

[Cite as *State v. Robinson*, 2007-Ohio-265.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87764

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

EUGENE ROBINSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-470090

BEFORE: Celebrezze, A.J., Gallagher, J., and Blackmon, J.

RELEASED: January 25, 2007

JOURNALIZED:

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FRANK D. CELEBREZZE, JR., A.J.:

{¶ 1} Appellant, Eugene Robinson, appeals the trial court's decision, which denied his motion to reveal the identity of a confidential informant. After a thorough review of the arguments and for the reasons set forth below, we affirm.

{¶ 2} The incident that gave rise to the charges against appellant occurred on June 29, 2006. On that evening, Cleveland police detective, Eugene Jones, was organizing a buy bust operation in the area of East 140th Street and Aspinwall. At trial, Detective Jones testified that he regularly used the aid of confidential informants to facilitate buy bust operations and used one on the evening of appellant's arrest. In preparation for the transaction, Jones gave the informant an amount of pre-recorded marked buy money and searched her to ensure she did not have any narcotics or contraband on her person. He instructed the informant to attempt to make a drug buy.

{¶ 3} Jones parked his unmarked vehicle roughly 15 feet from where the transaction was to take place. As Jones waited, the informant approached a parked vehicle with two occupants inside, including appellant who was in the driver's seat. Jones observed as the informant made a hand-to-hand transaction with the individual sitting on the passenger's side of the vehicle. Jones also observed as appellant and the occupants of the vehicle made furtive gestures throughout the duration of the transaction. After the buy was complete, the informant returned to Jones' unmarked vehicle and handed him a small quantity of marijuana. Appellant was subsequently arrested.

{¶ 4} On August 26, 2005, appellant was indicted on two counts of drug trafficking, in violation of R.C. 2925.03, and one count of possession of criminal tools, in violation of R.C. 2923.24. He was arraigned and entered a plea of not guilty. He filed a motion to reveal the identity of the confidential informant who had facilitated the transaction, which was denied by the trial court.

{¶ 5} On December 12, 2005, appellant appeared before the trial court where he withdrew his former plea of not guilty and instead entered a plea of no contest. He was sentenced to a term of eight months incarceration.

{¶ 6} Appellant brings this appeal asserting one assignment of error for our review:

{¶ 7} “I. The trial court erred in refusing to order the state to reveal the identity of the confidential informant.”

{¶ 8} He argues that the trial court abused its discretion when it denied his motion requesting that the identity of the confidential informant be revealed. More specifically, he asserts that the identity of the confidential informant was vital to establishing essential elements of the charges against him and was beneficial to the preparation of his defense.

{¶ 9} To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 50 OBR 481, 450 N.E.2d 1140.

{¶ 10} “The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations.” *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222, quoting *Spalding v. Spalding* (1959), 355 Mich. 382, 384-385. In order to have an abuse of that choice, the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, not the exercise of reason but instead passion or bias. *Id.*

{¶ 11} The Ohio Supreme Court’s holding in *State v. Williams* (1983), 4 Ohio St.3d 74, 466, provides the circumstances under which the identity of a confidential informant may be disclosed. *Williams* provides in pertinent part:

{¶ 12} “A criminal defendant is entitled to disclosure of a confidential informant’s identity only where the informant’s testimony is either: (1) vital to establishing an essential element of the offense; or (2) helpful or beneficial to the accused in preparing a defense.”

{¶ 13} Detective Jones was present on the evening of the transaction and testified at trial regarding the events that took place. According to his testimony, he searched the informant prior to the operation and provided her with an amount of prerecorded marked buy money. He then parked his unmarked police vehicle about 15 feet from where the transaction was to occur, giving him an excellent vantage point. Jones directly observed as the informant approached appellant’s car, and he witnessed the hand-to-hand transaction that occurred between the informant and the individual sitting on the passenger’s side of appellant’s vehicle. After the transaction took place, the informant returned to Jones and gave him the marijuana that she had purchased during the operation.

{¶ 14} Because Jones directly witnessed the transaction, the informant’s identity was not essential to establishing any element of the charges against appellant. Similarly, disclosure of the informant’s identity would not have aided appellant in the preparation of his defense. On the basis of Jones’ close observations on the evening of the incident, the informant’s testimony would not

have deviated from his account of the events, so it would have been no more beneficial.

{¶ 15} We do not find that the trial court's actions were unreasonable, arbitrary, or unconscionable when it denied appellant's motion to disclose the identity of the confidential informant. Accordingly, the trial court did not abuse its discretion, and appellant's assignment of error is overruled.

Judgment 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. Case remanded to the trial court for execution of sentence.

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

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

PATRICIA ANN BLACKMON, J., CONCURS;
SEAN C. GALLAGHER, J., CONCURS IN JUDGMENT ONLY.

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