[Cite as *State v. Imani*, 2009-Ohio-5717.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

SEKOU IMANI

Defendant-Appellant

JUDGES:
Hon. Sheila G. Farmer, P. J.
Hon. John W. Wise, J.
Hon. Julie A. Edwards, J.

Case No. 2008 AP 06 0043

O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. 2007 CR 04 0145
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	October 27, 2009

APPEARANCES:

For Plaintiff-Appellee

MICHAEL J. ERNEST
ASSISTANT PROSECUTOR
125 East High Avenue
New Philadelphia, Ohio 44663

For Defendant-Appellant

JOSE ANTONIO IBORRA
2559 Aaronwood Avenue, NE
Massillon, Ohio 44646

Wise, J.

{¶1} Appellant Sekou Imani appeals his conviction, in the Tuscarawas County Court of Common Pleas, on four felony drug trafficking counts. The relevant facts leading to this appeal are as follows.

{¶2} According to the State's witnesses in the case sub judice, appellant sold crack cocaine or powder cocaine to a confidential informant ("CI") on the following dates: March 22, 2007, March 23, 2007, March 27, 2007, and April 5, 2007. These sales occurred at appellant's Newcomerstown residence, which was located within 1,000 feet of an elementary school. Three of the transactions were recorded on audio or video.

{¶3} On April 17, 2007, appellant was indicted on two counts of aggravated trafficking in drugs, felonies of the first degree, and two counts of trafficking in drugs, felonies of the third degree.

{¶4} Appellant entered pleas of not guilty, and the matter proceeded to a jury trial on April 17-18, 2008. The jury found appellant guilty on all four counts.

{¶5} On May 14, 2008, the trial court sentenced appellant to two five-year prison sentences for aggravated trafficking (consecutive), and two three-year sentences for trafficking (consecutive to each other and the other sentences). The total sentence was thus sixteen years.

{¶6} On June 12, 2008, appellant filed a notice of appeal. He herein raises the following three Assignments of Error:

{¶7} "I. THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S REQUEST FOR SUBSTITUTE COUNSEL AND AS A RESULT THE APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

{¶8} "II. THE COURT ERRED IN ALLOWING THE LABORATORY REPORTS FROM THE BUREAU OF CRIMINAL INVESTIGATION INTO EVIDENCE AS WELL AS NOT PROVIDING THE APPELLANT WITH AN INDEPENDENT ANALYSIS PERFORMED BY A LABORATORY ANALYST APPOINTED BY THE COURT.

{¶9} "III. THE JURY VERDICT IS NOT SUPPORTED BY [THE] SUFFICIENCY OF THE EVIDENCE AND IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I.

{¶10} In his First Assignment of Error, appellant argues he was deprived of the effective assistance of trial counsel. We disagree.

{¶11} We note appellant first contends he should have been appointed new trial counsel because of a breakdown in the attorney-client relationship. See, e.g., *State v. Coleman* (1988), 37 Ohio St.3d 286, 292. However, we note that although some discussion took place prior to trial concerning appellant representing himself, appellant never specifically asked for a new attorney. Furthermore, the constitutional right to counsel does not include a right to a meaningful or peaceful relationship between the attorney and the defendant. *State v. Blankenship* (1995), 102 Ohio App.3d 534, 558. Therefore, we will focus our attention herein on the general issue of ineffective assistance of counsel.

{¶12} Our standard of review for ineffective assistance claims is set forth in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. Ohio adopted this standard in the case of *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373. These cases require a two-pronged analysis in reviewing a claim for ineffective assistance of counsel. First, we must determine whether counsel's assistance was ineffective; i.e., whether counsel's performance fell below an objective standard of reasonable representation and was violative of any of his essential duties to the client. If we find ineffective assistance of counsel, we must then determine whether or not the defense was actually prejudiced by counsel's ineffectiveness such that the reliability of the outcome of the trial is suspect. This requires a showing that there is a reasonable probability that but for counsel's unprofessional error, the outcome of the trial would have been different. *Id.* Trial counsel is entitled to a strong presumption that all decisions fall within the wide range of reasonable professional assistance. *State v. Sallie* (1998), 81 Ohio St.3d 673, 675, 693 N.E.2d 267.

