

[Cite as *State v. Martin*, 2004-Ohio-6673.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 20410
v.	:	T.C. NO. 03 CR 3721
	:	
CHARLES EDWARD MARTIN	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 24th day of November, 2004.

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WOLFF, J.

{¶ 1} Charles Martin was found guilty after a bench trial of third degree felony trafficking in marijuana and fourth degree felony possession of cocaine. The trial court imposed concurrent nine-month sentences. On appeal, Martin claims in a single assignment of error that the convictions were against the manifest weight of the

evidence.

I.

{¶ 2} Briefly, the evidence which the trial court chose to credit established that Dayton police officers approached a house at 68 Barnett Street in Dayton where they observed three men, including Martin, flee from the front porch upon observing the arrival of the police.

{¶ 3} Martin was apprehended and brought back to 68 Barnett Street where he was confined in a police cruiser. As the officers mounted the porch and entered the house, they smelled marijuana and observed it in plain view as they entered the house. Inside the house, they observed a box of plastic sandwich bags which was later shown to bear Martin's fingerprint, a number of baggies containing marijuana, and a digital scale. The officers also discovered a Tommy Hilfiger backpack containing marijuana, cocaine, and an Ohio Identification card with Martin's name on it.

{¶ 4} The parties stipulated to the use of Dayton police detective William Ables' suppression hearing testimony as trial testimony.

{¶ 5} Det. Ables testified that he advised Martin of his *Miranda* rights, that Martin acknowledged his understanding of those rights, and thereafter made certain statements, including the following:

{¶ 6} "Q. And what statements did Mr. Martin make to you after you read him his Miranda Rights, please?

{¶ 7} "A. Some time had passed before I had talked to him. Uh . . . some detectives had advised me of what had been found inside the residence in reference to a, uh . . . - - it was a backpack or some type of Tommy Hilfiger bag is what I believe it

was. Uh . . . they told me the effects that were found inside the bag as well as the State I.D. card belongin' to the Defendant.

{¶ 8} “Uh . . . so I immediately asked him about the contents of that bag and if, in fact, that bag was his.

{¶ 9} “Q. And what specifically did he state to you at that time?

{¶ 10} “A. Uh . . . after - - after identifying some of the items inside it, and I had advised him of what had been discovered in the bag, he stated that the bag was his. Stated to me that the marijuana that was found inside the bag was his.

{¶ 11} “Uh . . . and I also stated to him that, uh . . . some cocaine had been found inside the bag at which time he state - - he - - he referred to it as the boy, which is a street term sometimes used to describe cocaine or crack cocaine. He stated that he was holding that for someone, that it was not his however that it was in his bag and he was holding it for someone.

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{¶ 12} “Q. Okay. While he was doing all this cooperating with you, uh . . . , uh . . . and said he was holding the boy, I'm assuming you would've asked him: 'Who are you holding the boy for?' If he said it, didn't you?

{¶ 13} “A. Yes, I did.

{¶ 14} “Q. Okay. And then what did he say when you said: 'Since you've told us it's your bag; since you've told us the marijuana in there is your bag; uh . . . since you've told us you're holdin' this boy for someone else.' Who was the someone else, with this degree of cooperation that was goin' on, that he told you he was holding it for?

{¶ 15} “A. He did not say any names.

{¶ 16} “Q. All right. At that point in time you’re claiming that he stopped cooperating?”

{¶ 17} “A. He didn’t know their names. I . . .

{¶ 18} “Q. Oh, I - - oh, is that what he said: ‘I don’t know the name of the person, the boy that I’m holding for?’

{¶ 19} “A. He stated that it was guys he didn’t know what their names were.

{¶ 20} “Q. Okay. So he just totally confessed to you and as far as incriminating somebody else, he didn’t know who he was holding a boy for. That’s what your testimony is?”

{¶ 21} “A. Correct.”

II.

{¶ 22} Martin essentially argues that the evidence failed to establish that he possessed the marijuana and cocaine. Martin views this as a constructive possession case and argues that the evidence fails to establish his dominion or control over the contraband, citing, inter alia, R.C. 2925.01(K), to the effect that such control “may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.”

{¶ 23} The evidence shows much more than mere access through occupation of 68 Barnett Street. The backpack contained marijuana, cocaine, and Martin’s identification card. The house where it was found contained a digital scale, baggies of marijuana, and a box of baggies that contained Martin’s fingerprint. Most telling are Martin’s statements to Det. Ables, wherein Martin acknowledged ownership of the marijuana and possession of the cocaine. Although Martin claimed to be holding the

cocaine for someone else, he wouldn't - or couldn't - say for whom, and, as the State contends, proof of ownership is not a prerequisite for proof of possession. See *State v. Mann* (1993), 93 Ohio App.3d 301, 308.

III.

{¶ 24} The assignment of error is overruled.

{¶ 25} The judgment will be affirmed.

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GRADY, J. and YOUNG, J., concur.

Copies mailed to:

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- Daniel J. O'Brien
- Hon. Michael L. Tucker