

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

PLAINTIFF-APPELLEE,

-vs-

DEANDRE D. DIXON,

DEFENDANT-APPELLANT.

:
: Case No.2019-0506
:
: On Appeal from the
: Montgomery County
: Court of Appeals
: Second Appellate District
:
: C.A. Case No. 27792
:

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT DEANDRE D. DIXON

DEANDRE D. DIXON # 739-559
LEBANON CORRECTIONAL ISNT.
P.O. BOX 56
LEBANON, OHIO 45036
DEFENDANT-APPELLANT, *PRO SE*

MATHIAS H. HECK
MONTGOMERY COUNTY PROSECUTOR
303 W. 3RD STREET.
DAYTON, OHIO 45401

COUNSEL FOR APPELLEE, STATE OF OHIO

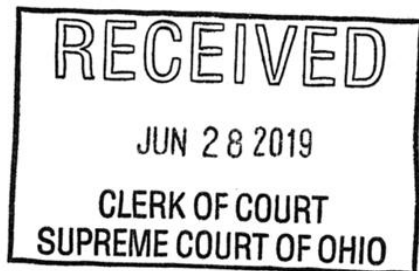
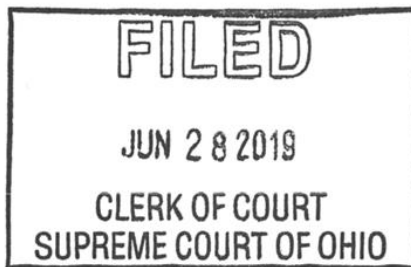


TABLE OF CONTENTS

	<u>Page No.</u>
EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....	1
STATEMENT OF THE CASE AND FACTS.....	2
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW.....	3
PROPOSITION OF LAW.....	3
<u>Proposition of Law I:</u> Trial counsel was ineffective, by the failure to provide notice of intention to use Rule 404 evidence, a denial of the Sixth and Fourteenth Amendment.....	3
<u>Proposition of Law II:</u> The issuance of the search warrant violated Mr. Dixon’s Fourth Amendment right against unreasonable searches and seizures, and Due Process of Law.....	5
A. Mr. Dixon’s Fourth Amendment right against unreasonable searches and seizure was violated when hos physical location was recovered through exigent circumstances, without first securing a search warrant.	
<u>Proposition of Law III:</u> Mr. Dixon’s convictions were against the manifest weight of the evidence and the evidence was insufficient to support his conviction, a violation of Due Process.....	10
A. Was sufficient evidence presented to satisfy all elements for the offense of murder, felonious assault or improper discharge of a firearm at or into a habitation?	
CONCLUSION.....	14
CERTIFICATE OF SERVICE	
APPENDIX	
Judgment Entry and Opinion, Court of Appeals, Montgomery County, January 25, 2019.....	A-1

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

This case will present this Court the opportunity to decide the critical issue of whether it is unduly prejudicial and a violation of Mr. Dixon's Due Process rights to a fair trial, and his right to put on a defense, as well as the right to effective assistance of counsel. When, trial counsel failed to provide notice of intent to use evidence of prior bad acts pursuant to Evid.R. 404(B). Thus, preventing Mr. Dixon the right to a fair trial and to put on a complete defense, curtailing Mr. Dixon's right to cross-examine relevant matters affecting the credibility of the State's main witness. Evid.R.607.

Additionally, this case will allow this Court to decide whether the trial court erred and violated the right to Due Process, when the trial court denied Mr. Dixon's Motion to Suppress, in violation of his Fourth Amendment right, because the affidavit in support of the search warrant lacked any information to establish the credibility of information provided by state's witness Michelle Edwards. Also, this Court will determine if Mr. Dixon's Fourth Amendment right's were violated when the state invaded his reasonable expectation of privacy in the whole of his physical movements, when they used exigent circumstances to support the recovery of Mr. Dixon's cell-site location information(CSLI), which has been held a search under the Fourth Amendment. Carpenter v. United States, 138 S.Ct. 2206.

Finally, this case will allow this Court to decide whether the convictions against Mr. Dixon were supported by sufficient evidence to establish proof beyond a reasonable doubt a constitutionally protected Due Process right, as well as if the convictions were against the manifest weight of the evidence. There were no witnesses to the actual murder, so Mr. Dixon could not be placed at the scene of the crime, there was no DNA evidence that linked Mr. Dixon

to the crime. The only person who could infer that Mr. Dixon could have facilitated the murder was Michelle Edwards, who had a vested interest to protect herself and her sister, Quayshawn Edwards, whom had earlier in the day texted the deceased Mr. Moses "boy you go to die over this." Both sisters who had threatened Mr. Moses in the past had every reason to deflect the focus from themselves onto Mr. Dixon.

STATEMENT OF THE CASE AND THE FACTS

This case stems from the shooting death of Gregory Moses on the night of December 2, 2016. At the time of his death, Moses was involved in a romantic but volatile relationship with a woman named Michelle Edwards. They were living together, and they fought and argued regularly. While still residing with Moses, Edwards met appellant Dixon in November 2016. Edwards and Dixon began dating and became intimately involved.

