In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2024-0474
	:	
Appellee,	:	On Appeal from the
	:	Henry County
v.	:	Court of Appeals,
	:	Third Appellate District
KENNETH BROWN,	:	
	:	Court of Appeals
Appellant.	:	Case No. 7-23-05

MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLEE

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INTRODUCTION

Kenneth Brown was a part of the Tecumseh Street Gang, a Toledo-based drug organization that supplied drugs to customers in Toledo as well as to other dealers who sold drugs in smaller surrounding counties. One dealer to whom the Tecumseh Street Gang supplied drugs was Alexandria Armijo. On at least three occasions, Armijo obtained drugs from a member of Brown's gang for the purpose of reselling those drugs to a client in Henry County. The third sale was on the front, meaning that Armijo paid the Gang for the drugs only after she resold them.

The State charged Armijo, Brown, and other members of the gang with various crimes, including engaging in a pattern of corrupt activity in violation of R.C. 2923.32. Because the investigation that led to the charges started as an investigation into Armijo and her Henry County activities, the State filed charges against the defendants in Henry County. Both at trial and on appeal, Brown argued that venue was not proper. He claimed that any charges against him should have been brought in Lucas County, where the Tecumseh Street Gang was headquartered. He makes a similar argument before this Court. The only difference in his argument is that a jury has now determined that venue was proper. Brown is therefore left to argue that there was insufficient evidence to support the jury's verdict.

In making that argument, Brown does not dispute that he engaged in criminal activity in Lucas County. He simply argues that no reasonable juror could find that his activities

extended *outside* of Lucas County. His argument is, at its core, an argument that Armijo was an independent drug dealer and that she was not part of the same corrupt enterprise as the other members of the Tecumseh Street Gang. According to Brown, Armijo's independent status meant that Armijo's activities could not be imputed to him for purposes of venue and that any charges against him should have been filed in Lucas County.

Brown is wrong. The activities of one member of a conspiracy can be imputed to all other members of that conspiracy. *See Ocasio v. United States*, 578 U.S. 282, 288–89 (2016). Thus, for purposes of venue, it is "immaterial that an individual defendant was not physically present in the district so long as it can be established that the defendant participated in an enterprise that conducted illegal activities in that district." *State v. Giffin*, 62 Ohio App.3d 396, 401 (10th Dist. 1991); *see also State v. Yates*, 2009-Ohio-6622, ¶¶42–62 (5th Dist.).

The relevant question is therefore whether there was sufficient evidence to permit a reasonable juror to conclude that Armijo was part of the Tecumseh Street Gang's criminal enterprise. There was. Despite what Brown now claims, the fact that the Armijo received drugs on credit and repaid the Gang after she sold them was not the only evidence connecting her to the Gang's corrupt enterprise. Among other things, Armijo testified that she repeatedly obtained drugs from the Tecumseh Street Gang, pursuant to a

standing arrangement that the Gang would supply her with the drugs she needed for her illegal resale business.

As for Brown's manifest-weight-of-the-evidence argument, the Court should not consider it at all. The General Assembly has made clear that the Court has no obligation to consider manifest-weight claims. *See* R.C. 2953.02. And the Court has previously held that it will not consider such claims. *State v. Shoemaker*, 74 Ohio St. 3d 664, 664–65 (1996) (per curiam). To be sure, the Court has backtracked from its earlier refusal, at least in capital cases. *See State v. Smith*, 80 Ohio St. 3d 89, 102–03 (1997). But Brown still has not cited a single example of a case in which this Court has substituted its judgment for that of a jury. This case should not be the first. If the Court *does* consider Brown's manifest-weight claim, it should reject it, as the Third District already did. *See State v. Brown*, 2024-Ohio-627, ¶¶40–45 (1st Dist.) ("App.Op.").

STATEMENT OF *AMICUS* INTEREST

The Attorney General is Ohio's chief law officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. The General Assembly has also authorized the Attorney General, in certain circumstances, to directly prosecute individuals who engage in organized criminal activity in violation of R.C. 2923.32. *See* R.C. 109.83; R.C. 177.03(D)(2)(a). The Attorney General is therefore interested in the question of where venue is proper for such prosecutions.

