

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

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| STATE OF OHIO | : | |
| Plaintiff-Appellee | : | C.A. CASE NO. 23077 |
| v. | : | T.C. NO. 2007 CR 5124 |
| RICHARD D. COTTRELL | : | (Criminal appeal from Common Pleas Court) |
| Defendant-Appellant | : | |

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OPINION

Rendered on the 9th day of October, 2009.

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WOLFF, J. (by assignment)

{¶ 1} Richard Cottrell, pursuant to plea negotiations, entered pleas of no contest to possession of crack cocaine, a third degree felony, and possession of criminal tools, a fifth degree felony. The court found Cottrell guilty of the offenses and sentenced him to concurrent sentences of 5 years and 12 months. On appeal, Cottrell assigns error as

follows:

{¶ 2} “THE STATE DID NOT ESTABLISH A KNOWING AND VOLUNTARY WAIVER OF THE MIRANDA RIGHTS AND THE STATE DID NOT ESTABLISH THE MIRANDA RIGHTS READING.”

{¶ 3} The gist of Cottrell’s argument on appeal is that this court is left to guess as to whether he was actually advised of his *Miranda* rights, and thus cannot conclude that he knowingly and voluntarily waived those rights.

{¶ 4} Cottrell was arrested inside an apartment on Santa Clara Avenue on December 7, 2007, as the Dayton police were executing a search warrant for the apartment. Detective Dennis Murphy, the only witness at the suppression hearing, testified in part as follows:

{¶ 5} “Q. As a result of executing the search warrant were narcotics items - narcotics and paraphernalia type items found during your search warrant?

{¶ 6} “A. Yes, that’s correct. I believe about eight grams of crack and about ten grams of marijuana and some other various items that were used to what we say, cook the crack up with.

{¶ 7} “Q. Okay. And based on your finding these items in the house with the defendant was the defendant arrested?

{¶ 8} “A. Yes.

{¶ 9} “Q. And prior to his being arrested did he make any statements while you were conducting your search or anything as you entered that you heard the defendant say, any statements?

{¶ 10} “A. No, not that I know of.

{¶ 11} “Q. Okay. Were you present physically in the vicinity of the defendant when he was taken into custody?

{¶ 12} “A. After the entry team made entry, Detective Knight and I entered the house, or I’m sorry, entered the apartment and at that point in time is when we made contact with the defendant.

{¶ 13} “Q. Okay. At some point in time was the defendant placed in handcuffs?

{¶ 14} “A. Yes.

{¶ 15} “Q. Okay. At some point in time was the defendant read Miranda warnings?

{¶ 16} “A. Yes.

{¶ 17} “Q. Who did that?

{¶ 18} “A. I did.

{¶ 19} “Q. Okay. And prior to reading Miranda to the defendant, did he make any kind of statements at all?

{¶ 20} “A. No, not that I remember.

{¶ 21} “Q. Okay. And can you describe for the court what the procedure was that you went through in reading Miranda to this defendant?

{¶ 22} “A. Yes. I always carry a card provided by the Montgomery County Prosecutor’s office and I read the rights from that card and asked if he understood his rights and at that time he stated he did.

{¶ 23} “Q. Okay. Now when you read him his rights, there are five rights on the

card, correct?

{¶ 24} “A. Yes.

{¶ 25} “Q. Did you ask him after each right whether he understood?

{¶ 26} “A. Actually I think I read the whole card to him and asked him if there’s anything about it he didn’t understand.

{¶ 27} “Q. Okay. And did he ask you any questions about his rights?

{¶ 28} “A. No.

{¶ 29} “Q. Okay. And did he make - did he answer any questions after that fact?

{¶ 30} “A. Yes, he did.

{¶ 31} “Q. Okay. And were some of those questions presented to him by yourself?

{¶ 32} “A. Detective Knight.

{¶ 33} “Q. Detective Knight in your presence?

{¶ 34} “A. Yes.

{¶ 35} “Q. Okay. And were some of those questions also presented to him by Detective Spears?

{¶ 36} “A. Yes, I believe, so.

{¶ 37} “Q. Okay. After the defendant was read his rights and indicated that he understood them, did he voluntarily answer the questions that were asked of him?

{¶ 38} “A. Yes.

{¶ 39} “Q. In one manner or another?

{¶ 40} “A. Yes, correct.”

{¶ 41} The card Detective Murphy referred to was not entered into evidence.

{¶ 42} Cottrell contends that we cannot know that he was advised of his *Miranda* rights because Detective Murphy did not indicate what rights were stated on the card, and the card itself is not part of the record.

{¶ 43} We disagree.

{¶ 44} The trial court could have reasonably concluded that Detective Murphy, who had been with the Dayton Police Department eight years, three as a narcotics detective, was familiar with a defendant's *Miranda* rights, and that the card issued by the prosecutor's office contained those rights. Thus, there is no reason to question the trial court's conclusion that Detective Murphy gave Cottrell the warnings required by *Miranda*. *Miranda v. Arizona* (1966), 384 U.S. 434. Detective Murphy's testimony also supports the court's conclusions that Cottrell understood his rights and waived those rights by voluntarily answering questions put to him.

{¶ 45} The assignment of error is overruled.

{¶ 46} The judgment will be affirmed.

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GRADY, J. and FROELICH, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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