

IN THE SUPREME COURT OF OHIO

STATE OF OHIO :
Appellee :
-vs- :
EDWIN GUYTON :
Appellant :

07-1306
On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District Court
of Appeals
CA: 88423

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT, EDWIN GUYTON

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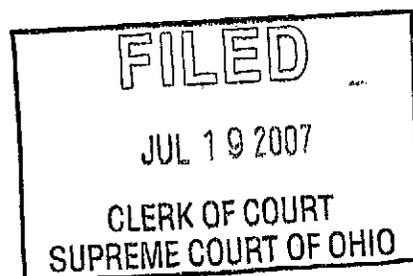


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**EXPLANATION OF WHY THIS CASE IS A FELONY CASE
OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES
A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case presents a recurring question that is of great importance to law enforcement officers and prosecutors throughout the State: under what circumstances may the State refuse to disclose the identity of a confidential informant who had direct contact with a criminal defendant now on trial? This Court's attention to this issue is of significant importance to lower courts throughout the State.

The use of confidential informants, particularly in drug cases, is a routine law enforcement practice. Without informants, it would be impossible for law enforcement to infiltrate certain criminal organizations. But these informants are oftentimes criminals themselves, and it would be naive to assume that their motives are purely altruistic when they cooperate with the police. Many are trying to help themselves with their own pending cases or potential cases. As a result, there is a significant possibility that informants will plant drugs or lie to their law enforcement "handlers" about what actually took place. While no one would question the need for a criminal defendant to be able to confront the confidential informant who is called to the witness stand during trial, the law is unsettled about when a defendant should be allowed to know the identity of a confidential informant who witnessed the alleged crime but is not being called to testify by the State.

It is this question that the instant case presents. This Court is invited to draw a bright line that requires the State to identify any informant who was directly involved with the defendant during the transaction from which the criminal charge has arisen. Such a rule of law draws a fair balance between the rights of the defendant and the law

enforcement needs of the State. It also provides a predictable rule that prosecutors and police can anticipate will be employed at trial. As a result of knowing the rule in advance, police will be able to decide during the investigation of the crime when the police need to remove the informant from active participation in order to protect the informant's identity.

This Court's own jurisprudence is unsettled in this regard. In *State v. Bays* (1999), 87 Ohio St.3d 15, this Court recognized that "[I]n general, courts have compelled disclosure in cases involving 'an informer who helped to set up the commission of the crime and who was present at its occurrence' whenever the informant's testimony may be helpful to the defense." *Id.*, quoting *Roviaro v. United States* (1957), 353 U.S. 53, 61. However, earlier, in *State v. Williams* (1983), 4 Ohio St.3d 74, this Court affirmed the withholding of an informant's identity in a case where the informant made hand-to-hand purchases, but where the police were able to watch the informant's hands at all times until the drugs were returned to the police. *Williams* reasoned that the informant could not be helpful because multiple police officers saw the drugs handed to the informant by the defendant and continued to watch the drugs until they were brought to the police. *Id.*, at 77.

This case falls between *Bays* and *Williams*. Like *Bays*, the informant herein set up the commission of the crime. Like *Williams*, the informant participated in a hand-to-hand transaction; significantly, however, there was not the same type of constant surveillance of the informant's hands in the instant case as there was in *Williams*.

This Court's concern in *Bays* about whether the informant's testimony will help the defense, respectfully, creates a conundrum. Until the defense can speak with the

informant, it is uncertain how helpful the informant can be. Requiring helpfulness as a threshold to disclosure places the cart before the horse. Nor can the defense rely upon the State to furnish the answer to the helpfulness question by virtue of the State's responsibility to disclose exculpatory evidence -- an informant can hide the exculpatory details from the police in an effort to advance the informant's own interests.

For these reasons, this Court's resources will be well spent by accepting this case.

STATEMENT OF THE CASE AND FACTS

Defendant-Appellant, Edwin Guyton was charged with drug trafficking drug possession and possession of criminal tools. Prior to trial, the defense moved to have the State disclose the identity of an informant who had allegedly been with Guyton during the time leading to and including his arrest. The State, in an effort to avoid disclosing the informant's identity, dismissed the drug trafficking charge. The trial court then ruled that the informant's identity need not be disclosed.

The State's evidence at trial indicated that Guyton was with the confidential informant in a public area of Cleveland. The police were nearby watching. The police saw Guyton hand something to the informant. Shortly thereafter, the police rushed on the scene, at which time Guyton was observed throwing something. A police officer located a small package of crack cocaine in the vicinity, corresponding to the direction in which Guyton was observed making his throwing motion.