STATEMENT OF THE CASE AND FACTS

I. Kenneth Brown was a member of the Toledo-based Tecumseh Street Gang, which repeatedly supplied the drugs for Henry-County-based drug deals.

The Tecumseh Street Gang was a Toledo-based drug operation, headquartered on the 800-block of Tecumseh Street. Trial Tr. Vol. III, 364–66. The primary members of the Gang included Anthony Lawrence, Michael Lawrence, and the defendant in this case, Kenneth Brown. Trial Tr. Vols. I, III, 139–41, 391. Brown played a consistent and significant role in the Gang. He frequently engaged in drug deals on the block of Tecumseh Street that the Gang controlled. *See* Trial Tr. Vol. I, 140, 145–60. Brown also was responsible for preparing crack cocaine for the Gang to sell. *See* Trial Tr. Vol. III, 353–54. When the police searched Brown's house, they discovered crack cocaine along with a workstation and supplies that were used to cook powdered cocaine and transform it into crack. Trial Tr. Vol. II, 194–95.

Although many of the Tecumseh Street Gang's activities took place on the 800-block of Tecumseh Street that it controlled, its operations extended much further. The Gang was also the source of drugs for smaller counties surrounding Toledo. Trial Tr. Vol. II, 200, 205, 219. One of the ways it did so was by supplying dealers who served customers in those counties. Alexandria Armijo was one of those dealers. *See* Trial Tr. Vol. II, 253–54. Armijo had an agreement with Anthony Lawrence that she could obtain drugs from the Tecumseh Street Gang whenever she needed them. Trial Tr. Vol. II, 254. One of the individuals to whom she sold drugs was a confidential informant who lived in Napoleon.

Trial Tr. Vols. I, II, 135–37, 256–57. Another was an undercover police officer, who also purchased drugs from Armijo in Napoleon. Trial Tr. Vol. II, 256–58. Because the sale to the undercover officer involved a larger quantity of drugs, and because Armijo did not have sufficient funds to purchase them outright, she obtained the drugs on credit and repaid the Tecumseh Street Gang after she had resold them. Trial Tr. Vol I, II, 136–38, 258.

II. A jury convicted Brown of engaging in a pattern of corrupt activity and determined that venue was proper in Henry County. Brown appealed the jury's venue determination, and the Third District Court of Appeals affirmed.

The State charged several of the individuals involved in the Tecumseh Street Gang's activities, including both Brown and Armijo, with engaging in a pattern of corrupt activity, in violation of R.C. 2923.32. *See* App.Op.¶15; *State v. Armijo*, Henry County Case No. 21CR0169; *see also State v. Lawrence*, Henry County Case No. 21CR0164. Because the investigation that led to the charges began with an investigation into Armijo and her activities in Henry County, that is where the State decided to bring charges. *See id.*; *see also* Trial Tr. Vol. II, 205–06. At trial, Brown argued that the State should have brought charges in Lucas County, not Henry County. *See* Trial Tr. Vols. III, IV, 477–79 (Rule 29 motion), 536–44 (closing argument). The jury disagreed and found Brown guilty. *See* App.Op.¶15; Trial Tr. Vol. IV, 588.

Brown appealed, and the Third District affirmed. Brown presented two separate assignments of error on appeal. He argued that the jury's venue finding was not

supported by sufficient evidence, and he separately argued that it was against the manifest weight of the evidence. *See* App.Op.¶16. The Third District rejected both claims. With respect to Brown's sufficiency claim, the Third District held that "the State produced some evidence establishing that Brown was part of an enterprise and that a portion of that enterprise's corrupt activities reached into Henry County," and that, based on that evidence "a reasonable trier of fact could conclude that venue was proper in Henry County." App.Op.¶35. As for Brown's weight-of-the-evidence claim, the Third District held that the evidence the Tecumseh Street Gang fronted Armijo drugs and drew her "into their operation and reached into Henry County with its pattern of corrupt activity," outweighed the evidence that "not all of the drug sales [Armijo] engaged in were conducted on behalf of the [Gang]." App.Op.¶¶42, 45.

