

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94797**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**KENNETH EASTERLY**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-527628

**BEFORE:** Gallagher, J., Stewart, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** January 20, 2011  
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**ATTORNEYS FOR APPELLEE**

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SEAN C. GALLAGHER, J.:

{¶ 1} Appellant Kenneth A. Easterly appeals his conviction for various charges of drug possession, drug trafficking, and possession of criminal tools,

all with specifications. For the reasons stated herein, we affirm the judgment of the trial court.

{¶ 2} The following facts give rise to this appeal. On June 2, 2009, Detective Anthony Quirino, a K-9 officer with the Cuyahoga County Sheriff's Department, obtained permission from Seko Worldwide in Cleveland to bring his dog into the facility. His dog detected the presence of illegal narcotics in a crate being shipped to Ken's Car Care at 6605 Barberton Avenue in Cleveland. Detective Quirino obtained a search warrant to open the crate, and upon executing the warrant, he found eight bundles of suspected marijuana in the crate. A field test was conducted with positive results for the presence of marijuana.

{¶ 3} In an effort to plan a controlled delivery, Detective Quirino obtained an anticipatory warrant to be executed once the crate was delivered to its intended address and "accepted and/or delivered into" Ken's Car Care. The purpose of the warrant was "to secure any potential defendants, and any controlled substances, U.S. currency, fruits of drug trafficking, evidence and instrumentalities of criminal offenses \* \* \*." The anticipatory warrant authorized a search of the premises of Ken's Car Care.

{¶ 4} The crate was delivered to Ken's Car Care the next day, June 3, 2009. When the delivery truck arrived, two men, Randy Miller and Arthur Crayton, approached. Crayton, who had been sitting in a U-Haul truck, and

Miller, who came out of a nearby residence, met on the street and walked over to the delivery truck.

{¶ 5} Miller was an acquaintance of Easterly's. Easterly had purchased marijuana from Miller in the past, and the two had spoken on the phone the day before. Easterly did not know Crayton. Crayton signed for the crate using a fake name. Neither man was an employee of Ken's Car Care.

{¶ 6} The two men then entered Ken's Car Care, opened the bay door, and helped unload the crate and drag it into the building. The bay door was a large garage-type door, and its opening would have been visible to Easterly from within the building. Easterly admitted seeing Miller and Crayton with the crate before the police arrived.

{¶ 7} Five to eight minutes later, Miller and Crayton slid the crate out a side door. The police proceeded to execute the warrant at that time. When the police went to apprehend the two men, Miller attempted to run but was caught.

{¶ 8} The police then entered Ken's Car Care. Easterly, who is the owner of the business, was working on a car with his son. Easterly and others working on the premises were arrested.

{¶ 9} The police searched the building and uncovered other drugs, including oxycontin and marijuana. When searching Easterly's office, the

police found several bags of marijuana, a scale under the desk, and a loaded firearm in a box on top of the desk. Police also recovered money and a couple of cell phones. Easterly admitted the marijuana in the office was his and that he sold marijuana occasionally to friends, but he denied any other drugs were his. He denied possessing or trafficking the marijuana found in the crate. He also denied ownership of the gun. The crate was later opened, and its contents were undisturbed. When the police questioned Easterly, he guessed that marijuana was in the crate.

{¶ 10} During the course of proceedings, Easterly filed a motion to suppress the evidence seized as a result of the anticipatory search warrant. The trial court denied the motion.

{¶ 11} Easterly was convicted of three counts of drug possession, with forfeiture and firearm specifications, one count of drug trafficking with forfeiture and firearm specifications, and one count of possession of criminal tools with a forfeiture specification. The trial court sentenced him to a total term of incarceration of two years.

{¶ 12} Easterly's appeal raises two assignments of error for our review. His first assignment of error provides as follows: "The trial court erred in failing to suppress the anticipatory search warrant for appellant's place of business."

{¶ 13} “Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.” (Citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

{¶ 14} In *U.S. v. Grubbs* (2006), 547 U.S. 90, 94, 126 S.Ct. 1494, 164 L.Ed.2d 195, the United States Supreme Court discussed the requirements for a constitutionally valid anticipatory search warrant. Specifically, the Supreme Court provided: “An anticipatory warrant is ‘a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.’ Most anticipatory warrants subject their execution to some condition precedent other than the mere passage of time — a so-called ‘triggering condition.’ \* \* \* If the government were to execute an anticipatory warrant before the triggering condition occurred, there would be no reason to believe the item described in the warrant could be found at the searched location; by definition, the

triggering condition which establishes probable cause has not yet been satisfied when the warrant is issued.” (Internal citation omitted.)

