

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070146
Plaintiff-Appellee,	:	TRIAL NO. B-0605630-A
vs.	:	
OSCAR AYERS,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Oscar Ayers was convicted, following a jury trial, of complicity to trafficking in cocaine within 1,000 feet of a school. The trial court sentenced Ayers to one year in prison and suspended his driver's license for six months. Ayers now appeals, raising a sole assignment of error in which he claims that the state's evidence was insufficient to support his conviction.

“ ‘Sufficiency’ is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.”² The relevant inquiry when examining an appeal based on the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541, citing Black's Law Dictionary (6Ed.1990) 1433.

doubt.³ A guilty verdict will not be disturbed on appeal unless “reasonable minds could not reach the conclusion reached by the trier-of-fact.”⁴ Proof of guilt, furthermore, may be by real evidence, circumstantial evidence, and direct or testimonial evidence, or any combination of the three, and all three have equal probative value.⁵

To convict Ayers of complicity to trafficking in cocaine as charged in the indictment, the state had to show that Ayers had knowingly solicited or procured another to sell cocaine, a controlled substance, within 1,000 feet of a school.⁶ During Ayers’s trial, the state presented testimony from three Cincinnati police officers. Officer Sandy Haynes testified that the police had received a number of complaints about drug trafficking at the intersection of 14th Street and Walnut Street. As a result, they had used a confidential informant, who was searched and equipped with a transmitter and marked currency, to purchase drugs on June 26, 2006. After dropping off the informant near the intersection, Haynes and number of other officers, some in marked vehicles and some in undercover vehicles, were positioned nearby with audio monitors.

One of those officers, Jody Dillinger-Peterson, was sitting in an undercover vehicle near the intersection. She watched the confidential informant approach Ayers, who was standing at the corner of 14th and Walnut Streets. She listened as the confidential informant asked Ayers where she could get \$20 of crack cocaine. Ayers replied, “My boy over here can hook you up.” Ayers then walked over to Willis Lowe, who was standing nearby. Ayers and Lowe then walked back to the confidential informant, who asked Lowe if he had “a \$20.” Lowe took the

³ *State v. Dennis*, 79 Ohio St.3d 421, 430, 1997-Ohio-372, 683 N.E.2d 1096.

⁴ *Id.*

⁵ *State v. Nicely* (1988), 39 Ohio St.3d 147, 151, 529 N.E.2d 1236.

⁶ R.C. 2925.03(A)(1); R.C. 2923.03(F).

confidential informant's money, walked away, and returned with the cocaine. The confidential informant took the cocaine from Lowe and walked away.

Officer Dillinger-Peterson and Officer Gerald Knight then arrested Lowe and Ayers. After being taken into custody and advised of his rights, Ayers told Knight that neither he nor Lowe had been involved in the transaction, stating, "Dude that sold went in. I was standing next to dude when he sold. Dread was not involved."

After giving police the cocaine, the confidential informant positively identified Ayers and Lowe. Laboratory testing by the police revealed the substance the confidential informant had purchased was in fact cocaine-based. Robert Heydkamp, a deputy county surveyor for the Hamilton County Engineer's Department, testified that he had prepared a map of the area surrounding the intersection where the drug sale had occurred, and that St. Francis Seraph School was located approximately 775 feet from the intersection.

This testimony, when viewed in the light most favorable to the prosecution, was sufficient to show that Ayers was not a mere bystander to the sale of cocaine, as he claimed, but rather that he had aided and abetted Lowe in the commission of the offense. We, therefore, overrule his sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HILDEBRANDT and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 13, 2008
per order of the Court _____
Presiding Judge