On December 1, 2016, Edwards spent the night with Dixon at his mother's house. The following morning, Dixon dropped Edwards off down the street from Moses' house. She walked to the house and found her clothes and other belongings outside. Edwards confronted Moses, who brought the items back inside. Later that day, Dixon called Edwards while she was at Moses' house. Edwards told Dixon that she loved him. Moses responded by telling Edwards to "get the F out." He threw her belongings outside again and poured bleach on them.

That evening, Edwards went out drinking with her sister, Quayshawn. While at a nightclub, she spoke to Dixon on her cell phone shortly after 10:00 p.m. She mentioned her belongings being put outside earlier in the day but told Dixon that she still loved Moses. Dixon responded by cursing and threatening to kill Moses. Edwards did not take the threat seriously. Shortly after Edwards finished speaking to Dixon, his cell phone began "pinging" off of cell towers as it moved north away from his mother's house and toward Dixon's home. Twenty-five minutes later, Dixon's cell phone "pinged" off of the cell tower that serviced Moses' home. Edwards then spoke to Dixon again around 11:30 p.m. He told her he had taken care of everything.

Moses' friend Anthony Ivery called Moses around 11:37 p.m., but the call went to voicemail. Ivery then drove to Moses' house so the two men could go out together. When he arrived, Ivery saw that the front door was open and there were several bullet holes in the glass screen door. Ivery found Moses' body on the floor inside the door. Moses had been shot in the shoulder and the head. Police identified Dixon as a suspect several hours later. Dixon fled on foot when police arrived at his mother's house to arrest him. As he ran, he dropped a bag containing two .38 caliber revolvers and several rounds of ammunition. A forensic firearms examiner determined that one of the revolvers was the weapon that fired a bullet recovered from the back of Moses' skull.

Based on the evidence presented, a jury found Dixon guilty on a number of charges and specifications, including murder. The trial court separately found him guilty on two counts of having a weapon while under disability and on firearm and repeat-violent-offender specifications. After merging allied offenses, the trial court imposed an aggregate sentence of 27 years to life in prison.

PROPOSITION OF LAW

Proposition of Law I: Trial counsel was ineffective, by the failure to provide notice of intention to use Rule 404 evidence, a denial of the Sixth and Fourteenth Amendment.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant the right to effective assistance of counsel. *Douglas v. California*, 372 U.S. 353, 356(1963). A defendant whose counsel fails “to provide effective representation is in no better position than one who has no counsel at all.” *Evitts v. Lucey*, 469 U.S. 387,396(1985).

The United States Supreme Court established a two-prong to determine whether a defendant was deprived of his right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668,687(1984). First, a defendant must demonstrate that counsel’s performance was deficient. *Id.* To satisfy the first prong, a defendant must show the errors made were so serious that the attorney did not function as the “counsel” required by the Sixth Amendment. *Id.* The second prong requires that the deficient performance prejudice the defendant. *Id.*

Courts review ineffective assistance of counsel claims de novo. State v. Williams, 2016-Ohio-322 (2nd App. Dist. 2016).

The Due Process Clause of the Fourteenth Amendment requires that criminal defendants be given a meaningful opportunity to present a complete defense. California v. Trombetta, 467 U.S.479(1984). A defendant's right to cross-examine is not absolute, but may not be unreasonably curtailed. State v. Ware, 2004-Ohio-6984 (10th App. Dist. 2004). Cross-examination shall be permitted on all matters affecting credibility Evid.R.611(B). Proof of motive may be relevant evidence and within the scope of cross-examination. State v. Kearns, 2016-Ohio-5941 (10th Dist. 2016).

Ohio Rules of Evidence permit the admission of other crimes, wrongs, or acts for purpose such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Evid.R. 404(B). The proponent of the evidence must provide reasonable notice in advance of trial of the nature of any bad acts it intends to introduce at trial. Evid.R. 404(B). A party may attack the credibility of a witness. Evid.R.607.

Mr. Dixon attempted to introduce evidence regarding four(4) incidents between Michelle Edwards and Mr. Moses and their volatile relationship where they were physical with each other. The evidence included an incident where Mr. Moses threw Ms. Edwards possessions out of the apartment and she grabbed a knife and assaulted him. Mr. Dixon argued the evidence was relevant regarding the relationship between Ms. Edwards and Mr. Moses, and also regarding Ms. Edwards' credibility and reliability. The State objected to the admissibility of the evidence, in part, because notice was not provided prior to trial. The Court sustained the objection to use of the four police reports.

The failure of Mr. Dixon's trial counsel to provide notice of the intent to introduce prior bad acts evidence establishes that his performance was deficient. Additionally, the failure to provide notice prejudice Mr. Dixon, because he was not permitted to cross-examine Ms. Edwards regarding the four(4) prior incidents. Mr. Dixon should have been permitted to testify regarding prior incidents because it is relevant to her credibility and motive in making statements incriminating Mr. Dixon. Therefore, Mr. Dixon was denied his Constitutional right to effective assistance of counsel and Due Process, because the failure to file a motion to use prior bad act evidence prejudiced Mr. Dixon.

