[Cite as *State v. Harris*, 2026-Ohio-4683.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
JACKSON COUNTY

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA10
	:	
v.	:	
	:	DECISION AND
Shaun Harris,	:	JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	**RELEASED 11/16/26**

APPEARANCES:

Elizabeth R. Miller, Ohio Public Defender, and Jeremy Masters, Assistant Public Defender, Columbus, Ohio, for appellant.

Randy Dupree, Jackson County Prosecutor, Jackson, Ohio, for appellee.

Smith, P.J.

{¶1} Appellant, Shaun Harris, appeals the judgment of the Jackson County Court of Common Pleas convicting him of two counts of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(1) and (C)(1)(c). On appeal, he only challenges his conviction on count two of the indictment. Appellant contends that his conviction is not supported by sufficient evidence and that it is also against the manifest weight of the evidence. We agree with appellant's sufficiency argument and find that his conviction for aggravated trafficking in drugs as a principal offender, as set forth in count two of the indictment, is not supported by sufficient

evidence. Thus, his first assignment of error is sustained. Because our disposition of appellant's first assignment of error is dispositive of the case, his second assignment of error has been rendered moot.

{¶2} Accordingly, having found appellant's conviction for aggravated trafficking in drugs in count two of the indictment is not supported by sufficient evidence, the judgment of the trial court is reversed as to that count and affirmed as to count one, which was not challenged on appeal.

FACTS

{¶3} On February 18, 2022, appellant was indicted on two counts of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(1) and (C)(1)(c). The indictment alleged that appellant sold or offered to sell methamphetamine equal to or exceeding the bulk amount, but not exceeding five times the bulk amount, in the vicinity of a school (Jackson Middle School) on January 25, 2022, and February 2, 2022. The record indicates that these two drug sales occurred as part of a controlled buy set up by law enforcement with the use of Brittany Ferris, who was acting as a confidential informant (hereinafter referred to as "C.I.").

{¶4} The matter proceeded to a jury trial on August 12, 2024. The State presented three witnesses at trial: Officer Richard Kisor, Brittany Ferris, and Sarah Michael, a forensic scientist employed by the Ohio Bureau of Investigation (hereafter "BCI"). Kisor testified regarding the manner in which the controlled

buys were set up with the help of Ferris, essentially explaining that Ferris was first searched, provided with marked money, given a wire for recording, and sent to 51 Trago Street in Jackson, Ohio, with a plan to buy methamphetamine from an individual named George Tackett. Kisor testified that on both occasions Ferris returned from the Trago Street location in possession of methamphetamine. Kisor also testified that upon listening to the recordings of each transaction he was able to identify appellant's voice and that he was able to view appellant on the video of the second transaction. Kisor further testified that George Tackett was the target of the investigation.

{¶5} Brittany Ferris, the C.I., testified that she set up both transactions directly with George Tackett via cell phone. She testified that when she arrived at Tackett's house on January 25, 2022, no one answered the door but she found appellant outside the house near another building. According to Ferris, appellant told her that Tackett was laying down and that the drugs were on the seat of the car. Appellant directed her to leave the money on the seat. Ferris testified that she had a conversation with appellant regarding the price of the drugs, expressing that the cost was "highway robbery."

{¶6} Ferris also testified regarding the second controlled buy that occurred on February 2, 2022. She stated that she arrived at Tackett's house to find both Tackett and appellant. She testified that appellant was seated at the table while the

transaction occurred. She testified that she again commented that the price was "highway robbery," to which appellant responded that prices had gone up. Notably, she did not testify that appellant was involved in setting up the transaction or that he handed her the drugs or took the money from her.[1] There was also no testimony that the marked money was recovered from appellant thereafter.

{¶7} Finally, Sarah Michael, a forensic scientist in the drug chemistry section of BCI testified on behalf of the State. Her testimony is not relevant to the issues raised by appellant on appeal. At the close of the State's case, appellant moved for acquittal pursuant to Crim.R. 29(A). The State opposed the motion, arguing that the video from the first transaction demonstrated that the transaction "was made directly with Mr. Harris." The State argued that because appellant was seated at the table during the second transaction and was said to have "eyeballed" the amount of drugs, the minimum standard to overcome the motion for acquittal had been met. The trial court agreed with the State and denied the motion. The matter was thereafter submitted to the jury. The State did not request, nor was the jury provided, an instruction on complicity.

{¶8} The jury ultimately convicted appellant on both counts as charged in the indictment. The trial court sentenced appellant to a prison term of 8 years on

[1] A video of both transactions was played for the jury. The video quality was very poor and the sound quality was equally poor. Although this Court has viewed the video and attempted to listen to it, we primarily rely on the trial testimony of the C.I. to explain what happened during the transactions.

each count, to be served consecutively, for an aggregate minimum term of 16 years and a maximum term of 20 years.[2] Appellant now brings his timely appeal, setting forth two assignments of error for our review.

