

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH JONES II,

Defendant-Appellant.

UNPUBLISHED

November 18, 2021

No. 353359

Monroe Circuit Court

LC No. 19-245517-FH

Before: CAVANAGH, P.J., and SHAPIRO and GADOLA, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent. Under *People v Beck*, 504 Mich 605; 939 NW2d 213 (2019), a trial court may not base a sentence on a finding that the defendant engaged in conduct of which he was acquitted. In this case, the jury acquitted defendant of charges that he had distributed drugs and convicted him of the lesser-included offense of possession. Contrary to the jury's verdict, however, the trial court found that defendant's conduct was "tantamount to trafficking in this town." The majority concludes that resentencing is not required because the trial court's reference to trafficking was "gratuitous" and that the trial court did not rely on the acquitted conduct in sentencing defendant. However, the trial court stated its belief that defendant trafficked drugs while discussing why a harsher sentence than probation was warranted:

And I just can't . . . put you on probation, it's just a mere rewarding of everything that went on here. And quite frankly, I'm convinced there was enough of the material, the possession and things like that, that it is tantamount to trafficking in this town. There's no question in my mind about this.

Because the trial court expressly relied on its belief that defendant was trafficking drugs in justifying its sentencing decision, I would conclude that the imposed sentence was based, in part, on acquitted conduct and remand for resentencing.

/s/ Douglas B. Shapiro