Brown appealed to this Court and raised a single proposition of law in which he challenged the Third District's rejection of both his sufficiency and weight-of-the-evidence claims. *See* Brown Memorandum in Support of Jurisdiction at 8. The Court accepted Brown's appeal for review. *06/25/2024 Case Announcements*, 2024-Ohio-2373.

ARGUMENT

Although Brown presents only one proposition of law in this case, that single proposition encompasses two distinct legal arguments. It asserts both that the State did not present sufficient evidence to establish venue in Henry County and that the determination that venue was proper was against the manifest weight of the evidence.

See Brown Br.10. Unlike Brown, the Court has "carefully distinguished the terms 'sufficiency' and 'weight' in criminal cases, declaring that 'manifest weight' and 'legal sufficiency' are 'both quantitatively and qualitatively different.'" *Eastley v. Volkman*, 2012-Ohio-2179, ¶10 (quoting *State v. Thompkins*, 78 Ohio St. 3d 380, syl.¶2 (1997)). Consistent with that precedent, the Attorney General's brief responds with two separate propositions of law: the first addresses the sufficiency of the trial evidence, while the second addresses its weight.

***Amicus Curiae* Ohio Attorney General's Proposition of Law 1:**

> *The jury's determination that Henry County was a proper venue for this case was supported by sufficient evidence.*

This case presents a fact-bound question about whether there was sufficient evidence to support the jury's determination that Henry County was a proper venue for this case. Brown's challenge to venue, which focuses on evidence that indicated that the Tecumseh Street Gang fronted Armijo drugs so that she could resell them, is improperly narrow. While evidence that the Gang fronted Armijo drugs would by itself likely be sufficient to establish that Armijo and Brown were part of the same corrupt enterprise, that was not the *only* evidence that connected Armijo to the activities of the Tecumseh Street Gang. When viewed as a whole, the evidence that the State introduced at trial provided a more than sufficient basis for a reasonable juror to conclude that venue was proper in Henry County.

I. The State may prosecute a defendant for engaging in a pattern of corrupt activity in violation of R.C. 2923.32 in any county in which a member of the corrupt enterprise committed a corrupt act.

A member of a criminal conspiracy is responsible for the actions of his coconspirators. *See Ocasio*, 578 U.S. at 288–89; *State v. Brownlee*, 2018-Ohio-739, ¶12 (8th Dist.); *cf. Galan v. State*, 44 Ohio App. 192, 193 (9th Dist. 1932). A similar rule applies when determining the proper venue for a criminal case. "[W]here a criminal conspirator commits an act in one district which is intended to further a conspiracy by virtue of its effect in another district, the act has been committed in both districts and venue is properly laid in either." *United States v. Lewis*, 676 F.2d 508, 511 (11th Cir. 1982)); *United States v. Watson*, 717 F.3d 196, 198 (D.C. Cir. 2013) ("[V]enue is proper in any jurisdiction where any co-conspirator committed an overt act in furtherance of the conspiracy.").

That rule is not limited to run-of-the-mill conspiracies. Federal courts have applied it to organized criminal activity as well. Specifically, the have applied it to prosecutions for violations of 18 U.S.C. §1962, the federal Racketeer Influenced and Corrupt Organizations Act (RICO). "Drawing an analogy to conspiracy prosecutions, federal courts have found it immaterial that an individual defendant was not physically present in the district so long as it can be established that the defendant participated in an enterprise that conducted illegal activities in that district." *Yates*, 2009-Ohio-6622 at ¶60 (5th Dist.) (citing *United States v. Persico*, 621 F. Supp. 842 (S.D.N.Y. 1985)).

Ohio courts do the same when determining where the State may prosecute a defendant for engaging in a pattern of corrupt activity in violation of R.C. 2923.32. Venue in Ohio is proper "in a court having jurisdiction of the subject matter, and … in the territory of which the offense or any element of the offense was committed." R.C. 2901.12(A). Applying that statute, appellate courts have held that a defendant may be prosecuted for engaging in a pattern of corrupt activity in any county in which the corrupt enterprise conducted its business. *Giffin*, 62 Ohio App.3d at 399–402; *see also Yates*, 2009-Ohio-6622 at ¶62 (5th Dist.); *State v. Mielke*, 2013-Ohio-1612, ¶¶22–23 (12th Dist.). When a court has determined that venue was not proper for such a prosecution, it has been because the State failed to adequately demonstrate that *any* corrupt activity occurred in the county where it sought to prosecute the defendant. *See State v. Yavorcik*, 2018-Ohio-1824, ¶¶70–72 (8th Dist.).