ASSIGNMENT OF ERROR

I. THE TRIAL COURT VIOLATED SHAUN HARRIS'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN, IN THE ABSENCE OF SUFFICIENT EVIDENCE, THE TRIAL COURT CONVICTED HIM OF TRAFFICKING IN DRUGS, IN VIOLATION OF R.C. 2925.03(A)(1) AND 2925.03(C)(1)(c) UNDER COUNT 2 OF THE INDICTMENT AND BILL OF PARTICULARS.

II. THE TRIAL COURT VIOLATED SHAUN HARRIS'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT CONVICTED HIM OF TRAFFICKING IN DRUGS, IN VIOLATION OF R.C. 2925.03(A)(1) AND (C)(1)(c), UNDER COUNT 2 OF THE INDICTMENT AND BILL OF PARTICULARS, AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

ASSIGNMENT OF ERROR I

{¶9} In his first assignment of error, appellant contends that his conviction for aggravated trafficking in drugs as charged in count two of the indictment is not supported by sufficient evidence. The State contends that appellant's conviction as a principal offender is supported by sufficient evidence. The State alternatively

[2] The sentencing entry states as follows: "Count 1 is a qualifying offense subject to indefinite sentencing and the defendant has been sentenced to a minimum term on each qualifying count as detailed above." Thus, it appears the trial court sentenced appellant to a minimum prison term of 8 years up to a maximum term of 12 years on count 1, to be served consecutively to a prison term of 8 years on count 2.

argues that appellant's conviction is supported by sufficient evidence based upon a theory of complicity. In his reply brief, appellant counters the State's argument by pointing out that the jury was not instructed on complicity and thus, the State was required to demonstrate that he committed the offense as a principal offender.

Standard of Review

{¶10} "When a court reviews the record for sufficiency, '[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. Maxwell*, 2014-Ohio-1019, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307 (1979); *State v. Bennington*, 2019-Ohio-4386, ¶ 11 (4th Dist.).

{¶11} An appellate court must construe the evidence in a "light most favorable to the prosecution." *State v. Hill*, 75 Ohio St.3d 195, 205 (1996); *State v. Grant*, 67 Ohio St.3d 465, 477 (1993). Further, "[t]he court must defer to the trier of fact on questions of credibility and the weight assigned to the evidence." *State v. Dillard*, 2014-Ohio-4974, ¶ 22 (4th Dist.), citing *State v. Kirkland*, 2014-Ohio-1966, ¶ 132; *State v. Lodwick*, 2018-Ohio-3710, ¶ 9 (4th Dist.). Thus, "a reviewing court is not to assess 'whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a

conviction.' " *State v. Davis*, 2013-Ohio-1504, ¶ 12 (4th Dist.), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997) (Cook, J., concurring). Rather, a reviewing court will not overturn a conviction on a sufficiency of the evidence claim unless reasonable minds could not reach the conclusion that the trier of fact did. *State v. Tibbetts*, 92 Ohio St.3d 146, 162 (2001); *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶12} "A conviction that is based on legally insufficient evidence constitutes a denial of due process." *State v. Martin*, 2012-Ohio-1519, ¶ 27 (4th Dist.), citing *Thompkins* at 386-87. Importantly, " 'the Double Jeopardy Clause precludes retrial once the reviewing court has found the evidence legally insufficient to support a conviction.' " *Martin* at ¶ 27, quoting *Tibbs v. Florida,*457 U.S. 31, 40-41 (1982); *see also Thompkins* at 387.[3]

Legal Analysis

{¶13} Appellant contends, with respect to only count two of the indictment, that the State failed to present evidence from which a rationale juror could conclude that he committed all the necessary elements of aggravated trafficking in drugs. He specifically argues that the State failed to present evidence that he sold or offered to sell drugs (methamphetamine) on February 2, 2022. Appellant argues

[3] "There is a notable distinction between a reversal based upon insufficient evidence and one resting upon the weight of the evidence." *State v. Martin*, *supra*, at fn. 3, citing *Thompkins* at 387. "In contrast, a finding that the jury's verdict was against the weight of the evidence does not preclude a retrial under the Double Jeopardy Clause." *Martin* at fn. 3, citing *Tibbs v. Florida* at 40-41; *see also Thompkins* at 387.

that the State is limited on appeal to its theory that he committed the offense as a principal offender and cannot now argue a theory of complicity in the absence of a complicity instruction being provided to the jury at trial. We agree.

{¶14} Appellant was convicted of two counts of aggravated trafficking in drugs (methamphetamine) in violation of R.C. 2925.03(A)(1), which states that "(A) No person shall knowingly do any of the following: (1) Sell or offer to sell a controlled substance or a controlled substance analog[.]" R.C. 2901.22(B) defines the culpable mental state of "knowingly" as follows:

> A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

Appellant argues that the State failed to introduce sufficient evidence to prove that he was the person who actually sold, or offered to sell, methamphetamine to the C.I. during the second controlled buy, which occurred on February 2, 2022.