Proposition of Law II: The issuance of the search warrant violated Mr. Dixon's Fourth Amendment right against unreasonable searches and seizures, and Due Process of Law.

The denial of a motion to suppress presents an appellate court with a mixed question of law and fact. *State v. Burnside*, 100 Ohio St. 3d 152(2003). Appellate courts must accept the trial court's finding of fact if they are supported by competent, credible evidence. *Id.* Then, the appellate court must independently determine whether the facts satisfy the applicable legal standard, without deference to the trial court. *Id.* The Fourth and Fourteenth Amendments to the United States Constitution protect individuals from unreasonable searches and seizures. The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly the place to be searched, and the persons or things to be seized.

Courts should examine the totality of the circumstances in determining if there is probable cause to issue a warrant. *Illinois v. Gates*, 462 U.S. 213,238(1983). "The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstance set forth in the affidavit before him, including the "veracity" and "basis of

knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* at 238. A reviewing court should ensure the magistrate had a substantial basis for deciding that probable cause existed. *Id.*

A judge may consider hearsay information from an informant in determining if there is probable cause only if the affiant presents the basis of knowledge and underlying circumstances supporting the belief the information is credible. *State v. Humphrey*, 2013-Ohio-40(2nd Dist. 2013). Without such information, the affiant or informant, rather than the magistrate, is making the probable cause determination. *Id.*

Mr. Dixon filed a Motion to Suppress based on inadequate basis or deficiency for the issuance of search warrants for a DNA Saliva Swab from Deandre Dixon, the cell phone of Deandre Dixon, cell phone records of Mr. Dixon, a 2007 Chevrolet Tahoe, Black, and 425 North Orchard. The affidavit in support of the search warrant failed to include any information or circumstances to support the belief that Ms. Edwards was credible. The affidavit in support of the search warrant stated:

On 12/2/16 (Fri) at approximately 23:48 hours, Harrison Twp. Deputies were dispatched to 37333 Haney Rd. in Harrison Township reference to an unresponsive male. Upon arrival, Deputies located a black male, later identified as Gregory Moses, deceased just inside the door of the residence, Moses had been shot in his body succumbing to his injuries from apparent gunshot wounds.

There were at least 5 bullet holes in the front “storm” door appearing the suspect fired from outside striking the victim while he was still inside the residence. There were no casings found at the scene. The residence was processed by E.V. and Moses’ body was removed by the coroner’s office.

Detectives shortly later located Moses’ girlfriend Michele Edwards girlfriend Michelle Edwards and interviewed her at Special Investigations. Edwards relayed she had been at 2 bars throughout the evening and had conversations over the phone with a subject identified as Deandre Dixon who she had current intimate relations with. Dixon was angry over a rocky relationship that Edwards had with Moses.

Edwards stated that she felt that Dixon was responsible for Moses' murder due to telling her over the phone shortly before the murder, "I'll kill his lame ass." Edwards also stated that she again spoke with Dixon over the phone around the time of the murder and Dixon relayed to her, "I took care of everything." Edwards stated that she was unsure at the time what Dixon meant by this. She said during these conversations with Dixon, he appeared to be intoxicated and sounded angry. Edwards provided Dixon's cell phone number of 937-204-6390.

Dixon's cell was "pinged" using exigent circumstances and he showed to be in the area of 425 N. Orchard Ave. in the city of Dayton. Edwards confirmed that this address is where Dixon has been staying. She further provided that Dixon drove a black Tahoe. A black Tahoe bearing Ohio registration GSW2275 was located parked south of the residence.

Ms. Edwards that was confirmed was Mr. Dixon's location and the model of vehicle that he drove. The information did not relate to the likelihood of criminal activity. Detective Steele essentially made the determination regarding whether probable cause existed to issue a warrant because no information was included in the affidavit to support the credibility of the information.

Therefore, the Court erred in overruling Mr. Dixon's Motion to Suppress because there was not probable cause to issue a warrant, violating Mr. Dixon's right to Due Process.

A. Mr. Dixon's Fourth Amendment right against unreasonable searches and seizure was violated when his physical location was recovered through exigent circumstances, without first securing a search warrant.

The Fourth Amendment protects not only property interests but certain expectations of privacy as well. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 576. Thus when an individual "seeks to preserve something as private" and his expectation of privacy is "one that society is prepared to recognize as reasonable", official intrusion into that sphere generally qualifies as a search and requires a warrant supported by probable cause. Smith v. Maryland, 442 U.S. 735, 740, 98 S.Ct. 2577, 61 L.Ed.2d 220.

It has been held by the United States Supreme Court that individuals have a reasonable expectation of privacy in the whole of their physical movements. Allowing a government access to cell-site records—which hold for many Americans the ‘privacies of life.’ Riley v. California, 134 S.Ct. 2473, 189 L.Ed.2d 340 - -contravenes that expectation.