II. The evidence that the State introduced at trial was sufficient to allow a reasonable juror to conclude that Brown and Armijo were members of the same corrupt enterprise.

There are two undisputed facts in this case. *First*, it is undisputed that Brown was a member of the Tecumseh Street Gang, which was based in Toledo. *See* Brown Br.14. *Second*, it is also undisputed that Armijo sold drugs in Henry County. *See id.* at 18. Venue for Brown's prosecution was proper in any county in which the corrupt enterprise of which he was a part conducted its activities. *Giffin*, 62 Ohio App.3d at 399–402. The relevant question in this case is therefore whether the State introduced sufficient evidence

to show that Armijo participated in that enterprise when she sold drugs in Henry County. It did. The Court reviews "a record for evidence sufficient to support a conviction by asking 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. Fork*, 2024-Ohio-1016, ¶14 (quotation omitted). The evidence that the State presented in this case easily meets that standard.

Few Ohio courts have addressed what differentiates a single, isolated drug sale from the formation of an ongoing corrupt relationship. Federal courts have, however, and their decisions confirm that the Third District was right when it held that the jury's venue finding was supported by sufficient evidence. Similarities between R.C. 2923.32 and the federal RICO statute make decisions interpreting the federal statute instructive. *State v. Schlosser*, 79 Ohio St. 3d 329, 332 (1997); *see also State v. Beverly*, 2015-Ohio-219, ¶3 (noting that the federal RICO statute is "the general model for Ohio's own corrupt-activity statute").

Brown is right that not every drug sale constitutes a conspiracy or is evidence of a corrupt enterprise. *See, e.g., United States v. Thomas*, 114 F.3d 228, 241 (D.C. Cir. 1997) ("[A] mere buyer-seller relationship is insufficient to show conspiratorial activity."); *see also* Brown Br.19 (citing *United States v. Hawkins*, 547 F.3d 66, 73–74 (2d Cir. 2008)). When deciding whether a corrupt enterprise or conspiracy exists, federal courts have therefore looked for additional evidence that would indicate that a buyer and seller understood

that the drugs involved in a transaction would be resold. "People in a buyer-seller relationship have not agreed to advance further distribution of drugs; people in conspiracies have." *See United States v. Brown*, 726 F.3d 993, 1001 (7th Cir. 2013). When a "seller agrees to sell [drugs] to the buyer, and the buyer agrees to buy, specifically for the purpose of having that buyer later distribute the [drugs] to others (i.e. an agreement that the buyer become a distributor) a conspiracy does exist—there is an agreement beyond the mere sale for personal consumption." *See United States v. Kozinski*, 16 F.3d 795, 808 (7th Cir. 1994).

To determine whether the parties understood that drugs would be resold, courts consider the totality of the circumstances surrounding the initial sale. *See United States v. Moran*, 984 F.2d 1299, 1303 (1st Cir. 1993). The presence or absence of any individual factor is not necessarily dispositive. "The evaluation of the facts is entrusted largely to the jury." *Id.* What matters is that there is some evidence indicating that the buyer and seller shared an interest "in the success of the buyer's resale." *See United States v. Parker*, 554 F.3d 230, 236 (2d Cir. 2009).

Federal courts have looked for evidence that an initial seller shares "with the buyer an intention that the buyer succeed in reselling and may be seen as having a stake in the buyer's resale." *Id.* Some factors that they have considered when considering whether there was sufficient evidence to support a RICO conviction include the frequency of sales and the quantity of drugs involved. *See United States v. Bostick*, 791 F.3d 127, 139–40 (D.C.

