IN THE SUPREME COURT OF OHIO 20-1083

JOHNATHON D.FITTS,
Appellant,

v.

STATE OF OHIO,
Appellee.

* On Appeal from the Wood County Court of Appeals Sixth Appellant District

* Court of Appeals Case No.WD-18-092

* WD-18-093

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JOHNATHON D.PITTS

This appeal is a jurisdictional appeal, under S.Ct.R.5.02(A)(1), from the court of appeal under App. R.26(B), this is a noncapital case, pursuant to Art.IV, Section 2(B)(2)(a)(ii), of the Ohio Constitution, which this case is a non-violant criminal act, and United States Constitution, Bill of Rights has been not acknowledged in this case.

JOHNATHON D.FITTS#A753-529
CHILICOTHE, CORRECTIONAL INSTITUTE
P.O.BOX 5500
CHILICOTHE., OHIO
45601
APPELLANT-DEFENDANT
PRO.SE.

DAVID T.HAROLD(0072338)
ASSISTANT PROSECUTOR ATTORNEY
ONE COURTHOUSE SQUARE
BOWLING GREEN, OHIO
43402
APPELLEE FOR THE STATE

AFFIDAVIT OF REOPENING OF DIRECT APPEAL

I, JOHNATHON D.FITTS,have been duly sworn and cautioned upon my oath as required by law, under penalty of perjury do hereby depose and sayeth that the following is both true and correct.

1) That all facts averments and statements as set forth in this application to reopen are true and correct which this is not be intricacies.

2) That all copies an documents attached hereto are true copies of the original.

3)That if appellant counsel would have faised assignments of error that were appropriate for a reversal then I would not be filing this 26(B), which under 26(B)(5)ineffective counsel.

4) That it is my opinion, my appellant counsel was ineffective for failing to raise the obvious reversible errors, Strickland v.Washington, 466 U.S.668 SEE State v. Reed, 74 Ohio St.3d 534, 535.

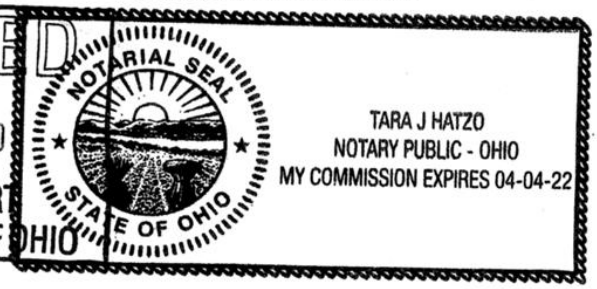
5) That if appellant counsel would have raised the errors appearing on the face of record,my appeal would have had a different outcome or would have preserved the issues that, this. would have been cause for my case to get reserved by or a higher court, that is a constitutional cpurt.

Johnathon D. Fitts
AFFIANT

Tara J. Hatzo
NOTARY PUBLIC

Sworn to subscribed in my presence on this day of 8-26-2020 /
County Ross /
Notary Public Tara J. Hatzo
My commission expires on /

SEAL



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THIS CASE RISES TO A GREAT IMPORTANCE AND
A INTEREST TO THE PUBLIC IN FUTURE CASE THAT
INVOLVES A CONSTITUTIONAL QUESTION HEREIN AND MUST BE
EXPLAINED WHY THE CONSTITUTION DOES NOT HOLD ANY WEIGHT

This case presents a viable claim and a constitutional right to be heard. App. R.26(B) is of great importance for all defendants to end up for a greater chance to reopen a appeal because the appellant attorney has left out scrupulous evidence for a successful results. This appeal I had in the Sixth District Court of Appeals was not effective for the proper judgment and the obligatory request for a reopening the appeal under 26(B) will give all defendant a better abate.

I have a prims facie evidence on the record for a reopening my appeal, which must be executed for justice, I was prejudiced against because the (CI, Michell Tyson) got arrested and became a Confidential Informabt fot Lawenforcement, I was in my mind entrapment by her and lawenforcement, (CI).