{¶13} Appellant directs us to the following passages from the trial transcript:

{¶14} First, defense counsel indicated what evidence he and appellant had reviewed prior to trial:

{¶15} “MR. PETIT: *** My client does know what was recommended [in a plea deal], he does know the offer was on the table. He has seen the majority of the evidence against him, except for as I stated, the one audio tape that I don’t recall hearing, my client doesn’t recall hearing and we have not been able to hear it as of yet this morning. ***.” Tr. at 3.

{¶16} Defense counsel then summarized that appellant perhaps felt rushed and was losing faith in counsel's abilities. Tr. at 4. He then asked appellant to respond if that was a correct summary of the situation:

{¶17} "MR. IMANI: Sort of and why, why the way that it is, what more is of is the fact of certain things that I've asked to receive and I haven't been able to receive those things, whether it's further testing on the evidence like the statements that I have here today, this is the first time that I've ever seen these, these statements from the CI and from the detective whereas I feel that this in itself is an example of where the evidence that I needed to see and have a while ago in order to formulate my opinion on whether or not I wanted to take the plea bargain or the deal. There's still, there's still maybe video that I haven't seen. When Detective Ballentine brought stuff at the, arranged setting in the county for me to review the evidence like the phone conversations, I have, I know that there were many but only heard one so that, that doesn't just count for the case that they're speaking about dropping but the phone conversations, the wire taps that I haven't heard so it's kind of hard for me to say that or feel that I'm in the position to accept or even think about taking the plea bargain for anything if I haven't heard all the evidence. I asked my attorney maybe if we could have a copy of the CI's record and what type of trouble she was in because I'm not, attorneys unloaded the exact specific legal words that they asked for the right things, but I wanted information about her history which I feel would be relevant, if not just for a plea but in a trial as far as my only defense. If her credibility came into play and this was weeks ago and even more than weeks ago, I've asked for this and I've still yet to receive that on the CI. * * *." Tr. at 4-5.

{¶18} Finally, appellant told the court he had wanted to have his "own examiners" review the physical drug evidence. Tr. at 8. Defense counsel then responded as follows:

{¶19} "MR. PETIT: I don't recall him asking me to have the drugs tested to determine whether they were cocaine or crack cocaine at all. I know he's telling me that and I don't deny that he's telling me that and I don't deny that he may have, I don't recall him ever asking me that. It was always a discussion as to the amount of --

{¶20} "THE COURT: The weight, the amount --

{¶21} "MR. PETIT: --yeah, whether it was pure." Tr. at 9.

{¶22} In light of our review of the entire record before us, as further analyzed in appellant's third assigned error below, we are unpersuaded that the outcome of the trial would have been different had the aforesaid issues been further pursued by trial counsel. In particular, any consideration of an independent examination of the drug evidence is purely speculative under these circumstances, and is best suited to a post-conviction remedy rather than a direct appeal. See, e.g., *State v. Radel*, Stark App.No. 2009-CA-00021, 2009-Ohio-3543, ¶15, (noting "where an ineffective assistance of counsel claim cannot be supported solely on the trial court record, it should not be brought on direct appeal").

{¶23} We therefore hold appellant was not deprived of the effective assistance of trial counsel.

{¶24} Appellant's First Assignment of Error is overruled.

II.

{¶25} In his Second Assignment of Error, appellant maintains the trial court erred in allowing the State's laboratory drug reports into evidence and in declining to require an independent analysis of the drugs in question. We disagree.

{¶26} One of the statutory requirements for the prosecutor to use a lab report in evidence concerning a controlled substance is that the State must serve the defendant with a copy of the lab report prior to trial. See R.C. 2925.51(B).