Cir. 2015) (Kavanaugh, J.); *see also United States v. Sanders*, 778 F.3d 1042, 1053 (D.C. Cir. 2015). And, like the Third District, federal courts have held that "'fronting' drugs or supplying them on consignment would also be strong indicators," of a shared interest in the success of the buyer's resale. *United States v. Loveland*, 825 F.3d 555, 560 (9th Cir. 2016); *see also Bostick*, 791 F.3d at 140; *United States v. Bedini*, 861 F.3d 10, 15 (1st Cir. 2017) (fronting of "wholesale quantities" of drugs "assumed an ongoing enterprise with a standing objective") (quotation omitted); *but see Brown*, 726 F.3d at 1000 ("[T]o prove conspiracy, more evidence is required than a single sale, on credit, in a quantity consistent with personal consumption.").

Applied here, a totality of the circumstances test shows that the State presented several pieces of evidence that would have allowed a rational juror to conclude that Armijo and Brown were part of the same criminal enterprise. Among other things, Armijo testified that she had a standing agreement with Anthony Lawrence, another member of the Tecumseh Street Gang, pursuant to which she could obtain drugs for the purposes of resale. Trial Tr. Vol II, 254. Armijo took advantage of that agreement somewhere between five and eight different times. *See* Trial Tr. Vol. II, 260–61 and 266. And although Anthony Lawrence was Armijo's primary contact, she obtained drugs from another member of the Gang as well. Trial Tr. Vol. II, 261. Finally, Athony Lawrence fronted Armijo drugs on behalf of the Tecumseh Street Gang at least once. Because Armijo did not have money to pay Anthony in advance for the drugs she

obtained from him, he gave her the drugs on credit and Armijo repaid him out of the profits she made when she resold them. Trial Tr. Vol. II, 258–59.

The Third District focused on this last piece of evidence when it rejected Brown's assignment of error that challenged the sufficiency of the evidence supporting the jury's venue finding. It noted that "[b]y fronting to Armijo, the enterprise came to have a direct interest in the proceeds from the drugs sold to the buyer in Napoleon and was, therefore, invested in the outcome of the transaction in Henry County." App.Op.¶34.

Construed in a light most favorable to the State, evidence that the Tecumseh Street Gang provided drugs to Armijo on credit was, by itself, sufficient to allow a rational juror to conclude that Armijo's drug sales furthered the Gang's corrupt enterprise. But that was not the *only* evidence that the State introduced that would have allowed a rational juror to reach that conclusion. Armijo's agreement with Antony Lawrence that she could obtain drugs from the Tecumseh Street Gang, and the fact that she repeatedly did so, was additional evidence on which a rational juror could have relied when concluding that Armijo and the other members of the Gang shared a common corrupt purpose and were part of the same corrupt enterprise. Indeed, Armijo's testimony that she had an agreement with Anthony Lawrence, in which he agreed to regularly supply her with the drugs she needed for resale, *see* Trial Tr. Vol. II, 254, would *also* have been enough for a rational juror to conclude that Armijo was part of the same corrupt enterprise as Lawrence and Brown—even if Lawrence had never fronted her any drugs.

Finally, other evidence that the State presented at trial was sufficient to confirm, at least for a rational juror, that the Tecumseh Street Gang was interested in the success of Armijo's subsequent sale of the drugs that she obtained from them. The State introduced significant evidence at trial that indicated that Toledo-based drug dealers play an important role in the sale and distribution of drugs in smaller surrounding counties. *See* Trial Tr. Vols. II, III, 219, 385–87. Armijo was one of those distributors.

Brown cites a handful of cases that, he argues, support the proposition that a defendant must knowingly participate in a conspiracy before he can be held responsible for the actions of his coconspirators. *See* Brown Br.19 (citing *Hawkins*, 547 F.3d at 73–74; *United States v. Ceballos*, 340 F.3d 115, 124 (2d Cir. 2003); *United States v. Reifler*, 446 F.3d 65, 96 (2d Cir. 2006); *United States v. Lechuga*, 994 F.2d 346, 349 (7th Cir. 1993)). True, but irrelevant. Brown does not dispute that he was a member of the Tecumseh Street Gang. *See* Brown Br.14. And, as the foregoing makes clear, the evidence at trial was sufficient to show that Armijo participated in the Tecumseh Street Gang's activities as well—and that her "efforts contributed towards its success." *Reifler*, 446 F.3d at 96 (quoting *United States v. Wiley*, 846 F.2d 150, 154 (2d Cir. 1988)).