This appeal is in a jurisdictional appeal, under S.Ct.R.5.02(A)(1) which this case is a noncapital case or a non-violant case herein. Art.IV Section 2 (B)(2)(a)(ii) of the Ohio Constitution, the United States Constitution, Bill of Rights also has been determined to exist. The Sixth Amendment states I shall have the greater advantage to cross-examine the CI-Confidential Informant after Michell's tragic accident which she died before I could cross-examine and herein the prosecutor had changed Michell Tyson from a (CI) to a Co-Conspirator, which I was not charged with a Conspiracy charge in the indictment. I was. Charged with Trafficking of Cocaine, not conspiracy, so this was fraud upon the court, if I had been indicted on a conspiracy charge this would akin to conspiracy, not a drug charge, this is a violation of the 14th Amendment to the United States Constitution Due Process of the law.

This case is the future of or justice system and is of great Constitutional question.

STATEMENT OF THE CASE AND FACTS

This case arises from a (CI, or Confident informant turned to entrap) on or about 2017 Michell Tyson was charged with a drug charge in Fremont Ohio, Sandusky County, The lawenforcement had given her a deal to trap this defendant in exchange to dismiss her: drug charges, and she accepted this deal.

Michell had died in a tragic accident before the trial which I could not cross- examine her involvement to the case, the prosecutor had changed her statis from ,a confidential informant to a co-conspirator, this defendant had not been charged with conspiracy charges, and this was as legal analysis fraud upon the court, or state justice system. At trial the prosecution brought up Evid.R.801(D)(2)(e),(e) "a statement by a co-conspirator of a party during the course and in further of conspiracy upon independent proof of the conspiracy-(statement must be made during course of conspiracy")

Johnathon Fitts was indicted in a three count indictment on February 16, 2017, in was the basis for case 2017-CR-056, which the first charge trafficking in drugs-cocaine a felony in a second degree, the second charge with complicity to trafficking in drugs, also cocaine, and the third charge was trafficking in cocaine both the second charge and the third charge are both a fifth degree felony, at no time the state indicted this defendant to a conspiracy charge, which in order to charge in this case and have a co-conspirator in the indictment. The defendant was violated his due process rights herein.

The trial began on November 14, 2018, it did last two days, and Fitts was found guilty of all three charges, which there was no witness saying that Mr,Fitts was the dealer of cocaine, because Ms.Tyson had died before trial, which this case derived around her testimony, because not one person testified for the state that Mr.Fitts was the defendant, or said drug dealer, and there was no cross-examining any witness for the state.

Mr.Fitts was found guilty and received 6 yrs. and 22 months.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No.I:Appellant cousel was ineffective under the Sixth Amendment to the United States Constitution, for not objecting to the audio and vidio, which did not have a meaningful discussion this prejudiced this defendant from having a fair trial.

The United States Constitution of the Sixth Amendment,states that all defendants have a right to effective counsel at trial and in the appellant proceedings.

Strickland v.Washigton, 466 U.S.668, has been a long standing case to prevent ineffective assistant of counsel. Two prong test which is (1) must show deficient, and (2) performance prejudiced the defendant, if any defendant shows the slightest defective as require reversal, which the right to a fair trial, Martinez v.Ryan, 566 U.S.51. At trial counsel waived error with respect to the admission of audio and vidio recordings, the confidential informent, which was named Michell Tyson, did not even know Mr.Pitts name, now how could she identify Mr.Pitts because she only knew Mr.Fitts as Memphis, after her tragic death the state never had any witnesses to testify that Mr,Fitts sold her the cocaine, as the lawenforement had testified there were three men in the SUV, now the prejudiced the defendant, the lawenforcement officers did not witness the sell or buying of cocaine, the only witness that could identify Mr.Pitts is deceased , and she did not identify Mr.Fitts at all. The Sixth Amendment to the United STates Constitution, State v.Rose, 2015-Ohio-2607(11 th Dist.)