{¶15} The State concedes on appeal that the drug transaction was set up by the C.I. with George Tackett, not appellant. The evidence indicates that the C.I. contacted Tackett directly via cell phone and planned the time and location of the purchase of methamphetamine. Although the record before us establishes that

appellant was present and seated at the table during the transaction, there is no evidence that establishes that appellant handled the drugs or cash that was exchanged. Instead, the evidence shows that appellant was merely present in the residence where the transaction took place, which was the home of Tackett. Further, there is no evidence in the record indicating that appellant shared the residence with Tackett.

{¶16} Although the evidence introduced at trial established that the C.I. was seated at the table with appellant and Tackett while the transaction took place and that she acknowledged to appellant that the price was high, the evidence does not indicate that appellant set the price or negotiated the price with the C.I. Further, although the State points out that Tackett stated that he and appellant had "eyeballed" the amount of drugs being sold to the C.I., appellant was not charged with a violation of R.C. 2925.03(A)(2), which prohibits the preparation for distribution and distribution of a controlled substance. He was only charged with violations of R.C. 2925.03(A)(1), which prohibits an individual from selling or offering to sell a controlled substance. "Eyeballing" the amount of drugs is not an element of R.C. 2925.03(A)(1). Based upon the foregoing, there is no evidence, aside from appellant's mere presence during the transaction that appellant sold or offered to sell the C.I. drugs.

{¶17} Several cases have observed that mere presence during the sale of drugs is not enough to satisfy the elements of drug trafficking. *See State v. Wilcoxen*, 2003-Ohio-6061, ¶ 12 (2d Dist.) (stating that "* * * one's mere presence at the scene of a crime is insufficient to establish complicit conduct," but affirming a conviction for aiding and abetting another in trafficking in cocaine under a theory of complicity where the accused permitted drugs to be sold out of her home); *State v. Jordan*, 2006-Ohio-538, ¶ 8 (8th Dist.) (reasoning, with respect to a complicity theory, that the mere presence of an accused at the scene of crime is not sufficient to prove aiding and abetting, and "even if the accused has knowledge of the commission of the crime, his presence at the scene is not enough to convict him of aiding and abetting"); *State v. Fletcher*, 2017-Ohio-1006, ¶ 53 (12th Dist.), quoting *State v. Davis*, 2016-Ohio-1166, ¶ 49 (12th Dist.) (acknowledging that an accused's "mere association" with a principal offender is not enough to sustain a conviction for aiding and abetting, but rather "[t]he accused 'must actively participate in some way and contribute to the unlawful act of aid or to abet' "); *State v. Bevins*, 2026-Ohio-2522, ¶ 29 (4th Dist.) (observing that mere presence alone is not enough, but upholding a conviction for aggravated trafficking in drugs under a complicity theory where the appellant directly benefitted financially and offered her home as a "home base" for drug sales).

{¶18} Importantly, as argued by appellant, appellant was charged and prosecuted as principal offender. Although the State at times alluded to appellant being "directly" involved in the first sale rather than the second sale, seeming to acknowledge a different level of involvement on the part of appellant in the second sale, the State did not request an instruction on complicity. Nor was the jury instructed on complicity. The State argues on appeal that if this Court were to find the evidence did not support appellant's conviction as a principal offender, that we can alternatively uphold the conviction based on a theory of complicity. However, this Court has held that even if the evidence supports a conclusion that an offender was complicit in a crime, " 'appellate courts cannot consider evidence of a defendant's complicity in a criminal act if the jury was not instructed on complicity since this would violate the defendant's Sixth Amendment right to a jury trial.' " *State v. Martin*, supra, ¶ 34 (4th Dist.), quoting *State v. Peterson*, 2007-Ohio-4979, ¶ 23 (7th Dist.).

{¶19} As a result, we are limited to considering whether the evidence supports appellant's conviction as the principal offender and, as set forth above, we have already determined that there was no evidence introduced from which a reasonable juror could have concluded that appellant directly sold or offered to sell the C.I. methamphetamine on February 2, 2022. Moreover, it is axiomatic that if mere presence or association alone is insufficient to establish an accused trafficked

in drugs under a theory of complicity, it is certainly insufficient to establish that an accused trafficked in drugs as a principal offender.

{¶20} In summary, there is insufficient evidence to conclude beyond a reasonable doubt that appellant trafficked in drugs by selling or offering to sell methamphetamine to the C.I. on February 2, 2022, as alleged in count two of the indictment. Accordingly, we sustain appellant's first assignment of error and reverse the judgment of the Jackson County Court of Common Pleas as to count two only. Appellant's remaining assignment of error has been rendered moot, and we need not address it. See App.R. 12(A)(1)(c). Furthermore, appellant's conviction for aggravated trafficking in count one is affirmed as it has not been challenged on appeal.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED IN PART, REVERSED IN PART, and that the parties shall split the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Jackson County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal set forth in the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.