The jury found the defendant guilty. On appeal, the Eighth District Court of Appeals affirmed.

This timely appeal follows.

ARGUMENT

Proposition of Law I:

Upon request of the defense, the prosecution must reveal the identity of any informant who was directly involved with the defendant during the transaction from which the offense conduct has allegedly arisen.

Mr. Guyton's constitutional rights to a fair trial and due process were violated when the trial court failed to require the State to disclose the identity of its confidential informant. An informant's identity must be disclosed when disclosure is "essential to a fair determination of a cause." *Roviaro v. United States* (1957), 353 U.S. 53, 59. The proposition of law presented herein is consistent with, and compelled by the same due process considerations on which *Roviaro* is premised.

In the instant case, the trial court allowed the State to hide the identity of the informant when the State announced that it (1) was not charging Guyton with the drug trafficking offense arising from his having allegedly handed drugs to the informant and (2) was only proceeding on the basis of the drug possession that occurred moments later, as evidenced by Guyton's having allegedly thrown those drugs when confronted by the police. This type of artificial distinction violates *Roviaro*.

Where previous events are "inextricably related to the alleged criminal act," evidence of the previous events is admissible. *State v. Curry* (1975), 43 Ohio St.2d 66, 73. *Accord, State v. Johnson* (August 3, 1998), Stark App. No. 1997 CA 00247, unreported (evidence "provided the context in which the crimes charged occurred."); *State v. Brown-Austin* (August 3, 1998), Stark App. No. 1997 CA 00122, unreported.

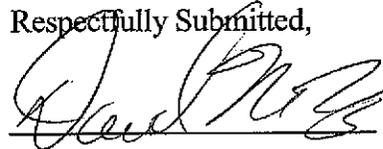
Here, the hand-to-hand transfer of something between Guyton and the informant were inexorably linked to the throwing activity that occurred moments later. If called as a witness, the informant would have testified about what it was that Guyton gave him – was it crack cocaine or chewing gum? Similarly, if the informant had been told by Guyton that Guyton had no drugs, then it is less likely that Guyton actually threw drugs when confronted by the police – which suggests that Guyton was not guilty.

Where, as here, the informant is the only person who was with the defendant during the critical moments leading to arrest, the informant's identity must be revealed. The failure to do so constitutes reversible error.

CONCLUSION

Wherefore, this Court should accept and exercise plenary jurisdiction over the instant case.

Respectfully Submitted,



DAVID M. KING, ESQ.
Assistant Public Defender

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Support was served upon William Mason, Cuyahoga County Prosecutor and or a member of his staff, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 this 19th day of July, 2007.



DAVID M. KING, ESQ.
Assistant Public Defender

Attachment not scanned

JUN 4 2007

Judge Villanueva

FILED
Court of Appeals of Ohio

2007 JUN -8 P 2:16

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GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 88423



STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EDWIN GUYTON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-473796

BEFORE: Kilbane, J., Gallagher, P.J., and Dyke, J.

RELEASED: May 24, 2007

CA06088423 45818132

JOURNALIZED: JUN 4 2007



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**FILED AND JOURNALIZED
PER APP. R. 22(E)**

JUN - 4 2007

**GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.**

**ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED**

MAY 24 2007

**GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.**

CA06088423

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

VOL 636 PG 634

**NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED**

MARY EILEEN KILBANE, J.:

Edwin Guyton ("Guyton") appeals from his conviction received in the Cuyahoga County Common Pleas Court. Guyton argues the trial court erred in admitting hearsay testimony and in making its jury instructions, the trial court violated his right to confrontation, his conviction is against the manifest weight of the evidence, and his trial counsel rendered ineffective assistance. For the following reasons, we affirm the decision of the trial court.

In early fall 2005, Fifth District Cleveland Police Officers targeted the area of East 79th Street and Cedar Avenue in response to complaints of drug activity. In particular, the officers received complaints about a male named Marlo selling drugs in the area. As a result, Lieutenant Ronald Timm ("Lieutenant Timm") acquired the services of a confidential informant ("CI"). On September 28, 2005, Lieutenant Timm, along with the CI, Detective David Sims ("Detective Sims"), Detective George Lewandowski ("Detective Lewandowski") and other vice officers proceeded to East 79th Street and Cedar Avenue.

Lieutenant Timm observed the CI approach Guyton, in front of a storefront on the north side of Cedar Avenue at East 79th Street. While the CI and Guyton were talking, the officers lost sight of the two for approximately one

to two minutes. However, when the CI and Guyton reappeared, Lieutenant Timm and Detective Lewandowski observed the CI with outstretched hands. The officers believed illegal activity had occurred and approached in their undercover vehicles.