The State acquisition from T-Mobile/Metro PCS of Mr. Dixon’s cell-site location information (CSLI) was a search under the Fourth Amendment. When the State accessed Mr. Dixon’s CSLI, it invaded his reasonable expectation of privacy in the whole of his physical movements and the recovery through a third party does not overcome Mr. Dixon’s Fourth Amendment protection. Carpenter v. United States, 138 S.Ct. 2206, 201 L.Ed.2d 507, 2018 LEXIS 3844. The seriousness of the offense under investigation does not itself create exigent circumstances of the kind under the Fourth Amendment justify a warrantless search, where there is no indication that evidence would be lost or destroyed, during the time required to obtain a search warrant, and there was no suggestion that a warrant could not easily and conveniently have been obtained. Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290.

The Detective Walt Steele, on 12/3/16 faxed a Exigent Circumstances Request Form, to T-Mobile, which stated:

The emergency of the situation (and/or other factors) renders it unfeasible to obtain a search warrant or probable cause court order I am requesting that T-Mobile provide the following records or services[Please mark all that apply]: 1. Current subscriber information 2. Real-time location † [Every 5 min. up to 48 hrs] 3. Call Detail Records w/cell sites (within the past 48 hours)

Detective Steele stated that “a immediate danger or serious physical injury to any person” was the reason “to determine and declare an exigent circumstance.” When the cell-site information was requested, there was not any “immediate danger of death or serious physical

injury to any person.” Det. Steele, intentionally provided false information and misstated the facts, when filing the Exigent Request Form.

Further, in “The emergency which exist is as follows: Homicide occurred in an township this evening suspect is a danger to society and has had previous violent tendencies as he has shot someone before, witnesses are afraid of retaliation or harm.” There were no witnesses to the crime, once again the Detective provide false facts to justify the violation of Mr. Dixon’s Fourth Amendment right. As well as, the fact that after being held for 2 days Mr. Dixon was released without bond or charges, so how is it that a man to have been a “danger to society’ and ‘violent tendencies’ and ‘the witnesses are afraid of retaliation or harm’” was released without bond are any formal charges being lodged against him.

Especially, considering that Quayshawn Edwards had earlier in the day texted Mr. Moses and stated in the text “boy you go die over this.” Are the same people who threatened to kill the victim, now scared of themselves? No!, because neither Michelle Edwards nor her sister Quayshawn Edwards had personal knowledge that Mr. Dixon had committed a murder, on the contrary they were the one’s who had set a alibi when the murder was being committed, by being seen in 2 separate public places by witnesses. Then when learning of the murder and going to the scene and not notifying the police that Michelle was the deceased girlfriend. Why would a grieving girlfriend not approach the police to try to assist in the death investigation of her boyfriend.

Mr. Dixon’s CSLI was seized in violation of the Fourth Amendment, because the Police had obtained without a warrant Mr. Dixon’s physical movements. “cell phones have the capacity for storing immense amounts of private information” and thus likened the devices to laptop

computers, in which arrestees have significant privacy interests, rather than to address books or pagers found on their persons, in which they have lesser privacy interests. Park, 2007 U.S. Dist. LEXIS 40596, 2007 WL 1521573, *8; Carpenter, 138 S.Ct. 2206(2018).

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The basic purpose of this Amendment, “our cases have recognized,” is to safe guard the privacy and securing of individuals against arbitrary invasions by government officials. Camara v. Municipal Court of City and County of San Fransico, 387 U.S. 523, 528, 87 S.Ct. 1727, 18 L.Ed.2d 930(1967).

The United States Supreme Court has held “an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI. “individuals have a reasonable expectation of privacy in the whole of their physical movements.” Jones, 565 U.S. at 430, 130 S.Ct. 945, 181 L.Ed.2d 911. The CSLI in this case was used to infer that since Mr. Dixon was within a 4 mile range of the victims house, it was that he committed the murder of Mr. Moses. What was lost sight of is that Mr. Dixons child’s mother Cartier Dixon lived off of Salem on Culzean Road, which Mr. Dixon would have had to pass Haney Road and his cell-phone would have ping off of the cell site that encompasses Haney road.

Accordingly, when Detective Steele used fraudulent information and facts to access Mr. Dixon’s CSLI information from T-Mobile, it invaded Mr. Dixon’s reasonable expectation of privacy in the whole of his physical movements. Thus, “[i]n the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.” Riley, 134 S.Ct. 2473, 189 L.Ed.2d 430, 439. Before compelling a wireless carrier to turn over a subscriber’s CSLI, the State’s obligation is a familiar one – get a warrant.

Proposition of Law III: Mr. Dixon's convictions were against the manifest weight of the evidence and the evidence was insufficient to support his conviction, a violation of Due Process.

A court reviewing the weight of the evidence examines the believability of evidence and the competing inferences suggested by evidence to determine the believability and persuasiveness. State v. Wilson, 2009 Ohio 525, 12 (2nd Dist. 2009). When evaluating whether a conviction is contrary to the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." State v. Thompkins, 78 Ohio St. 3d 380, 387 (1997), quoting State v. Martin, 20 Ohio App.3d 172, 175(1983); State v. Elmore, 111 Ohio St.3d 515 (2006).

