication from him during his cross-examination. This argument lacks merit.

**{¶32}** During appellant's cross-examination, and over his objection, the following exchange occurred:

**{¶33}** "[THE STATE]: Now, you knew before today, that at least according to what [Collins] is saying now, that he had had a previous conversation with your attorney where he stated that you knew everything that was going on, and you knew that conversation took

place, didn't you?

**{¶34}** "* * *

**{¶35}** "[APPELLANT]: Yes, sir.

**{¶36}** "* * *

**{¶37}** "[THE STATE]: You knew that conversation was had?

**{¶38}** "[APPELLANT]: Yes, sir.

**{¶39}** "* * *

**{¶40}** "[THE STATE]: But you knew is essence that Collins had lied about you previously?

**{¶41}** "[APPELLANT]: Yes, sir.

**{¶42}** "[THE STATE]: But today you are on good terms and talking and friendly and hey, how is it going out in the hallway?

**{¶43}** "[APPELLANT]: Yes, sir."

**{¶44}** According to appellant, by admitting such evidence the trial court allowed the state to elicit "knowledge [he] could only have received from his attorney." However, as the record clearly indicates, appellant merely testified that he "knew that [a] conversation took place" during which Collins had informed his trial counsel that appellant "knew everything that was going on" that day. While the state's questioning had the potential of invading appellant's attorney-client privilege, after a thorough review of the record, it simply cannot be said that appellant suffered any resulting prejudice as he did not reveal any privileged attorney-client communications. See *State v. Rogers*, Fayette App. No. CA2004-06-014, 2005-Ohio-6693, ¶17 (finding defendant's answer of "no, we have not" did not disclose any attorney-client communications when asked by the state on cross-examination if he had discussed taking a polygraph test with his trial counsel). In turn, even if we were to find error in the trial court's decision permitting the state to question appellant regarding his knowledge

of this conversation, the error was, at best, harmless. See Crim.R. 52(A). Therefore, appellant's first argument is overruled.

**{¶45}** Appellant also argues that the trial court erred by admitting this evidence because it was "irrelevant." However, contrary to appellant's claim, this evidence was, at a minimum, relevant for impeachment purposes so that the jury could properly gauge appellant's credibility and the weight to be given to his testimony. This is especially true considering appellant's own testimony acknowledging that he and Collins were on "good terms" and spoke in a "friendly" manner in the courthouse hallway during lunch recess even though he was angry that Collins had "lied about [him] previously." The trial court, therefore, did not abuse its discretion in admitting this evidence at trial. Accordingly, appellant's second argument is overruled.

**{¶46}** In light of the foregoing, having found no merit to appellant's two arguments advanced under this assignment of error, appellant's second assignment of error is overruled.

**{¶47}** Judgment affirmed.

POWELL, P.J., and HUTZEL, J., concur