{¶27} A defendant, upon written request to the prosecuting attorney, is entitled to have a portion of the substance preserved for the benefit of an independent analysis performed by a laboratory analyst employed by the defendant. R.C. 2925.51(E). Once a defendant requests a portion of the substance, the prosecutor is required to make the preserved portion available to the defendant's analyst at least 14 days before the trial. We agree with the State's assertion herein that a defendant's failure to timely request an independent analysis does not prohibit the use of the State's test results as long as they were properly served upon the defendant.

{¶28} In the present case, appellant does not dispute that he was served with the State's laboratory results. Instead, appellant argues that the drug test results should not have been admitted because he was denied an independent test on the drugs. Appellant, however, did not make a request to have an independent analysis performed upon the drugs until the day of the trial.

{¶29} Upon review, we find the trial court's denial of appellant's pro se request for independent substance testing under these circumstances did not constitute

reversible error. Cf. *State v. Owings*, Montgomery App.No. 21429, 2006-Ohio-4281, ¶79-¶85.

{¶30} Appellant's Second Assignment of Error is therefore overruled.

III.

{¶31} In his Third Assignment of Error, appellant maintains his conviction was against the sufficiency and manifest weight of the evidence. We disagree.

{¶32} In reviewing a claim of insufficient evidence, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶33} Appellant herein was convicted of four counts of trafficking in drugs (three counts crack cocaine and one count powder cocaine). All counts contained the "vicinity of a school" specification. Two of the crack cocaine counts were in the amount of ten grams or greater, ultimately elevating them to first-degree felonies.[1] R.C. 2925.03(A)(1) sets forth the essential elements of the offense of trafficking in drugs: "No person shall knowingly sell or offer to sell a controlled substance." *State v. Moore*, Stark App.No. 2008-CA-00228, 2009-Ohio-4958, ¶ 12. At trial, the prosecutor brought forward the two sheriff's detectives who supervised the controlled buys, who detailed the manner in which the confidential informant, Lisa Haas, was prepared and wired for same, and was correspondingly searched before and after. This testimony was buttressed by Special Agent Ronald Broadwater of the Ohio BCI. The prosecutor also questioned Ms. Haas

[1] Appellant, at least in this assigned error, does not raise a challenge as to proof of the bulk of the drugs per se.

herself, who recounted first-hand what occurred during the buys and who identified appellant as the dealer. The audio and video tapes for three of the buys were shown to the jury, as were the State's evidence bags and laboratory testing reports.

{¶34} Viewing the evidence before us in a light most favorable to the prosecution, we hold reasonable triers of fact could have found, beyond a reasonable doubt, that appellant committed the crime of trafficking in drugs, under all four counts.

{¶35} Turning to the second portion of this assigned error, our standard of review on a manifest weight challenge to a criminal conviction is stated as follows: "The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury 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. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175, 485 N.E.2d 717.

{¶36} The focus of appellant's manifest weight argument is on the confidential informant, Ms. Haas, whom he describes as a "motivated drug addict" who was trying to cope with her own drug problems in neighboring Coshocton County and the intervention of Tuscarawas County DJFS concerning her eleven-year-old son. See Appellant's Brief at 16. Appellant maintains that the actual usage of the terms "crack" or "cocaine" are not found on the audio or video tapes, and that Haas admitted that she owed money to appellant at the time of the buys. However, the jurors were in the best position to gauge

Haas, and, as Detective Ballentine noted in his testimony, it is often necessary for law enforcement to utilize informants who have a prior history of involvement with the alleged dealer under investigation. See Tr. at 55. Upon review, we find the jury did not clearly lose its way and create a manifest miscarriage of justice requiring that appellant's conviction be reversed and a new trial ordered.

{¶37} Appellant's Third Assignment of Error is overruled.

{¶38} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Tuscarawas County, Ohio, is hereby affirmed.

By: Wise, J.

Farmer, P. J. and

Edwards, J., concur.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ JULIE A. EDWARDS_____

JUDGES

JWW/d 929

IN THE COURT OF APPEALS FOR TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
SEKOU IMANI	:	
	:	
Defendant-Appellant	:	Case No. 2008 AP 06 0043

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Tuscarawas County, Ohio, is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ JULIE A. EDWARDS_____

JUDGES