{¶ 15} With respect to probable cause requirements, the Court stated: “[W]here the anticipatory warrant places a condition (other than the mere passage of time) upon its execution, the first of these determinations goes not merely to what will probably be found if the condition is met. \* \* \* Rather, the probability determination for a conditioned anticipatory warrant looks also to the likelihood that the condition will occur, and thus that a proper object of seizure will be on the described premises. In other words, for a conditioned anticipatory warrant to comply with the Fourth Amendment’s requirement of probable cause, two prerequisites of probability must be satisfied. It must be true not only that if the triggering condition occurs ‘there is a fair probability that contraband or evidence of a crime will be found in a particular place,’ but also that there is probable cause to believe the triggering condition will occur. The supporting affidavit must provide the magistrate with sufficient information to evaluate both aspects of the probable-cause determination.” (Internal citations omitted.) Id. at 1500.

{¶ 16} Easterly claims that the anticipatory search warrant in this case was invalid because the “triggering” event had not occurred at the time the search warrant was executed. Easterly argues that the triggering event of delivery and acceptance by Ken’s Car Care was not accomplished because the

two men who accepted the crate were not employees of Ken's Car Care, the crate bound for Easterly's place of business was fictitiously signed for by a stranger off the street, and the men immediately attempted to take the unopened crate to an awaiting U-Haul truck unconnected to Ken's Car Care.

{¶ 17} An examination of the affidavit underlying the anticipatory warrant reflects that it was to be executed once the crate was delivered to its intended address and "accepted and/or delivered into" Ken's Car Care. Our review of the record reflects that the trial court's determination that a successful delivery occurred was supported by competent, credible evidence.

{¶ 18} Although Easterly did not sign for or handle the crate and the police did not inspect the package to determine if it had been opened, these factors were not required to establish the acceptance and delivery of the crate to its intended address. Further, it is immaterial that the crate was no longer in the building at the time the warrant was executed.

{¶ 19} The evidence presented showed that the crate was addressed to Ken's Car Care, the crate was signed for delivery, the garage door to the building was opened, and the crate was taken inside. The crate was in the building for five to eight minutes before the men were again seen exiting with the crate out a side door. These facts are sufficient to establish the acceptance and delivery of illegal drugs to Ken's Car Care had occurred and to satisfy the triggering condition. Accordingly, we find the police had probable



cause to execute the warrant and search the premises of Ken's Car Care. We conclude that the motion to suppress was properly denied, and we overrule Easterly's first assignment of error.

{¶ 20} Easterly's second assignment of error provides as follows: "The firearm specifications underlying appellant's convictions are against the sufficiency of the evidence."

{¶ 21} Easterly was convicted of accompanying one-year firearm specifications under R.C. 2941.141(A), which provides that "the offender had a firearm on or about his person or under his control while committing the offense." Easterly claims that the state did not present sufficient evidence to support his conviction on the firearm specifications.

{¶ 22} When an appellate court reviews a claim of insufficient evidence, "the 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. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37.

{¶ 23} Easterly argues that there was insufficient evidence to show that the firearm was “on or about his person” as charged in the indictment. He claims he was not located near the gun when it was recovered. He also denied knowing that the firearm was in the building.

{¶ 24} The state may show a defendant has dominion or control over the weapon for purposes of R.C. 2941.141 by proving constructive possession. E.g., *State v. Davis*, Cuyahoga App. No. 93844, 2010-Ohio-5123; *State v. Wilkins*, Clinton App. No. CA2007-03-007, 2008-Ohio-2739; *State v. Conway*, Cuyahoga App. No. 86140, 2005-Ohio-6634. “Constructive possession exists when an individual exercises dominion and control over an object, even though that object may not be within his immediate physical possession.” *State v. Hankerson* (1982), 70 Ohio St.2d 87, 91, 434 N.E.2d 1362.

{¶ 25} In this case, the gun was found in Easterly’s business office in a box on top of his desk. Marijuana belonging to Easterly was also found in this office and Easterly admitted that he periodically sold marijuana. Under the totality of the circumstances, reasonable minds could conclude that the gun belonged to Easterly and was under his control, and that he used it in the commission of the charged offenses. Easterly’s second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

MELODY J. STEWART, P.J., and  
MARY J. BOYLE, J., CONCUR