The officers startled Guyton, who turned and threw an object. Lieutenant Timm searched the area where Guyton threw the object and recovered a plastic baggie that contained rocks of suspected crack cocaine. The officers placed Guyton under arrest. Detective Sims transported Guyton to the Cleveland Police Department, where he searched Guyton and recovered \$169 in cash.

On November 23, 2005, a Cuyahoga County Grand Jury returned an indictment charging Guyton with drug possession, two counts of trafficking offenses, and one count of possession of criminal tools. Prior to trial, defense counsel moved to reveal the identity of the purported confidential informant witness, or, in the alternative, to dismiss the two trafficking counts in the indictment. The State of Ohio ("State") opted to dismiss both trafficking offenses. The trial court then limited what testimony could and could not be presented as to the activities of the informant. The parties also stipulated to the forensic analysis of the drugs that determined the substance tested positive for crack cocaine in the amount of 1.16 grams.

At the close of the State's evidence, the trial court granted defense counsel's motion for acquittal on count four, possession of criminal tools.

In his defense, Guyton called Mr. Willie James Griggs ("Griggs") to the stand. Griggs testified that on September 28, 2005, he resided at 7807 Cedar Avenue in a second floor apartment. Griggs indicated that he watched out of his living room window while the officers arrested Guyton. Griggs testified that he did not see Guyton commit any illegal activity other than drinking a bottle of wine in the street. On cross-examination, Griggs testified that Guyton was known as Marlo and that he observed officers pick up something behind where Guyton had been sitting.

On May 26, 2006, the jury returned a guilty verdict on the only remaining count, possession of drugs. The trial court sentenced Guyton to nine months in prison.

Guyton appeals, raising the five assignments of error contained in the appendix to this opinion.

In his first assignment of error, Guyton argues the trial court erred when it admitted impermissible hearsay testimony. This assigned error lacks merit.

The admission or exclusion of evidence rests within the sound discretion of the trial court. *State v. Laboy*, Cuyahoga App. No. 87616, 2006-Ohio-5927.

“The applicable standard of review for questions regarding the admission of evidence is an abuse of discretion. An abuse of discretion ‘connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.’” Id. (Internal citations omitted.)

Guyton finds error with statements made by defense witness Griggs and State’s witness Detective Lewandowski. We shall address each incident of alleged hearsay separately.

With regard to Griggs’ statements, Guyton argues that while on cross-examination, the prosecutor asked Griggs about a conversation Griggs had the day prior to his testimony with one of the detectives in the case. When the prosecutor asked “What did you tell him?” the trial court overruled defense counsel’s objection and the witness answered as follows:

“That I was there looking out the window when I saw the police officer pick up something behind Marlo [Guyton] off the ground.”

Evid. R. 801(C) defines hearsay as follows:

“Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted.”

As explained above, Griggs did not testify to a statement made by another person. Griggs testified to a statement he made to a detective one day prior to

his testimony. As such, his testimony is not hearsay and was properly admitted into evidence.

In addition, Guyton finds error with the following exchange between the State and Detective Lewandowski:

“Q: Did there come a time during the summer or early fall in which you received information about that area?”

A: Yes.

Q: What information did you receive?

A: I received information from our lieutenant, Lieutenant Timm, who testified earlier, about a certain individual selling drugs in the area.

Q: Okay, do you know that individual’s name?

Mr. Castle: Objection.

The Court: I’ll permit it.

A: At the time we knew him as Marlo.”

This testimony was part of a long line of questioning in which the prosecutor elicited from the witness the course of the investigation and the steps he took to ascertain the true identity of the person he arrested. The answers given in this type of questioning are not hearsay, because the witness did not give this information for the truth of the matter asserted, that is, to

show that Marlo, also known as Guyton, is a drug dealer. The Ohio Supreme Court addressed this issue and held as follows:

“The testimony at issue was offered to explain the subsequent investigative activities of the witnesses. It was not offered to prove the truth of the matter asserted. It is well established that extrajudicial statements made by an out-of-court declarant are properly admissible to explain the actions of a witness to whom the statement was directed. * The testimony was properly admitted for this purpose.”** *State v. Thomas* (1980), 61 Ohio St.2d 223; *State v. Jenkins*, Cuyahoga App. No. 87606, 2006-Ohio-6421.

Additionally, in *State v. Huscusson*, Tuscarawas App. No. 2004AP050040, 2005-Ohio-864, the Fifth Appellate District upheld a trial court’s decision to admit the Law Enforcement Automated Data Service (“LEADS”) printout to verify Huscusson’s identity. The *Huscusson* court determined that the evidence was properly admitted for non-hearsay purposes, including demonstrating the officer’s process and reasoning in verifying Huscusson’s identity. *Id.*

We find the instant case analogous to *Huscusson*. The testimony elicited by Detective Lewandowski was properly admitted to show that Guyton is also known as Marlo. The evidence was not admitted to show that Guyton, also known as Marlo, is a drug dealer.

