

IN THE OHIO SUPREME COURT

STATE OF OHIO

: Supreme Court Case No.

14-0757

Plaintiff-Appellee,

:

vs.

: On Appeal from the Greene

County Second Appellate District

NOEL MANGAN,

: C.A. Case No. 13-CA-0003

Defendant-Appellant.

:

---

NOTICE OF DELAYED APPEAL  
OF APPELLANT, NOEL MANGAN

---

Greene County Prosecuting Attorney  
Stephen K. Haller  
55 Greene Street  
Xenia, Ohio 45385  
(937) 562-5250  
Attorney for Appellee

Noel Mangan 676-677  
Lo.C.I. P.O. Box 69  
London, Ohio 43140

Pro se

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SUPREME COURT OF OHIO

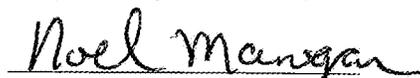
FILED  
MAY 12 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

**IN THE OHIO SUPREME COURT**

**NOTICE OF DELAYED APPEAL OF APPELLANT, NOEL MANGAN**

Appellant, Noel Mangan, hereby gives NOTICE OF A DELAYED APPEAL to the Ohio Supreme Court from a decision of the Greene County Court of Appeals, Second Appellate District, journalized on March 14, 2014 in Case No. 2013-C.A.-3. This Case involves a felony. A copy of the Second District's Judgment and Decision are attached to Appellant's NOTICE OF A DELAYED APPEAL. This case raises substantial constitutional questions and involves matters of public or great general interest.

Respectfully submitted,

  
Noel Mangan 676-677  
Lo.C.I. P.O. Box 69  
London, Ohio 43140

Pro se

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the foregoing Notice of Delayed Appeal was sent this

8, day of May 2014, via regular U.S. Mail, to

**Greene County Prosecuting Attorney  
Stephen K. Haller  
Reg. #0082881  
55 Greene Street  
Xenia, Ohio 45385  
(937) 562-5250**



**IN THE OHIO SUPREME COURT**  
**REASONS IN SUPPORT OF THIS DELAYED APPEAL AND**  
**WHY THIS COURT SHOULD ALLOW THIS DELAYED APPEAL**

This case involves an appeal from the Second District Court of Appeals rendered on March 14, 2014. This case involves a felony conviction. As this Court reviews the following documentation: Sworn Affidavits and Evidence attached Herein, i.e., **Exhibits A, B, & C**. This Court will see the Appellant originally sent his **Notice of Appeal, Memorandum in Support of Jurisdiction, and Affidavit of Indigence** to this Court on April 25, 2014. See **Exhibit A**/which is a copy of a Certified Mail Receipt dated 4/25/2014 being mailed/sent to The Ohio Supreme Court's Clerk. This documentation proves the Appellant mailed the proper documentation to the Clerk of The Ohio Supreme Court 3 days prior to the last day for filing, as the time expired on 4/28/2014.

As this Honorable Court can see by looking at **Exhibit B**/consisting of 3 pages, which consist of the cover page of **The Notice of Appeal, The Memorandum of Jurisdiction, and the Affidavit of Indigency** the Clerk for this Court received the documentation on 4/29/2014. As previously stated the documentation was due by 4/28/2014. By looking at **Exhibit A**, this Court can see Appellant had the documentation in the Institutional Mail on 4/25/2014; as clearly evidenced by **Exhibit A**. This should have allowed for sufficient time for this Court's Clerk to receive the documentation in a timely matter. Appellant has no control over the mail at the Institution, yet he made sure he sent the documentation by Certified Mail, and had it in the mail 3 days prior to it being due.