[HN-1]: Confrontational Clause prohibits the admission or use of testimonial statement of a witness who does not appear at trial unless that witness is unavailable to testify and the defendant has had (Prior opportunity for cross examination) the Sixth Amendment right to confrontation,however may only be invoked under situations when heresay is offered into evidence.

3-examples of a testimonial statement, (1) in court testimony or its function equivalent including affidavits, (2) statement contain , in formal testimonial such as affidavit, (3) statement where made a objective declarant would reasonably believe the statement be available to be used at a subsequent trial, Crawford v.Washington, 541 U.S.36, Michell Tyson(CI) did not confirm that

Mr.Pitts is or was the seller of cocaine, at no time the prosecutor produced a affidavit or equivalent of any statement from the (CI) MIchell Tyson.

The state did only admit into evidence the audio and vidio for only one purpose that was to prejudice Mr.Pitts from having a fair trial ab initio.

After Michell Tyson had gotten arrested in in Fremont Ohio, Sandusky County Ms.Tyson had her chid in the car with her, which that made her a loaded gun, and desperate for her drug offenses to be dismissed, the lawenforcement gave her a deal of a life time just set up a drug deal with someone else and the lawenforcement would let her go free, which this would be fine but one thing she could not ID the dealer, as stated there was three men in the SUV.

The confidential informent plan had failed after her death, and the Confrontation Clause did protect Mr.Fitts from any conviction herein. Crawford, 541 U.S.36.

The state wants the courts to believe that Mr.Pitts and Ms.Tyson were under . conspiracy charges, which there was no conspiracy only a drug trafficking so under this claim is moot, the lawenforcement ID Ms.Tyson as CI or Confidential Informent see exhibit (A), (B), also they stated that a black man was in the front seat, they did not know which of the (3) passengers was Memphis.

Upon finding these claims that set forth in proposition law I, this court should grant a new appellant proceeding, or App. R.26(B) the constitution requires this as , the defendant has made a prime facie show of good cause.

Proposition of Law No.II:The appellant counsel was ineffective for not admitting that the states prosecutors evidence was insufficient and manifest of evidence was not admitted for a guilty verdict this created plain error which may be noticed but not brought to the attention of the court which this created a miscarriage of justice, and violated 14th Amendment due process of the law.

In plain error may be noticed even if not brought to the attention of the court, State v. Barnes, 94 Ohio St.3d 21, as , also in State v.Payne, 114 Ohio St.3d 502 [HN-3] There must be error, Error must be plain, lastly, Error must have effected substantial rights,(A reversal is Warranted which the outcome would have been different).At trial the prosecutor never at no time produced any evidence as in the cocaine that was seized, they never admitted the cocaine as exhibits, and the admitting of audio and vidio, only was used to prejudice the defendant towards the jury, this created plain error, and insufficient evidence, the claim of insufficient evidence is a claim based on legal sufficiency, which means that the state has failed to prove that the accused guilty of the offense charged as defined the elements in the statute that was alleged to have been violated, the constitutional claim might look like: the state or prosecutor failed to produce sufficient substantial, competent, reliable evidence on all elements of the charged.In re.Winship, 90 S.Ct.1068(1970); Jackson v.Virginia, 99 S.Ct. 2781(1979); Fiore v.White, 121 S.Ct.712(2001); Sullivan v.Louisiana, 113 S.Ct.2078(1993). The confidential informent Ms.Tyson which had died before trial which her testimony was critical to states case, without a witness and the actual cocaine that was never brought to trial was plain error, and a miscarriage of justice.