The appeals court must defer to the fact finder's decisions whether, and to what extent, credit the testimony of particular witnesses because the trier of fact sees and hears the witnesses at trial. State v. Lawson, Montgomery App. No. 16288(1997); see also State v. Lewis, 2011-Ohio-1411(2011). However, the appeals court may determine which of several competing inferences suggested by the evidence should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. Martin, 20 Ohio App.3d at 175.

A. Was sufficient evidence presented to satisfy all elements for the offense of murder, felonious assault or improper discharge of a firearm at or into a habitation?

In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to verdict is a question of law. State v. Robinson, (1955), 162 Ohio St. 486, 55 O.O. 388, 124 N.E.2d 148. An allegation that a verdict was entered upon insufficient evidence upon states a claim under the Due Process Clause of the Fourteenth Amendment to the United States

Constitution. Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); Johnson v. Coyle, 200 F.3d 987, 991 (6th Cir. 2000); Bagby v. Sowders, 894 F.2d 792, 794 (6th Cir. 1990) (en banc). In order for a conviction to be constitutionally sound, every element of the crime must be proved beyond a reasonable doubt. In re Winship, 397 U.S. at 364.

[T]he relevant question is whether, after viewing the evidence in the light most to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences from basic facts to ultimate facts.

Jackson, 443 U.S. at 319; United States v. Paige, 470 F.3d 603, 608 (6th Cir. 2006); United States v. Somerset, No. 3:03-po-2, 2007 U.S. Dist. LEXIS 76699 (S.D. Ohio 2007) (Rice, J.).

This rule is recognized in Ohio law at State v. Jenks, 61 Ohio St. 3d 259, 574 N.E.2d 492 (1991).

Of course, it is state law which determines the elements of offenses; but once the state has adopted the elements, it must then prove each of them beyond a reasonable doubt. In re Winship, 397 U.S. at 364.

R.C. 2903.02(B), Murder, provides, in part, “no person shall cause the death of another as a proximate result of the offender’s committing or attempting to commit an offense of violence that is a felony of the first or second degree.”

R.C. 2903.11(A)(2), Felonious Assault, provides that no person shall knowingly cause or attempt to cause physical harm to another by means of a deadly weapon or dangerous ordinance.

R.C. 2903.11(A)(1), Felonious Assault, provides that no person shall knowingly cause serious physical harm to another.

R.C. 2923.161(A)(1), Improperly discharging a firearm at or into a habitation, provides no person shall knowingly discharge a firearm at or into an occupied structure that is a permanent or temporary habitation of any individual.

The State failed to present sufficient evidence to establish beyond a reasonable doubt that Mr. Dixon committed the offenses of murder, felonious assault, or improper discharge of a firearm at or into a habitation. There were no eyewitnesses to the shooting of Mr. Moses. The shooting occurred after Mr. Ivery spoke to Mr. Moses at 10:37 and before Mr. Ivery arrived at the Haney house shortly after 11:37. The State presented analysis by Mr. Horan that he records were consistent with Mr. Dixon's phone being near Haney Road at 10:58 and 10:59, time-frame of the shooting. The evidence submitted by Mr. Horan linking Mr. Dixon to the Haney Road area at the time of the shooting was insufficient because the analysis can be inaccurate due to human error, the analysis could be skewed by a malfunctioning tower, or an inaccuracy with the call detail records would result in a flaw in the analysis.

There was evidence presented that bullets from the scene of the shooting came from one of the revolvers in the bag Mr. Dixon carried. Mr. Moses died as a result of a gunshot wound through the right nasal area. However, there was no evidence that Mr. Dixon possessed the revolver at the time of the shooting on December 2, 2016.

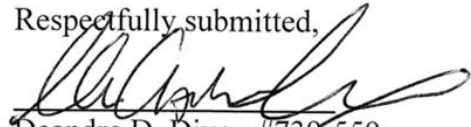
Ms. Edwards did not take Mr. Dixon's threat toward Mr. Moses seriously. When Mr. Dixon stated that he took care of everything, Michelle thought he was referring to money for an apartment deposit. Additionally, Quayshawn Edwards made death threats to Mr. Moses. Quayshawn admitted she lied to the police before the police found her phone that contained the threat. There is insufficient evidence to establish Mr. Dixon committed the shooting of Mr.

Moses. Therefore, the conviction of Mr. Dixon was against the manifest weight of the evidence and legally insufficient to support his conviction. Tibbs v. Florida, (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 2200, 72 L.Ed.2d 652, 663, *citing Jackson v. Virginia*, (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

CONCLUSION

This case raises substantial constitutional questions and is of great general and public interest. This Court should accept jurisdiction over Dixon's appeal on each proposition of law.