Furthermore, by looking at **Exhibit C**/this Court will see Appellant only received the notice of the denial of his appeal from the Second Dist Court of Appeals on 4/18/2014. This was due to Appellant's paid Appeal attorney (Jay Adams) not mailing the Decision of the Second District to his client Noel Mangan-Appellant until 35 days after (4/18/2014) the decision had been rendered by the Second Dist., Court of Appeals. **Exhibit C**/is a copy of the Institutional (Lo.C.I., i.e. London

Correctional Institution) Mail Log, which proves Appellant signed for the decision of the Second District Court of Appeals on 4/18/2014. Appellate Counsel Jay Adams' never sent the decision of the Second Dist., Court of Appeals in a timely fashion. As demonstrated by **Exhibit C**/Appellant signed for legal mail from attorney Jay Adams on 4/18/2014. **Exhibit C**, can be authenticated by simply calling down here to the London Correctional Institution Mail Room. This was the date Appellant received the decision of the Second District. (See **Exhibit C**.) Appellant only had 9 days to file a Notice of Appeal, Memorandum of Jurisdiction, and Affidavit of Indigency to this Court. Appellant is pro se, and as evidenced above appellant mailed the documentation to this Court's Clerk for filing 3 days prior to it being due. As Appellant has further demonstrated by the above, this Court received the documentation a day late, this was not due to the Appellant's actions. Appellant was diligent in his efforts to see this Court received the proper documentation timely.

For all the Reasons stated above, and the Evidence put forth in **Exhibit A, B, & C**. The Appellant "**respectfully**" moves this Honorable Court to Grant his Motion For Delayed Appeal, and prays the Court does so. **Also, Please see Attached Sworn Affidavit.**

*Respectfully submitted,*

Noel Mangan

#### CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Notice of Delayed Appeal was sent this 8, day of May 2014, via regular U.S. Mail, to

**Greene County Prosecuting Attorney  
Stephen K. Haller  
Reg. #0082881  
55 Greene Street  
Xenia, Ohio 45385  
(937) 562-5250**

Noel Mangan

IN THE OHIO SUPREME COURT

SWORN AFFIDAVIT

State of Ohio

ss:

Madison County

AFFIDAVIT OF NOEL MANGAN

Noel Mangan-Appellant, hereby swears the following statements are true and correct to the best of his knowledge and belief and swears these facts are true under the penalty of perjury.

1. Appellant states that every statement made in: **REASONS IN SUPPORT OF THIS DELAYED APPEAL AND WHY THIS COURT SHOULD ALLOW THIS DELAYED APPEAL** are true to the best of his knowledge and belief.
2. Appellant further swears that all copies of the documentation attached as evidence in **Exhibit A, B, & C** are true and accurate copies of the originals. These Exhibits prove the Appellant was not at fault for the one day late filing. Appellant clearly put forth every effort possible to see the filing of the Notice of Appeal, Memorandum of Jurisdiction, and Affidavit of Indigency was filed in a timely fashion and in compliance with this Honorable Court's rules and procedures.

Noel Mangan  
Affiant

8, Sworn to and subscribed by the above named person in front of me, a notary public this 8, day of May 2014.

Muriel D. Reine  
Notary Public



MURIEL D. REINE  
Notary Public  
In and for the State of Ohio  
My Commission Expires Aug. 31, 2018

8, 31, 2018  
My Commission Expires

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
GREENE COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

NOEL E. MANGAN

Defendant-Appellant

Appellate Case No. 2013-CA-3

Trial Court Case No. 12-CR-143

(Criminal Appeal from  
Common Pleas Court)

.....  
OPINION

Rendered on the 14th day of March, 2014.  
.....

STEPHEN K. HALLER, Atty. Reg. #0009172, by STEPHANIE R. HAYDEN, Reg. #0082881, Greene County Prosecutor's Office, 55 Greene Street, Xenia, Ohio 45385  
Attorney for Plaintiff-Appellee

JAY A. ADAMS, Atty. Reg. #0072135, 36 North Detroit Street, Suite 102 Xenia, Ohio 45385  
Attorney for Defendant-Appellant  
.....

FAIN, J.

{¶ 1} Defendant-appellant Noel E. Mangan appeals from his conviction and sentence for one count of Illegal Manufacture of Drugs, in violation of R.C. 2929.04(A), a felony of the second degree; two counts of Illegal Assembly or Possession of Chemicals

for the Manufacture of Drugs, in violation of 2925.041, felonies of the third degree; three counts of Aggravated Trafficking in Drugs, in violation of R.C. 2925.03(A)(1), felonies of the fourth degree; and one count of Possession of Criminal Tools, in violation of R.C. 2923.24(A), a felony of the fifth degree. Mangan contends that the trial court erred by admitting in evidence audiovisual recordings made by a surreptitious miniature recording device on a car key fob that was uploaded from the recording device onto a computer hard drive maintained by the police department. Mangan argues that the duplicates of the original recordings were not admissible under Evid.R. 1003, because a genuine question was raised as to the authenticity of the originals, since the times and dates impressed onto the recordings by the recording device were not correct.

