

RENDERED: DECEMBER 21, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001700-MR

DEBRA SUE FARRIS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE ERNESTO M. SCORSONE, JUDGE  
ACTION NO. 09-CR-01596

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: ACREE, CHIEF JUDGE; DIXON AND VANMETER, JUDGES.

DIXON, JUDGE: Appellant, Debra Sue Farris, pled guilty in the Fayette Circuit Court to one count of being a second-degree persistent felony offender and was sentenced to ten years' imprisonment. For the reasons set forth herein, we reverse the conviction and remand the matter for a new trial.

In October 2009, Appellant was indicted by a Fayette County Grand Jury on one count of first-degree trafficking in a controlled substance, one count of possession of drug paraphernalia, second or greater offense, one count of possession of marijuana, and for being a second-degree persistent felony offender. Following a trial in July 2011, the jury found Appellant guilty on all charges. However, the trial court *sua sponte* “set aside the jury verdict in the sentencing phase due to faulty instructions,” and Appellant was thereafter sentenced to a total of ten years’ imprisonment. She now appeals to this Court as a matter of right.

On appeal, Appellant argues that the trial court erred in (1) failing to instruct the jury on criminal facilitation of trafficking in cocaine, and (2) instructing the jury under the previous version of KRS 218A.1412, instead of under the mitigating provisions of the amended version of KRS 218A.1412. The Commonwealth concedes that the jury should have been instructed on criminal facilitation as set forth in KRS 506.080(1), because a reasonable jury could have believed that Appellant facilitated her co-defendant’s trafficking by allowing him to sell cocaine out of her home. As such, the Commonwealth acknowledges that this case should be remanded for a new trial. As such, we need not reach the statutory issue as such is rendered moot and unlikely to occur on remand.

Accordingly, the judgment and sentence of the Fayette Circuit Court is reversed and this matter is remanded for further proceedings in accordance with this opinion.

ALL CONCUR.

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