The state is trying to change the states theory as now Ms.Tyson is a co-conspirator, which this defendant was never charged with conspiracy, or Ms.Tyson was never charged in a conspiracy charge, Ms.Tyson was pulled over

in Fremont, Ohio Sanducky County, Ms.TYson had her child in the car , Ms.Tyson had agreed to intrap Memphis, see exhibit (B), Chief Broshious had stated he covered the black male in the front seat, while Mr.Pitts was in the back seat, they only stated , a black male in the back seat, This ID Johnathon Pitts, (a.k.a.Memphis), the lawenforcement did not know exactly which of the three males was Mr.Pitts, Ms.Tyson did not ID Mr.Pitts or even filed a Affidavit of testimony before she died,

Plain Error is and has effected the rights of Mr.Pitts, State v.Turner,11th Dist.Ashtabula No. 2010-A-0060, 2011-Ohio 5098, Citing State v.Yarbrough, 95 Ohio St.3d 227, 2002-Ohio-2126, 108, 767 N.E.2d 216. the State wants to change the path of this case, and use Evid R.801(D)(2)(e); a statement by a co-conspiarator of a party during the course and in further of conspiracy upon independemt proof of the conspiracy- statement must be made during course of conspiracy.

In this case at hand there was no conspiracy, and Ms.Tyson never admitted a affidavit, also there was no evidence at trial to the fact, De Novo review. Upon the prosecutor withheld the cocaine at trial and never had a witness to the facts, I ask that this court to grant the defendant to reopen the appeal for further review, under App.26(B). De Novo review.

Upon finding of all facts there has been a manifest miscarriage of jusice has occured. In.re Winship, 90 S.Ct.1068(1970)

Proposition of law No.III: The appellant attorney never argued that the Sixth Amendment was violated because the defendant never got to cross-examine the (CI-Confidential informent) thès was the only witness to the states case, this violated the United States Constitution and the Ohio Constitution and the Bill of Rights, the Confrontational Clause violated, which this does protect all defendants the right to confront witness also this is plain error, also the defendant was not on a conspiracy charge. The defendant was also entrapped into a drug deal.

The attorney for the defendant never argued that the witness for the state had to testify if there was going to be a fair trial, the evidence was at no time presented for a exhibit,there was just a picture of cocaine, also there was plain error by the trial court, for not producing any cocaine to be analyze and determine to testify the weight, and the strangth of the cocaine, a picture is not sufficient for evidence, which this is plain error, Barnes at, 94 Ohio St.3d 21.

Counsel failed to investigate and produce witnesses for the defendant as in character witnesses, or alibi witnesses, which the other : malès in the SUV.

There was plain error for the state entrapped the defenadnt into committing a criminal act, which this is what he is in prison for the sale of cocaine, which the confidential informent and lawenforcement entrapped Mr.Pitts into a sale of cocaine, the defendant pled not guilty to the charges and to the charges against him, which lawenforcement officers instigated Mr.Pitts into a criminal act, and lured him into the commission of a illegal act to punish him, United States v.Russell,411 U.S.423, also this is plain error upon the trial attorney also the appellant attorney for not arguing that this is entrapment, Sorrells v.U.S.,287 U.S.435, Sullabus (5) Entrapment is available as a defense under plea of not guilty, (6) Evidence of entrapment in the case should have been admitted to the jury, by trial attorney, If entrapment is proven judgment must be reversed and quash the indictment and discharge the defendant.

CONCLUSION

Upon filing this App.R.26(B) to reopen this appeal, for the following reasons attached to this brief, and the reopening facts to this reopening is obligatory and I ask this court to grant this proceeding , which there was prima facie evidence of miscarriage of just, and remand back to the appellant court for review De Novo.

RESPECTFULLY SUBMITTED

Johnathon D.PITTS Acting in Pro.Se.

CERTIFICATE OF SERVICE

I, Johnathon D.Pitts, hereby state that this is certified and to be sent to the Assistant prosecutor David T.Harold of Wood County, Ohio, One Courthouse Square Bowling Green, Ohio 43402, this being sent by Johnathon D.Pitts, the defendant at C.C.I. P.O.BOX 5500 Chilicothe, Ohio 45601, this APP.R.26(B) is being sent on this 28 /day of AUG /2020.