Based on the above, we find that Detective Lewandowski’s statements did not constitute impermissible hearsay.

The trial court did not err when it allowed the statements of Griggs and Detective Lewandowski. Guyton's first assignment of error is overruled.

In his second assignment of error, Guyton argues the trial court violated his right of confrontation and admitted impermissible other acts evidence in violation of Evid.R. 404(B). This assignment of error lacks merit.

First, Guyton argues his right of confrontation was violated when he was not permitted to cross-examine the confidential information concerning the activities of September 28, 2005. In this case, the State elected to dismiss the trafficking offenses and maintain the confidentiality of its informant. As such, the trial court limited the testimony of the State's witnesses to comport with only what they observed. No witness could testify that the CI was going to purchase drugs from the defendant, that the officers searched the CI and found him to be free of drugs, or that any drugs were turned over by the CI after Guyton's arrest.

Guyton claims the trial court violated its own pretrial ruling when it allowed the State, during opening statements, to inform the jury that the officers observed Guyton hand the CI an object. Additionally, Guyton argues that testimony from Lieutenant Timm and Detective Lewandowski that Guyton

and the CI appeared to be involved in an illegal transaction further violated his right of confrontation.

The testimony of Lieutenant Timm and Detective Lewandowski does not violate Guyton's right of confrontation. Both Lieutenant Timm and Detective Lewandowski testified as to what they observed between Guyton and the CI. Guyton's defense attorney questioned each officer thoroughly. As such, Guyton was given the opportunity to confront the witnesses against him. Guyton was not entitled to confront the CI, as the State dismissed both trafficking charges prior to trial. See, *State v. Williams* (1983), 4 Ohio St.3d 74.

Moreover, this evidence does not constitute impermissible other acts evidence in violation of Evid.R. 404(B). Evid.R. 404(B) provides as follows:

"Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith."

The testimony elicited above does not demonstrate that any prior bad act occurred. The testimony detailed the officers investigation and why they approached Guyton to place him under arrest. The testimony was not elicited to prove that Guyton trafficked in drugs and therefore, he must also possess drugs. Accordingly, any testimony that Guyton handed the CI an object was not

used to show Guyton's character or that he acted in conformity therewith. See, *State v. Jones*, Cuyahoga App. No. 88161, 2007-Ohio-1443.

Finally, Guyton finds error with the following response by Detective Lewandowski to a jury question:

"A: Yes. The CI informant received two rocks of suspected crack cocaine."

While this response arguably violates the trial court's pretrial order regarding the CI, the court sustained the objection immediately raised by Guyton's counsel. Moreover, neither the State nor the defense attorney pursued the statement concerning Guyton during the examination of Detective Lewandowski or during the questioning of any other witness. Additionally, neither counsel mentioned the testimony in closing argument. We find no reasonable possibility that the challenged testimony contributed to Guyton's conviction.

Guyton's second assignment of error is overruled.

In his third assignment of error, Guyton argues the trial court erred during its instruction to the jury. In particular, Guyton claims the trial court should have given a limiting instruction regarding the evidence admitted in violation of Evid.R. 404(B). This assignment of error lacks merit.

In support of his argument, Guyton cites to the case of *State v. Hicks* (May 19, 1989), Lucas App. No. H-88-23. In *Hicks*, the Sixth District Appellate Court held that "where evidence of prior acts is admitted for one of the limited purposes enunciated under Ohio Evid.R. 404(B) or R.C. 2945.59, the jury must be instructed as to the limited purpose for which such evidence is admitted and admonish[ed] not to consider such evidence as proof of the crime charged."

While Guyton is correct in his quotation of *Hicks*, we determined above that none of the evidence admitted violated Evid.R. 404(B), nor was the evidence admitted for one of the limited purposes of Evid.R. 404(B). Accordingly, the trial court was not required to provide the jury with a limiting instruction.

Guyton's third assignment of error is overruled.

In his fourth assignment of error, Guyton argues his conviction for possession of drugs was against the manifest weight of the evidence. This assignment of error lacks merit.

In evaluating a challenge to the verdict based on manifest weight of the evidence, a court sits as the thirteenth juror, and intrudes its judgment into proceedings which it finds to be fatally flawed through misrepresentation or misapplication of the evidence by a jury which has "lost its way." *State v.*

Thompkins, 78 Ohio St.3d 380, 1997-Ohio-52. As the Ohio Supreme Court declared:

“Weight of the evidence concerns ‘the inclination of the greater amount of credible evidence offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.’