{¶ 2} We conclude that except for the time and date impressions, which the State acknowledged were not correct, there was unrebutted testimony of the undercover police officer present when the recordings were made that they accurately depicted the events shown and heard on the recordings. The recordings were not offered to prove the dates and times of the events depicted thereupon.

{¶ 3} Mangan also contends that the trial court erred by overruling his motion to suppress evidence obtained as the result of consensual entry into his residence of an undercover police officer for the ostensible purpose of purchasing illegal drugs. We disagree, on the authority of *Lewis v. United States*, 385 U.S. 206, 87 S.Ct. 424, 17 L.Ed.2d 312 (1966); and *State v. Posey*, 40 Ohio St.3d 420, 534 N.E.2d 61 (1988). Accordingly, the judgment of the trial court is Affirmed.

**I. An Undercover Police Officer Buys Methamphetamine  
from Mangan at his Residence on Two Occasions**

{¶ 4} On February 12, 2012, Naomi Penrod, a Yellow Springs Police Detective, entered Mangan's residence with a confidential informant for the purpose of purchasing methamphetamine. Penrod had on her person a surreptitious miniature recording device in the form of a car key fob. After purchasing the methamphetamine, Penrod was able to observe Mangan manufacturing methamphetamine in a pole barn on his property.

{¶ 5} Penrod subsequently turned the recording device over to Sugarcreek Township Police Detective Craig Black, who was also a member of the Greene County A. C. E. Task Force. The recording device had a limited storage capacity, so Black uploaded the file to a secure file maintained on a computer at the Task Force, deleting the recording stored on the recording device in order that it could be reused.

{¶ 6} On March 26, 2012, Penrod and the informant again went to Mangan's residence, and again purchased methamphetamine. This transaction was also captured on a surreptitious audiovisual recording device, which was later turned over to Black, who again uploaded the recording to a secure file on a Task Force computer.

**II. The Course of Proceedings**

{¶ 7} Mangan was later charged by indictment with two counts of Illegal Manufacture of Drugs, two counts of Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs, three counts of Aggravated Trafficking in Drugs, and one count of Possession of Criminal Tools. The case was tried to a jury. At the conclusion of the State's case, the trial court granted Mangan's Crim.R. 29 motion for a judgment of acquittal on one of the

Illegal Manufacture of Drugs counts. Mangan presented no evidence. Mangan was found guilty of all the remaining counts.

{¶ 8} The trial court merged one of the Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs convictions with the Illegal Manufacture of Drugs conviction, those offenses having been found to be allied offenses of similar import, and the State having elected to have Mangan sentenced on the Illegal Manufacture conviction. The trial court also merged the Possession of Criminal Tools conviction with the remaining Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs conviction, those offenses having been found to be allied offenses of similar import, and the State having elected to have Mangan sentenced on the Illegal Assembly or Possession conviction.

{¶ 9} The trial court sentenced Mangan to five years in prison on the Illegal Manufacture of Drugs conviction, to eighteen months in prison for each of the three Aggravated Trafficking convictions, and to thirty-six months in prison for the Illegal Assembly or Possession conviction, and ordered all sentences to be served concurrently, for a total sentence of five years in prison. The trial court also suspended Mangan's driver's license for five years and ordered him to pay court costs, but did not impose a fine.

{¶ 10} From his conviction and sentence, Mangan appeals.

**III. No Genuine Question Was Raised as to the Authenticity of the  
Originals of the Audiovisual Recordings of the Offenses  
(Except for the Date and Time Impressions, for which Purpose  
the Exhibits Were Not Offered), Therefore the Trial Court Did Not Err  
in Admitting the Duplicate Recordings in Possession of the Police**

{¶ 11} Mangan's First Assignment of Error is as follows:

THE TRIAL COURT ERRED IN THE ADMISSION OF EVIDENCE AT TRIAL.

