

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
October 7, 2003

**STATE OF TENNESSEE v. DENNIS RAY JONES and PAMELA KAY
BARKER**

**Direct Appeal from the Circuit Court for Henry County
No. 13192 Julian P. Guinn, Judge**

**Nos. W2002-00402-CCA-R3-CD and W2002-00394-CCA-R3-CD
Filed February 26, 2004**

JAMES CURWOOD WITT, JR., J., concurring and dissenting.

I concur in affirming defendant Jones's conviction of manufacturing methamphetamine but respectfully dissent from affirming Barker's conviction of facilitation of the same offense.

The basis of Ms. Barker's conviction is the facilitation of *manufacturing* the controlled substance, not facilitation of *possession* with intent to manufacture. *See* Tenn. Code Ann. § 39-17-417(a)(1), (4) (2003).

Assuming that Barker's presence in the shed supports a finding that she facilitated possession of a controlled substance, I find no evidence that, based upon her presence in the shed, she was facilitating the *manufacture* of methamphetamine. There is no evidence in the record that manufacturing the drug occurred during the time Ms. Barker was present. Save for the odor of ether, the evidence does not inform when in the past the shed had been used to manufacture the drug.

In that circumstance, I find the evidence insufficient to support Ms. Barker's conviction. I would reverse and vacate her conviction and dismiss the charge.

JAMES CURWOOD WITT, JR., JUDGE