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Appellee

v.

Johnathan D. Fitts

Appellant

Court of Appeals Nos. WD-18-092
WD-18-093

Trial Court Nos. 2017-CR-0056
2018-CR-0416

DECISION AND JUDGMENT

Decided: AUG 07 2020

* * * * *

This case is before the court upon the following motions filed by defendant-appellant, Johnathan Fitts: (1) motion to extend time to file motion for reconsideration under Ap Rule 26(A) [sic], filed April 30, 2020; (2) application for reconsideration pursuant to App.R. 26(A)(1), filed July 17, 2020; and (3) appellant's application for reopening pursuant to App.R. 26(B), filed July 24, 2020. The state has opposed Fitts's applications for reconsideration and reopening.

We consider each of these motions in turn.

1. Motion for Extension to File Motion for Reconsideration

On March 27, 2020, we affirmed the trial court's November 19, 2018 judgment, convicting Fitts of trafficking in cocaine in an amount greater than 20 grams but less than

1.

27 grams, a violation of R.C. 2925.03(A)(1) and (C)(4)(e) (Count 1); complicity in the commission of an offense, a violation of R.C. 2923.03(A)(2) and (F) (Count 2); and trafficking in cocaine in an amount less than five grams, a violation of R.C. 2925.03(A)(1) and (C)(4)(a) (Count 3). *State v. Fitts*, 6th Dist. Wood No. WD-18-092, 2020-Ohio-1154. In his April 30, 2020 motion, he asks us to extend the time within which he may request reconsideration of this decision.

A motion for reconsideration must typically be filed within ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App.R. 30(A). App.R. 26(A)(1)(a). However, on March 9, 2020, in response to the COVID19 pandemic, the Governor of Ohio issued Executive Order 2020-01D, declaring a state of emergency in Ohio. In turn, the Ohio Supreme Court issued an administrative order on March 27, 2020, tolling the time requirements for all filings until the period of emergency ends or July 30, 2020, whichever is sooner. Administrative Actions, 2020-Ohio-1166 (March 27, 2020). We issued a similar order on April 3, 2020. And since then, Fitts has filed his motion for reconsideration.

In light of the tolling orders, and considering that Fitts filed his motion for reconsideration before the expiration of the tolling period, we find his motion for extension of time well-taken.

We note that the state opposes both Fitts's motion for reconsideration and his application for reopening, in part, because they were not timely filed. Because we find

that the tolling order excuses Fitts's delay in filing his motions, we reject the state's timeliness challenges.

2. Application for Reconsideration

In his motion filed July 17, 2020, Fitts asks us to reconsider our March 27, 2020 judgment. Specifically, Fitts asks us to reconsider our decision with respect to his second assignment of error:

> The trail [sic] court abused its discretion and denied Appellant his fundamental right to a fair trial, and his Sixth Amendment right to confrontation of witnesses, by permitting the State to submit audio, video and text messaging evidence obtained through the use of a confidential informant when the informant was deceased and no longer available for Appellant to confront at trial.

The primary witness against Fitts was M.T. M.T. cooperated with police in arranging three drug buys from Fitts. She used text messaging and Facebook messages to arrange these buys. When she and Fitts met to exchange money for drugs, M.T. carried both audio and video recording devices.

M.T. was killed in an accidental house fire before the case was tried. The trial court allowed the admission into evidence of the audio and video recordings taken by M.T. (which, incidentally, were of extremely poor quality). Fitts's trial attorney specifically stated that she had no objection to the admission of the audio and video recordings.

On appeal, Fitts challenged the admission of this evidence. He maintained that this evidence was testimonial in nature and argued that because M.T. was not subject to cross-examination, the admission of the evidence violated his Sixth-Amendment right to confront the witnesses against him.