***** The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.”** *Id.* at 387. (Internal citations omitted.)

However, this court should be mindful that the weight of the evidence and the credibility of witnesses are matters primarily for the trier of fact, and a reviewing court must not reverse a verdict where the trier of fact could reasonably conclude from substantial evidence that the State has proven the offense beyond a reasonable doubt. *State v. DeHass* (1967), 10 Ohio St.2d 230, at paragraphs one and two of the syllabus. The goal of the reviewing court is to determine whether the new trial is mandated. A reviewing court should only

grant a new trial in the "exceptional case in which the evidence weighs heavily against a conviction." *State v. Lindsey*, 87 Ohio St.3d 479, 483, 2000-Ohio-465.

(Internal citation omitted.)

In the present case, we cannot say that the jury lost its way in convicting Guyton of possession of drugs. Lieutenant Timm testified that when he pulled up to Guyton, Guyton turned around and threw something. Although Lieutenant Timm did not see an object leave Guyton's hand, Lieutenant Timm recovered 1.16 grams of crack cocaine from the area where Guyton threw the object. Additionally, Detective Lewandowski observed Guyton make a throwing motion and actually observed an object leave Guyton's hand as he threw. Based on this testimony alone, the trier of fact could reasonably conclude from substantial evidence that the State proved the offense of possession of drugs beyond a reasonable doubt.

In response, Guyton argues that many other people were in this high-drug area and had the opportunity to leave the drugs where the officers recovered them. While the officers testified that other individuals were present in the area, there was no conflicting testimony regarding the fact that Guyton threw an object and the officers recovered 1.16 grams of crack cocaine. Accordingly, the greater amount of credible evidence supports Guyton's conviction for possession of drugs.

Guyton's fourth assignment of error is overruled.

In his fifth and final assignment of error, Guyton argues his trial counsel rendered ineffective assistance. Specifically, Guyton claims his trial counsel was ineffective for failing to object to a sleeping jury, failing to object to Detective Lewandowski's testimony regarding a hand-to-hand transaction, and in failing to ask for a limiting instruction regarding Evid.R. 404(B). This assignment of error lacks merit.

In order to prevail on a claim for ineffective assistance of counsel, the defendant must show (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136. Counsel's performance may be found to be deficient if counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, at 687. To establish prejudice, "the defendant must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different." *Bradley*, at 143.

In determining whether counsel's performance fell below an objective standard of reasonableness, "judicial scrutiny of counsel's performance must be highly deferential." *Strickland*, at 689. Because of the difficulties inherent in

determining whether counsel rendered effective assistance in any given case, a strong presumption exists that counsel's conduct fell within the wide range of reasonable, professional assistance. *Id.*

In the present case, we have previously determined that the trial court did not abuse its discretion when it admitted Detective Lewandowski's testimony, nor did it err in failing to give the jury a limiting instruction regarding Evid.R. 404(B). Accordingly, we cannot state that Guyton's trial counsel was deficient in failing to object to either the testimony or the jury instructions.

Moreover, Guyton fails to establish how his counsel's failure to object to a sleeping jury prejudiced the outcome of his trial. The trial court noticed that the jury was tired and gave them a break. As such, there is no reasonable probability that the outcome of trial would have been different if Guyton's counsel had objected to the sleeping jury.

Based on the above, we find that Guyton's trial counsel did not render ineffective assistance. Guyton's fifth and final assignment of error is overruled.

Guyton's conviction is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Mary Eileen Kilbane

MARYEILEEN KILBANE, JUDGE

SEAN C. GALLAGHER, P.J., and
ANN DYKE, J., CONCUR

Appendix A

Assignments of Error:

I. The trial court erred by allowing the prosecutor to elicit hearsay testimony from defense witness Willie Griggs as well as from Detective Lewandowski.

II. The trial court erred when it allowed State's witnesses to testify in regard to activities of a confidential informant in violation of defendant's right to confrontation. After ruling that such evidence was inadmissible and over defense objection thereby allowing other acts testimony in contravention of Evidence Rule 404(B).

III. The trial court erred when it failed to instruct the jury in regard to evidence admitted in contravention to its own pre-trial ruling and Evidence Rule 404(B).

IV. Edwin Guyton's conviction for drug possession is against the manifest weight of the evidence.

V. Defendant Edwin Guyton was denied effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 10 of the Ohio Constitution where counsel failed to challenge an inattentive jury, inadmissible police testimony and to elicit a limiting instruction to other acts testimony."