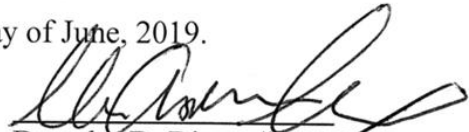
Respectfully submitted,


Deandre D. Dixon #739-559
Lebanon Correctional Inst.
P.O. Box 56
Lebanon, Ohio 45036

DEFENDANT-APPELLANT, *PRO SE*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to Mathias H. Heck, Prosecuting Attorney, Montgomery County, 303 W. 3rd St., Dayton, Ohio 45401, this 19th day of June, 2019.



Deandre D. Dixon # 739-859

DEFENDANT-APPELLANT, *PRO SE*

STATE OF OHIO

PLAINTIFF-APPELLEE,

-vs-

DEANDRE D. DIXON,

DEFENDANT-APPELLANT.

:
: Case No.2019-0506
:
: On Appeal from the Montgomery
: County Court of Appeals
: Second Appellate District
:
: C.A. Case No. 27792
:
:

APPENDIX TO

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT DEANDRE D. DIXON.**

{¶ 1} Deandre Dixon appeals from his conviction and sentence on one count murder, two counts of having a weapon while under disability, and accompanying firearm and repeat-violent-offender specifications.¹

{¶ 2} Dixon advances three assignments of error. First, he alleges ineffective assistance of trial counsel based on his attorney's failure to provide advance notice of intent to use other-acts evidence under Evid.R. 404(B). Second, he contends the trial court erred in denying a motion to suppress evidence obtained pursuant to an allegedly deficient search warrant affidavit. Third, he claims his convictions were against the manifest weight of the evidence presented at trial.

{¶ 3} The present appeal stems from the shooting death of Gregory Moses on the night of December 2, 2016. At the time of his death, Moses was involved in a romantic but volatile relationship with a woman named Michelle Edwards. They were living together, and they fought and argued regularly. While still residing with Moses, Edwards met appellant Dixon in November 2016. Edwards and Dixon began dating and became intimately involved.

{¶ 4} On December 1, 2016, Edwards spent the night with Dixon at his mother's house. The following morning, Dixon dropped Edwards off down the street from Moses' house. She walked to the house and found her clothes and other belongings outside. Edwards confronted Moses, who brought the items back inside. Later that day, Dixon called Edwards while she was at Moses' house. Edwards told Dixon that she loved him. Moses responded by telling Edwards to "get the F out." He threw her belongings outside

¹ Dixon also was found guilty of other offenses that were merged into those set forth above for sentencing.

again and poured bleach on them.

{¶ 5} That evening, Edwards went out drinking with her sister, Quayshawn. While at a nightclub, she spoke to Dixon on her cell phone shortly after 10:00 p.m. She mentioned her belongings being put outside earlier in the day but told Dixon that she still loved Moses. Dixon responded by cursing and threatening to kill Moses. Edwards did not take the threat seriously. Shortly after Edwards finished speaking to Dixon, his cell phone began "pinging" off of cell towers as it moved north away from his mother's house and toward Dixon's home. Twenty-five minutes later, Dixon's cell phone "pinged" off of the cell tower that serviced Moses' home. Edwards then spoke to Dixon again around 11:30 p.m. He told her he had taken care of everything.

{¶ 6} Moses' friend Anthony Ivery called Moses around 11:37 p.m., but the call went to voicemail. Ivery then drove to Moses' house so the two men could go out together. When he arrived, Ivery saw that the front door was open and there were several bullet holes in the glass screen door. Ivery found Moses' body on the floor inside the door. Moses had been shot in the shoulder and the head. Police identified Dixon as a suspect several hours later. Dixon fled on foot when police arrived at his mother's house to arrest him. As he ran, he dropped a bag containing two .38 caliber revolvers and several rounds of ammunition. A forensic firearms examiner determined that one of the revolvers was the weapon that fired a bullet recovered from the back of Moses' skull.

{¶ 7} Based on the evidence presented, a jury found Dixon guilty on a number of charges and specifications, including murder. The trial court separately found him guilty on two counts of having a weapon while under disability and on firearm and repeat-violent-offender specifications. After merging allied offenses, the trial court imposed an aggregate

sentence of 27 years to life in prison. This appeal followed.

{¶ 8} In his first assignment of error, Dixon alleges ineffective assistance of trial counsel. He contends his attorney provided deficient representation by failing to give timely notice of intent to introduce other-acts evidence under Evid.R. 404(B).

{¶ 9} The record reflects that Dixon wanted to cross examine Edwards about information contained in police reports involving four prior incidents between herself and Moses. (Trial Tr. Vol. I at 213-216).² These incidents occurred in April 2014, June 2014, and May 2015. One of them involved Moses throwing Edwards' belongings out of their apartment. Another involved Edwards threatening Moses with a knife. Defense counsel argued that these incidents demonstrated the volatile nature of their relationship and that the information was relevant to Edwards' credibility and reliability. (*Id.*). The State objected on two grounds: (1) Evid.R. 404(B) requires the proponent of other-acts evidence to give reasonable advance notice unless excused for good cause and (2) the proposed evidence was not relevant to what happened on December 2, 2016. (*Id.* at 215-216). After considering the parties' arguments, the trial court sustained the State's objection on the grounds that the "police reports are too far removed and do not comply with the rules." (Trial Tr. Vol. II at 222).