We found Fitts's assignment of error not well-taken. We held that because his trial counsel acceded to the admission of the recordings, Fitts waived any error in the admission of this evidence. But we further explained that even if we were to review his assignment of error under a plain-error analysis, his challenge to the admission of the audio and video recordings would still fail because under Ohio law, "audio recordings of actual drug transactions are not hearsay, and * * * the introduction of such recordings does not violate the confrontation clause." *Fitts*, 6th Dist. Wood No. WD-18-092, 2020-Ohio-1154, at ¶ 25, quoting *State v. Ward*, 3d Dist. Seneca No. 13-11-17, 2012-Ohio-988, ¶ 45.

Fitts acknowledges our conclusion that his counsel waived error with respect to the admission of the audio and video recordings, but he maintains that the cases we cited in support of this conclusion are distinguishable because "they did not deal with the right to confrontation of [the state's] main witness." He insists that we "must determine whether the audio and video are testimonial or nontestimonial statement[s]." What Fitts ignores is that while we found that counsel waived error, we nonetheless undertook a plain-error analysis and concluded that his claim still fails because the recordings were properly admitted.

The test generally applied in considering a motion for reconsideration in the court of appeals is whether the motion identifies an obvious error in the court's decision or raises an issue that was either not considered at all or not fully considered by the court when it should have been. *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981). "A motion for reconsideration is not designed for use in instances when a party merely disagrees with the conclusions reached and the logic used by the appellate court." (Citations omitted.) *Deutsche Bank Natl. Trust Co. v. Greene*, 6th Dist. Erie No. E-10-006, 2011-Ohio-2959, ¶ 2. It is also not to be used as an opportunity to raise new arguments that were not made in earlier proceedings. *Waller v. Waller*, 7th Dist. Jefferson No. 04-JE-27, 2005-Ohio-5632, ¶ 3.

Here, we fully considered the issue raised in Fitts's motion for reconsideration and we rejected his position. Fitts may disagree with our conclusion, but he has failed to identify any obvious error. Accordingly, we find his motion for reconsideration not well-taken.

3. Application for Reopening

In his motion filed July 24, 2020, Fitts asks that we reopen his appeal under App.R. 26(B). He argues that appellate counsel should have raised the following assignment of error on appeal:

APPELLATE COUNSEL WAS INEFFECTIVE IN FAILING TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN THE

FIRST (DIRECT) APPEAL IN VIOLATION OF SIXTH AMENDMENT[.]

Specifically, Fitts argues that appellate counsel should have argued that trial counsel was ineffective in failing to object to the admission into evidence of the audio and video recordings. He also argues that trial counsel should have objected to the admission into evidence of print-outs of text messages and Facebook messages between M.T. and Fitts.

App.R. 26(B) governs applications for reopening. It permits a defendant in a criminal case to apply for "reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel." App.R. 26(B)(1). An application for reopening must be filed within 90 days from journalization of the appellate judgment, and must present "[o]ne or more assignments of error or arguments in support of assignments of error that previously were not considered on the merits in the case by any appellate court or that were considered on an incomplete record because of appellate counsel's deficient representation." App.R. 26(B)(1) and (2)(c). The applicant must provide "[a] sworn statement of the basis for the claim that appellate counsel's representation was deficient," and "the manner in which the deficiency prejudicially affected the outcome of the appeal," and the application must not exceed ten pages. App.R. 26(B)(2)(d) and (4). "An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5).

A defense request for reopening under App.R. 26(B)(5) must be assessed under the two-prong analysis found in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *State v. Spivey*, 84 Ohio St.3d 24, 25, 701 N.E.2d 696 (1998). This requires Fitts to prove (1) that his counsel was deficient for failing to raise the issues he now presents, and (2) that had he presented those issues on appeal, there was a "reasonable probability" that he would have been successful. *Id.* Fitts "bears the burden of establishing that there was a 'genuine issue' as to whether he has a 'colorable claim' of ineffective assistance of counsel on appeal." *Id.*

First, Fitts has failed to provide a sworn statement as required under the rule.

