

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100135
Plaintiff-Appellee,	:	TRIAL NO. B-0907059
vs.	:	<i>JUDGMENT ENTRY.</i>
JASON COWANS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.¹

Following a jury trial, defendant-appellant Jason Cowans appeals his conviction for trafficking in cocaine, in violation R.C. 2925.03(A)(1). A reliable police informant had arranged to purchase cocaine from Cowans. Cowans had told the informant that he would be driving a black van to their meeting. Cowans was apprehended when he arrived at the prearranged location. Shortly after being taken into custody, Cowans told police officers that he had arranged the deal but had been unable to obtain the cocaine in time. He nonetheless had planned to take the informant's money. Police found marijuana in the van, but no cocaine.

The informant, who had had prior drug dealings with Cowans, testified at trial. And the recordings of Cowans's phone calls with the informant, including his panicked call

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

to the informant made during the police stop of the black van, were played for the jury. The jury returned a guilty verdict and was dismissed from service.

On the following day, the state learned that the police department's Arrest and Investigation Report, Form 527 ("the 527 report") had been attached mistakenly to the property envelope that had been submitted to the jury. The report contained a brief notation that Cowans had a "prior marijuana possession conviction. 11-3-06." Cowans moved for a new trial. Following a thorough hearing on the motion, the trial court overruled the motion. It then entered judgment on the jury verdict and sentenced Cowans to one year's imprisonment with credit for time served.

In his first assignment of error, Cowans states that "[t]he trial court erred by allowing the jury to review [the] inadmissible [527 report]." We note that the trial court did not approve of or acquiesce in submitting the 527 report to the jury. The only evidence contained in the record transmitted for our review is that the 527 report had been sent to the jury by accident and without any involvement by the trial court. The gravamen of Cowans's argument, as presented in his appellate brief, is more properly directed at the trial court's denial of his motion for a new trial. We review that contention.

Under Crim.R. 33(A)(1), a court may grant a new trial due to an "irregularity in the proceedings" that prevented the defendant from having a fair trial. The decision whether to grant a new trial lies within the trial court's discretion, and its judgment will not be disturbed absent an abuse of that discretion.² An abuse of discretion is shown when a decision is unreasonable, arbitrary, or unconscionable; that is, when there is no sound reasoning process that would support the decision.³

² See *State v. Ritze*, 154 Ohio App.3d 133, 2003-Ohio-4580, 796 N.E.2d 566, ¶6; see, also, *State v. Houston*, 1st Dist. No. C-090536, 2010-Ohio-2367, ¶6.

³ See *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144; see, also, *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

Where, as here, evidence that has not been admitted at trial is mistakenly submitted to a jury, “Ohio law does not presume prejudice * * * but rather takes a case-by-case approach, examining (1) whether the record reflects whether the exhibits were actually given to the jury, and (2) whether the error was harmless in light of the cumulative nature of the evidence in relation to the other evidence adduced at trial.”⁴

There is no question that the 527 report was actually given to the jury. And as the trial court noted at the conclusion of the hearing on the new-trial motion, that constituted an error in the proceedings.⁵ But in light of the properly admitted evidence that amply demonstrated Cowans’s guilt, the trial court’s decision that any error was harmless demonstrated a sound reasoning process.⁶ The assignment of error is overruled.

In his final assignment of error, Cowans challenges the weight of the evidence adduced to support his conviction for trafficking in cocaine. Our review of the entire record fails to persuade us that the jury, acting as 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.⁷ As the weight to be given the evidence and the credibility of the witnesses were for the jury to determine, the jury was entitled to reject Cowans’s theory that the “confidential” informant’s testimony was unreliable.⁸ The state presented ample evidence of Cowans’s cocaine trafficking, including the live, in-court testimony of the informant identifying Cowans as the intended cocaine seller. The second assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

⁴ *State v. Houston* at ¶8.

⁵ See, e.g., Evid.R. 404(B).

⁶ See *State v. Houston* at ¶9-10.

⁷ See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

⁸ See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

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Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HENDON and DINKELACKER, J.J.

To the Clerk:

Enter upon the Journal of the Court on March 11, 2011
per order of the Court _____.
Presiding Judge