{¶ 10} Upon review, we see no error in the trial court's ruling and no ineffective

² The record contains two sets of transcripts, one filed December 12, 2017 and one filed March 12, 2018. After the December 12th filing, Appellant's counsel filed a motion to supplement the record because a portion of voir dire and exercise of juror challenges was not included. The entire set of transcripts, including the missing parts, were refiled March 12th. Because these volumes contain additional material, the pagination of the material following voir dire has changed. The version of the transcripts available online on the clerk's website is the December 12, 2017 filing. But because it is the more complete set, we refer to the page numbers where material appears in the March 12, 2018 set of transcripts.

assistance of counsel. In our view the trial court's statement that the police reports were "too far removed" appears to be a finding that those prior incidents were not sufficiently relevant to the issues in this case. That being so, even if defense counsel had provided advance notice of the other-acts evidence he wanted to introduce, the trial court still would have excluded it for lack of relevance. Thus, Dixon cannot establish prejudice from counsel's failure to bring the police reports to the trial court's attention sooner.

{¶ 11} We also see no abuse of discretion in the trial court's determination that the proposed evidence was "too far removed" from the issues in this case to be admissible. Dixon contends on appeal that the four prior incidents were relevant to Edwards' credibility and her motive for incriminating him. But these prior incidents occurred between one and one-half and two and one-half years before the events in this case. The trial court reasonably could have concluded that this distant evidence had little bearing on Edwards' credibility as a witness or her motive for testifying against Dixon. Moreover, in conjunction with the ruling about the prior reports, the court also ruled that defense counsel *could* inquire of Edwards whether she was initially considered a suspect and was Mirandized by police in their initial contact. We note too that defense counsel did cross examine Edwards about more recent arguments and "violent talk" involving her and Moses in November and December 2016. (*Id.* at 229-230). This evidence included a threat by Edwards to have her brothers "F up" Moses. (*Id.* at 230).

{¶ 12} In short, because the trial court acted within its discretion in excluding the proposed other-acts evidence on relevance grounds, and permitted other evidence about the volatile relationship and the suspicions about Edwards, Dixon was not prejudiced by his attorney's failure to bring the Evid.R. 404(B) evidence to the trial court's attention

sooner. Accordingly, his ineffective-assistance claim fails. The first assignment of error is overruled.

{¶ 13} In his second assignment of error, Dixon challenges the trial court's denial of a pre-trial suppression motion. He contends a search warrant affidavit was defective because it was based on information supplied by Edwards, who was not shown to be a reliable source.

{¶ 14} The record reflects that police actually obtained four search warrants in this case.³ Although the supporting affidavits contained some differing information, each affidavit contained the same facts obtained from Edwards. As noted by the trial court in its written decision (Doc. #44), each affidavit included the following averments by Detective Walter Steele:

On 12/2/16 (Fri) at approximately 2348 hours, Harrison Twp. Deputies were dispatched to 3733 Haney Rd. in Harrison Township reference to an unresponsive male. Upon arrival, Deputies located a black male, later identified as Gregory Moses, deceased just inside the door of the residence. Moses had been shot in his body succumbing to his injuries from apparent gunshot wounds.

There were at least 5 bullet holes in the front "storm" door appearing the suspect fired from outside striking the victim while he was still inside the residence. There were no casings found at the scene. The residence was processed by E.V. and Moses' body was removed by the coroner's office.

³ One search warrant pertained to Dixon's residence and vehicle. The others pertained to his DNA, his cell phone, and cell phone records.

Detectives shortly later located Moses' girlfriend Michelle Edwards and interviewed her at Special Investigations. Edwards relayed she had been at 2 bars throughout the evening and had conversations over the phone with a subject identified as Deandre Dixon who she had current intimate relations with. Dixon was angry over a rocky relationship that Edwards had with Moses.

Edwards stated that she felt that Dixon was responsible for Moses' murder due to Dixon telling her over the phone shortly before the murder, "I'll kill his lame ass." Edwards also stated that she again spoke with Dixon over the phone around the time of the murder and Dixon relayed to her, "I took care of everything." Edwards stated that she was unsure at the time what Dixon meant by this. She said during these conversations with Dixon, he appeared to be intoxicated and sounded angry. Edwards provided Dixon's cell phone number of 937-[xxx]-6390.

Dixon's cell was "pinged" using exigent circumstances and he showed to be in the area of 425 N. Orchard Ave. in the city of Dayton. Edwards confirmed that this address is where Dixon had been staying. She further provided that Dixon drove a black Tahoe. A black Tahoe bearing Ohio registration GSW2275 was located parked south of the residence.

(Doc. #44 at 2).

{¶ 15} On appeal, Dixon's entire substantive argument is as follows:

* * * The only information provided by Ms. Edwards that was confirmed was Mr. Dixon's location and the model of vehicle that he drove.