Second, with respect to the admission into evidence of the audio and video recordings, we have already explained that even though counsel acceded to the admission of this evidence, thereby waiving error, the evidence was nevertheless admissible because under established Ohio law, the recordings are not hearsay and the admission of the evidence did not violate the confrontation clause.

Finally, as to the print-outs of the text messages and Facebook messages, we already rejected this argument in Fitts's direct appeal. We acknowledged in our decision that the trial court admitted this evidence, reasoning that the messages were statements of co-conspirators under Evid.R. 801(D)(2)(e). We disagreed with the trial court's rationale because "[a]s concluded by a number of federal courts applying the analogous federal rule, a confidential informant is not a co-conspirator for purposes of Evid.R. 801(D)(2)(e)." *Fitts*, 6th Dist. Wood No. WD-18-092, 2020-Ohio-1154, at ¶ 28.

the C.I was in and found a plastic bag with a significant amount of what appeared to be white powdered substance in a clear plastic bag on the passenger side floor board.

Once I placed the C.I safely in my cruiser and carefully picked up the white powder substance the size of a baseball in the clear plastic bag I went to the Crown Vic Cruiser and placed the white powder substance in the trunk of the Crown Vic Bradner Police cruiser for safe keeping. Chief Broshious then had me search the front seat passenger he had pulled out of the vehicle who was now on the ground in handcuffs. Upon searching the suspect, (later identified as Travis Holloway), I found a large sum of U.S Currency. I asked Travis where the money had come from and he stated " its my paycheck, I work". I continued to search Travis and found nothing more of interest other then his cell phone and personal belongings. I then placed Travis in the Wayne P.D Cruiser. I then came back to the Durango to help Sgt. Salaz with the passenger in the back seat behind the driver. Sgt. Salaz then pulled out the suspect, (later identified as Johnathan Fitts), Once Sgt. Salaz was done searching the suspect I placed Fitts in the Crown Vic, Bradner cruiser. After I had placed Fitts in the cruiser I then assisted by watching the driver of the vehicle, (later identified as Stiles Slate Bowman). I then was asked by Chief Broshious to take the C.I somewhere secured which I did and after taking the C.I to the Bradner Police Station I came back to the scene. After arriving back I placed Stiles in the back of my cruiser.

I then started searching the Dodge Durango (AK. 991RSW) for anything that may have been missed in the first search which was conducted by Sgt. Salaz, while the other officers took the suspects back to the Bradner Police Department. Upon finding nothing of interest I then did an inventory tow sheet Log of valuables in the vehicle. Once done I returned to the Bradner Police Department with the other officers. Chief Broshious then asked me to weigh the clear plastic bag of white powdery substance. During this procedure I used two different scales. The first scale indicated between 1.6 and 1.65 ounces. The second scale then read 1.63 ounces. Once I weighed and took pictures I then tested the white powdery substance in the clear plastic bag using two Nik Kit cocaine wipes. Both Nik Kit Wipes tested positive for Cocaine.

I then took Travis Holloway To the Wood County Justice Center where I performed a DNA swab and took thumb prints without incident.

Based on training and experience, Cell Phones are often used in the commission of Drug Trafficking. Evidence throughout the case shows messages were exchanged in this case.