{¶ 12} In this assignment, Mangan takes exception to the admission of the audiovisual recordings of the offenses in the possession of the police. Mangan argues that the recordings, having been copied onto the computer hard drive from the original recording device, are duplicates, and are therefore covered by Evid.R. 1003: "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Mangan argues that he did raise a genuine question as to the authenticity of the original recording, because Officer Black testified that the times and dates "stamped" on the recordings by the audiovisual recording device were not correct.

{¶ 13} Officer Penrod, who was present when both recordings were made, testified that they accurately depicted the events shown and heard on each recording. Her testimony in this regard was not rebutted. Therefore, the only question raised as to the authenticity of the original recordings is the time and date "stamped" on the recordings. The State acknowledged that the times and dates shown on the recordings were not correct, but offered other evidence to show the times and dates when the events depicted in each recording occurred. Therefore, the recordings were not offered to prove the times and dates of the occurrences depicted therein, and no genuine question was raised as to the authenticity of each original recording for the purposes for which each was offered.

{¶ 14} We might reach a different result if an immaterial discrepancy in a duplicate was of a nature that reasonably implicated the authenticity of the original in general. But it is common knowledge that time and date stamps on recording devices, unless the devices are connected to the internet, must be correctly set up by a user initially, and must be maintained, so that inaccuracies in a time and date stamp on an audiovisual recording device often occur without impugning in any way the accuracy of the audiovisual recordings underlying the time and date stamps.

{¶ 15} We conclude, therefore, that the trial court did not err in admitting the audiovisual recordings in evidence. Mangan's First Assignment of Error is overruled.

**IV. The Fact that a Person Given Consent to Enter a Residence Is an Undercover Police Officer Does Not Vitate the Consent for Fourth Amendment Purposes**

{¶ 16} Mangan's Second Assignment of Error is as follows:

THE TRIAL COURT ERRED IN OVERRULING THE MOTION TO SUPPRESS.

{¶ 17} In this assignment of error, Mangan argues that Officer Penrod's entries into his residence were unlawful because they were without his consent, since he did not know Penrod was a police officer, and they were without a warrant. Therefore, the evidence obtained from those entries should have been suppressed.

{¶ 18} In *State v. Posey*, 40 Ohio St.3d 420, 534 N.E.2d 61 (1988), paragraph three of the syllabus, the Supreme Court of Ohio held: "When an individual gives consent to another to enter a private area wherein illegal activities are being conducted, the consent does not lose its status of being freely and voluntarily given merely because it would not

have been given but for the fact that the other person failed to identify himself as a police officer or agent.”

{¶ 19} At 428, the Supreme Court of Ohio cited *Lewis v. United States*, 385 U.S. 206, 87 S.Ct. 424, 17 L.Ed.2d 312 (1966). In *Lewis*, at 211, the United States Supreme Court held that an undercover narcotics agent could lawfully enter a home for the purpose of purchasing illegal drugs without violating the Fourth Amendment, just as in the case before us. On the authority of *Posey* and *Lewis*, Mangan’s Second Assignment of Error is overruled.

**V. Conclusion**

{¶ 20} Both of Mangan’s assignments of error having been overruled, the judgment of the trial court is Affirmed.

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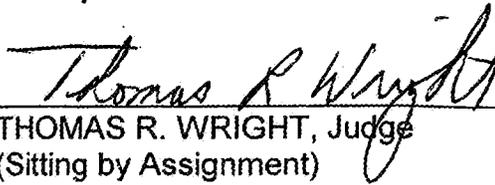
FROELICH and WRIGHT, JJ., concur.

(Hon. Thomas R. Wright, Eleventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

- Stephen K. Haller
- Stephanie R. Hayden
- Jay A. Adams
- Hon. Stephen Wolaver

  
JEFFREY E. FROELICH, Judge

  
THOMAS R. WRIGHT, Judge  
(Sitting by Assignment)

Copies mailed to:

Stephen K. Haller  
Stephanie R. Hayden  
Greene County Prosecutor's Office  
55 Greene Street  
Xenia, OH 45385

Jay A. Adams  
36 N. Detroit Street  
Suite 102  
Xenia, OH 45385

Hon. Stephen Wolaver  
Greene County Common Pleas Court  
45 N. Detroit Street  
Xenia, OH 45385-2998