III. Brown has not offered any compelling reason for reversal.

Brown challenges the Third District's decision on the basis that evidence that members of the Tecumseh Street Gang fronted Armijo drugs was not, by itself, sufficient to support the jury's determination that venue was proper in Henry County. *See* Brown

Br.15–20. But as discussed above, Armijo's testimony that Anthony Lawrence fronted her drugs was not the only evidence the State presented that linked Armijo to the Tecumseh Street Gang. The Court should affirm even if it believes that Third District gave too much weight to the fact that Armijo obtained drugs on credit. Courts review judgments, not opinions, *see Camreta v. Greene*, 563 U.S. 692, 704 (2011), and, for the reasons discussed above, the Third District's judgment was indisputably correct.

***Amicus Curiae* Ohio Attorney General's Proposition of Law 2:**

> *The manifest weight of the evidence supports the jury's determination that Henry County was a proper venue for this case.*

The Court should decline to address Brown's manifest-weight-of-the-evidence argument. But if it decides to address that argument, it should hold that the jury's verdict was consistent with the manifest weight of the evidence that the State presented at trial.

I. The Court should decline to consider Brown's manifest-weight-of-the-evidence challenge.

The Court has made conflicting statements about whether it can consider a manifest-weight-of-the-evidence challenge in a non-capital case and, as far as the Attorney General is aware, has never reversed a jury's verdict on that basis. Its reticence reflects several limitations on the power of courts to substitute their views for that of a jury. The General Assembly has made clear, for example, that except in capital cases, the Court "shall not be required to determine as to the weight of the evidence." R.C. 2953.02. The Ohio Constitution also imposes some limits on the power of courts to grant the type of relief Brown seeks. When defining the jurisdiction of Ohio's intermediate courts of appeals, it

states that reversal on direct appeal of a jury's verdict requires unanimous agreement of all three appellate judges. It is silent, however, about *this* Court's power to hear a manifest-weight-of-the-evidence claim—or its ability to substitute its judgment for that of a jury.

Relying in part on the difference between the provisions of the Ohio Constitution that govern this Court and the lower appellate courts, the Court has repeatedly declined to consider manifest-weight-of-the-evidence challenges. It has held that, while it can consider whether appellate courts have correctly applied the manifest-weight standard, "[o]nly courts of appeals may overturn trial court judgments on the grounds … that the verdict was against the manifest weight of the evidence." *Shoemaker*, 74 Ohio St. 3d at 664–65 (citing *State v. Cooey*, 46 Ohio St. 3d 20, 25–26 (1989)); *see also State v. Sheppard*, 165 Ohio St. 293, syl.¶5 (1956); *State v. Eley*, 56 Ohio St. 2d 169, 172 (1978) (noting that the Court's review is "confined to a determination of whether there was substantial evidence"). On the other hand, it has also held that it can consider manifest-weight-of-the-evidence claims and that it can "reverse on weight of the evidence with a mere majority." *Smith*, 80 Ohio St. 3d at 102–03. But its decision in that case relied in part on capital-specific amendments to the Ohio Constitution, however, *see id.* at 102 n.4, leaving open the question whether the Court's earlier precedent refusing to consider challenges based on the weight of the evidence still applies in noncapital cases. To be sure, the Court has, since *Smith*, occasionally considered manifest weight claims in a noncapital context.

See Beverly, 2015-Ohio-219 at ¶17. But Brown has not identified a single case in which this Court has *reversed* a noncapital jury verdict on the basis that the jury's decision was against the manifest weight of the evidence.

Rather than wade into these murky waters, the Court should avoid the issue entirely. If Brown's manifest-weight-of-the-evidence claim had been presented as a standalone proposition of law, the Court likely would have declined to address it. Brown does not allege that this aspect of the case presents a question of public or great general interest, he argues simply that *this* jury in *this* case incorrectly weighed the evidence the State presented. That is not the type of question that the Court normally reviews, and declining to consider Brown's manifest-weight-of-the-evidence arguments will discourage future litigants from engaging in the type of logrolling reflected in Brown's single proposition of law.