Searching Digital Evidence

Based upon my training, experience and discussions with those involved in digital forensics, I know that searching all areas of an electronic device is necessary in order to conduct a complete search for electronic evidence relevant to the investigation for the following reasons:

1. All electronic devices have a "file system," which is how the device organizes directories and files. The "file system" is a representation of the storage device's organization as opposed to the actual data that is stored inside of the files. In other words, the "file system" is like a table of contents or an index in a book; it is a mechanism that keeps track of where the actual

covered the white male driver while Chief Broshious covered the black male in the front passenger seat. While I had the black male in the back passenger seat, who was later identified as Johnathan Fitts (a.k.a. Memphis) at gun point, he took his hands and placed them towards the floor. I then ordered Mr. Fitts to keep his hands up and he again placed his hands down to the floor. Officer McCullough and myself again ordered Mr. Fitts to keep his hands up due to Officer safety and him not complying with my order. I then had Officer McCullough cover the driver (Slate Stiles) and Mr. Fitts while I placed Mr. fitts in handcuffs. Mr. Fitts (Memphis) only had a cell phone and other small items on his person. After he was searched Officer Rinehammer placed him in the back of Bradner's crown victoria. Officer Rinehammer then assisted Chief Broshious with his suspect who was identified as Travis Holloway. Apparently, Travis Holloway wasn't complying with Chief Brosious's orders either and had to be assisted out of the vehicle and to the ground by Chief Broshious. Upon searching Travis Holloway, Officer Rinehammer found a large amount of U.S. currency totaling $1,320.00. This money was confiscated and submitted as evidence. After all the suspects were searched and detained, Officer Rinehammer read all three of them their rights. Officer Rinehammer advised me that the C.I. was detained and that he found a bag of white powdery substance on the floor of the vehicle that the C.I. was in.

I immediately began to search the area where Mr. Fitt's was sitting, and on the floor where his feet were, I found $500.00 wrapped in a currency strap that was labeled $500.00 dollars. I then found a white envelope on the floor where his feet were with $1,000.00 in U.S. currency inside, and also found $1000.00 dollars in between the seat and the middle console. I thought to myself, that this was the reason Mr. Fitts was reaching towards the floor when we were ordering him to keep his hands up. After collecting the $2,500.00 as evidence, I found a pint of Smirnoff Ice that was about a quarter full, and was sitting on the back seat, right next to where Mr. Fitts was sitting. The Smirnoff Ice was collected as evidence as well. I continued my search, and in-between the seat cushions, I found a hollowed out wooden container (also known as a dugout) with what appeared to be marihuana inside, with a one-hitter pipe. I then retrieved the wooden item and brought it to Mr. Stiles and asked him if it was his and he stated, yes. I then collected it as evidence.

At this point Chief Broshious advised me to transport Mr. Stiles back to the the Bradner Police Department to attempt to interview him in our office. When we arrived at the office, I advised Mr. Stiles that he was read his rights by Officer Rinehammer and asked him if he would be willing to speak with us about this incident and he stated, yes. I then escorted him inside the office and readjusted his handcuffs for his comfort. I then read him his rights again, and asked him what what all went down tonight.

Mr. Stiles stated that they were at his hotel and Travis Holloway asked if he could get a ride to meet a girl at the laundromat and Mr. Stiles stated, "yea if you can put gas in my truck". Mr. Stiles stated that Mr. Holloway said that he would give him twenty dollars and he stated, "deal". Mr. Stiles stated that he did know Mr. Holloway but didn't know the guy sitting behind him in the truck (Johnathan Fitts, a.k.a memphis). Mr. Stiles began to say that he was given the wrong address at first, that he put in his GPS and that he ended up on church street. He then was given a different address, and he stated that when he pulled into the laundromat and saw that it was closed, he stated to Mr. Holloway (passenger seat) that he didn't like this, and that they needed to go. Mr. Stiles stated that he has been staying at the Great Lakes Motel in Fremont, Ohio since August and has been working in the area. Mr. Stiles states that he knows Mr. Holloway, because Mr. Holloway use to stay at the motel when him and his wife were fighting. Mr. Stiles stated that he gives Mr. Holloway rides because he has a suspended license. When I asked Mr. Stiles again about the marihuana that was found inside his vehicle, he stated that it was his. Mr. Stiles again stated that he knew something was up when he pulled into the

(EXHIBIT-B)