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See Reverse for Instructions

5297 5060 0000 07E 6002

Exhibit  
A

IN THE OHIO SUPREME COURT

STATE OF OHIO : Case No. \_\_\_\_\_  
Plaintiff-Appellee, :  
vs. : On Appeal from the Greene  
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Defendant-Appellant. : C.A. Case No. 13 CA 0003

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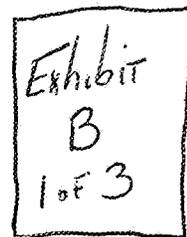
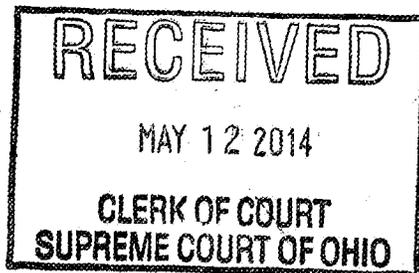
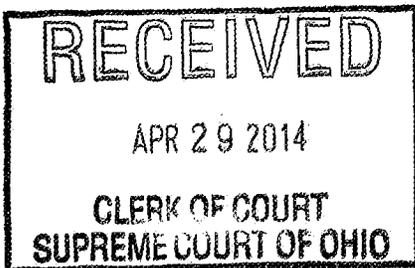
NOTICE OF APPEAL  
OF APPELLANT, NOEL MANGAN

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Greene County Prosecuting Attorney  
Stephanie R. Hayden  
(Reg. #0082881)  
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55 Greene Street  
Xenia, Ohio 45385  
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London, Ohio 43140

Pro se



STATE OF OHIO

:

Case No. \_\_\_\_\_

Plaintiff-Appellee,

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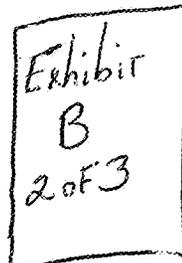
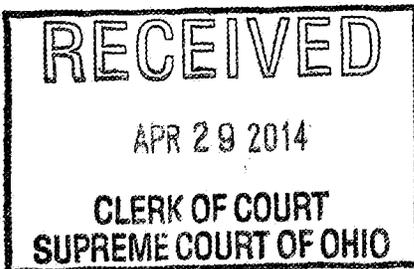
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**MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT, NOEL MANGAN**

Greene County Prosecuting Attorney  
Stephanie R. Hayden  
(Reg. #0082881)  
Assistant Prosecutor  
55 Greene Street  
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(937) 562-5250  
Attorney for Appellee

Noel Mangan 676-677  
Lo.C.I. P.O. Box 69  
London, Ohio 43140

Pro se



IN THE SUPREME COURT OF OHIO

AFFIDAVIT OF INDIGENCY

I, Noel Mangan, do hereby state I am without the necessary funds to pay the cost of this action, or able to supply the proper amount of copies for said action, for the following reason (s):

I am incarcerated and have no income, except for state pay which is \$18.00 dollars per month. I have been incarcerated for approximately 18 months and own no property or anything of value with which I could sell. I am responsible for my own hygiene products and mailing cost. I respectfully request all filing fees and the proper amount of copies be waived due to my indigent status.

Pursuant to **Rule 15.3**, of the Rules of Practice of the Supreme Court of Ohio, and for the reasons above, I am requesting that the filing fee and security deposit, additional copies, if applicable, be waived.

Noel Mangan  
Affiant

Sworn to, or affirmed, and subscribed in my presence this 24, day of April 2014.

Muriel D. Reine  
Notary Public

My Commission Expires: 8/31/18



MURIEL D. REINE  
Notary Public  
In and for the State of Ohio  
My Commission Expires Aug. 31, 2018

RECEIVED  
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SUPREME COURT OF OHIO

Exhibit  
B  
3 of 3

# Legal Mail Log

Date Received by Institution	Inmate Name	Inmate Number	Lock Assignment	Institution: London Correctional Institution	Sender's Name & Address	Inmate's Signature of Receipt	Date of Receipt
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4/18/2014	MANGAN	676677	C1	JAY A. ADAMS ATTORNEY AT LAW	Noel Mangan	4-18-2014
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Exhibit  
C