Finally, even Brown appears to implicitly acknowledge that the Court's power to grant him the relief he seeks is uncertain. That is likely why he asks in the alternative for the Court to remand the manifest-weight claim to the Third District. *See* Brown Br.23. It is unclear how that would help him. The Third District already considered—and rejected—his manifest-weight-of-the-evidence claim. There is no reason to remand the case just so that the lower court may repeat what it has already said; this Court should simply affirm the decision below.

II. The jury's determination that venue was proper in Henry County was not against the manifest weight of the evidence.

If the Court chooses to consider Brown's manifest-weight-of-the-evidence challenge, it should reject it. The jury's verdict was supported by the weight of the evidence and the jury did not clearly lose its way or create a manifest miscarriage of justice that requires a new trial. *See Thompkins*, 78 Ohio St. 3d at 387.

Whether a jury's verdict is against the manifest weight of the evidence is a very different question than whether the verdict is supported by sufficient evidence. A "challenge to the sufficiency of the evidence attacks its adequacy while a challenge to the weight of the evidence attacks its persuasiveness." *State v. Jordan*, 2023-Ohio-3800, ¶15 (quotation and ellipses omitted). Unlike a sufficiency challenge, which requires a reviewing court to defer to the jury by construing the trial evidence in a light most favorable to the State, *see State v. Jenks*, 61 Ohio St. 3d 259, syl.¶2 (1991), a challenge to the weight of the evidence asks a reviewing court to second guess the jury by sitting "as a thirteenth juror" and "reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered," *Thompkins*, 78 Ohio St. 3d at 387 (quotation omitted) (superseded by constitutional amendment on other grounds, *see Smith*, 80 Ohio St. 3d 89).

To the extent that Brown suggests that a different standard of review applies, *see* Brown Br.13, he is wrong. As should be obvious, whether a jury's verdict is consistent with the manifest weight of the evidence is a question that is reviewed using the manifest-weight-of-the-evidence standard—not de novo. None of the cases he cites hold otherwise. Among other things, none of those cases involved a manifest weight of the evidence claim. *See* Brown Br.12 (citing *Lunn v. Lorain Cty. Bd. of Revision*, 2016-Ohio-8075, ¶13 and *HCP EMOH L.L.C. v. Washington Ctny. Bd. of Revision*, 2018-Ohio-4750, ¶12). To the extent that Brown argues about whether the "facts satisfy the burden to show an 'enterprise' under R.C. 2923.31(C)," he is arguing about the *sufficiency* of the evidence, not its weight. *See* Brown Br.21.

Brown's claim ultimately fails regardless of the standard that the Court applies. At the risk of repetition, significant persuasive evidence supported the jury's conclusion that venue was proper in Henry County. It included evidence that Armijo had a standing agreement with Anthony Lawrence that the Tecumseh Street Gang would supply her with drugs, Trial Tr. Vol. II, 254, that she repeatedly obtained drugs under that agreement, Trial Tr. Vol. II, 260–61, 266, and that, on at least one occasion, the Gang provided drugs to her on credit and that she repaid the Gang only after she resold those drugs, Trial Tr. Vol. II, 258–59.

The evidence on which Brown relies does not undermine, much less outweigh, the evidence that connected Armijo to the Tecumseh Street Gang. He points to Armijo's

testimony in which she stated that she kept the profits from the drug sales and that she did not work for the members of the Gang. *See* Brown Br.22. But the relevant question before the jury was whether the Tecumseh Street Gang had an interest in Armijo's continued success as a distributor of the drugs that it sold to her. And Armijo's testimony, taken as a whole, shows that it did. At a minimum, the evidence that Brown cites does not outweigh the State's evidence to such a degree that it was manifestly unjust for the jury to conclude that Armijo and the other members of the Tecumseh Street Gang shared a common corrupt purpose and that venue was therefore proper in Henry County.

CONCLUSION

For the foregoing reasons, the Court should affirm the Third District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellee was served this 20th day of December, 2024, by e-mail on the following:

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