

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

KELLY ELIZABETH LOUDERMILK,

Appellant,

v.

Case No. 5D16-728

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed February 24, 2017

Appeal from the Circuit Court
for Osceola County,
A. James Craner, Judge.

James S. Purdy, Public Defender, and
Kathryn Rollison Radtke, Assistant Public
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Kelly Elizabeth Loudermilk appeals her judgment and sentence for trafficking in oxycodone and conspiracy to traffic in oxycodone. Loudermilk contends that the trial court erred in: 1) denying her motion for continuance to secure the testimony of two codefendants that she alleged would support an entrapment defense; and 2) applying the

incorrect legal standard to her motion for new trial. We affirm as to the first issue without further discussion but reverse and remand as to the second.

The proper standard to address a defendant's motion for new trial is the weight of the evidence. See Lee v. State, 117 So. 3d 848, 849 (Fla. 5th DCA 2013); Santiago v. State, 874 So. 2d 617, 625 (Fla. 5th DCA 2004). In this case, the trial court incorporated its order denying Loudermilk's motion for judgment of acquittal, in which it applied a sufficiency of the evidence standard, into its order denying her motion for new trial. Accordingly, these orders suggest that the trial court also utilized a sufficiency of the evidence standard when considering Loudermilk's motion for new trial. We therefore reverse and remand on this issue for the trial court to consider Loudermilk's motion for new trial pursuant to the weight of the evidence standard. See King v. State, 183 So. 3d 1071, 1072 (Fla. 5th DCA 2015).

AFFIRMED in part; REVERSED in part; REMANDED.

SAWAYA, TORPY and BERGER, JJ., concur.