The information did not relate to the likelihood of criminal activity.

Detective Steele essentially made the determination regarding whether probable cause existed to issue a warrant because no information was included in the affidavit to support the credibility of the information.

Therefore, the Court erred in overruling Mr. Dixon's Motion to Suppress because there was not probable cause to issue a warrant.

(Appellant's brief at 21).

{¶ 16} Because Dixon only challenges Steele's affidavit on the basis that it did not attest to or demonstrate Edwards' credibility or reliability, we will confine our analysis to that issue.⁴ In its ruling, the trial court concluded that Edwards "was an 'identified citizen informant' and sufficiently reliable to support the issuing judge's probable cause determination." (Doc. #44 at 2). We agree with this determination.

{¶ 17} Unlike an anonymous source or an unnamed confidential informant, Edwards was named and identified in the search warrant affidavit. It is well settled that information supplied by an "identified citizen informant" is treated as being more reliable than information obtained from other types of informants and may be presumed reliable, particularly where the citizen provides her basis of knowledge. *Maumee v. Weisner*, 87 Ohio St.3d 295, 300-301, 720 N.E.2d 507 (1999); see also *State v. Garner*, 74 Ohio St.3d 49, 63, 656 N.E.2d 623 (1995) ("Information coming from a citizen eyewitness is

⁴ The trial court noted that three of the four search warrant affidavits contained additional information supporting a finding of probable cause. This information included, inter alia, Dixon leaving his residence and running from police, dumping a bag containing two guns and ammunition, and being in possession of the cell phone that was "pinged." For purposes of our analysis, however, we will focus on the information police obtained from Edwards and her reliability, which is the subject of Dixon's assignment of error.

presumed credible and reliable, and supplies a basis for a finding of probable cause in compliance with") *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

{¶ 18} Here police themselves initiated contact with Edwards, who told them about her conversations with Dixon and provided her basis of knowledge. She also explained the nature of her relationship with Dixon, gave police his cell phone number, and told them where he lived and what vehicle he drove. Under the totality of the circumstances, the information Edwards provided was sufficiently reliable to support the issuance of a search warrant. Accordingly, the second assignment of error is overruled.

{¶ 19} In his third assignment of error, Dixon contends his convictions were against the manifest weight of the evidence.

{¶ 20} Dixon notes that there were no eyewitnesses to the shooting of Moses. He also asserts that cell phone "ping" data can be inaccurate. In addition, although bullets recovered from the crime scene were fired from one of the guns Dixon discarded, he contends there was no evidence that he possessed the gun when it was fired. Finally, Dixon notes that Edwards did not take his threat about killing Moses seriously and that Edwards' sister, Quayshawn, also made a death threat in a text message to Moses.

{¶ 21} When a conviction is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). A judgment should be reversed as being against the manifest weight of the evidence "only

in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 22} With the foregoing standards in mind, we conclude that Dixon's convictions were not against the weight of the evidence. While it is true that no one saw Dixon kill Moses, a murder conviction may be based entirely on circumstantial evidence. *State v. Brown*, 2d Dist. Montgomery No. 27820, 2018-Ohio-4448, ¶ 23. Here the circumstantial evidence of Dixon's guilt was compelling. Edwards testified that Dixon threatened to kill Moses when she spoke to Dixon on the telephone. Records from Edwards' and Dixon's cell phones show that this conversation occurred around 10:22 p.m. Analysis of "ping" data showed Dixon's cell phone then moving from his mother's house toward Moses' residence. Shortly thereafter, Dixon's cell phone "pinged" off of the cell tower that serviced Moses' residence. Dixon's cell phone then began moving back toward his mother's house. Phone records showed calls between Edwards and Dixon during this time, and Edwards testified that he told her, "I have took [sic] care of everything." Anthony Ivery found Moses shot dead at around 11:49 p.m. A few hours later, Dixon ran and dropped a bag when police tried to arrest him. Inside the bag was a gun that a forensic expert testified had fired a bullet removed from Moses' skull.

{¶ 23} Despite the strong evidence of his guilt, Dixon notes that cell phone "ping" data can be inaccurate, a point that his counsel argued to the jury. He also notes that his possession of the murder weapon does not mean he necessarily was the killer. While this is true, it was reasonable for the jury to infer that Dixon was the killer based on all of the evidence presented. As for the threatening text message from Edwards' sister, cell phone records corroborated testimony from Edwards and Quayshawn that they were together

at a bar when Moses was shot. Therefore, the jury reasonably could have concluded that Quayshawn was not the killer despite her threat.

{¶ 24} We conclude that this is not an exceptional case in which the evidence weighs heavily against Dixon's convictions, and the jury did not clearly lose its way in finding him guilty. The third assignment of error is overruled.

{¶ 25} The judgment of the Montgomery County Common Pleas Court is affirmed.

.....
DONOVAN, J. and TUCKER, J., concur.

Copies sent to:

Mathias H. Heck
Andrew T. French
Sean Brinkman
Hon. Gerald Parker