

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

STATE OF OHIO,	:	APPEAL NO. C-100720
Plaintiff-Appellee,	:	TRIAL NO. B-0901009(A)
vs.	:	<i>JUDGMENT ENTRY.</i>
GARY TODD,	:	
Defendant-Appellant.	:	

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

Defendant-appellant Gary Todd appeals from the trial court's entry overruling his motion to suppress evidence gained from a search of his Forest Park, Ohio apartment.

In February 2009, Cincinnati police officers and United States Postal inspectors intercepted a package containing five pounds of marijuana bound for a Cincinnati address. The officers obtained a search warrant, delivered the package, and apprehended Todd and a codefendant at the scene.

When arrested, Todd, a black male, had \$1,100 in cash, keys, and a cellular telephone in his possession. The phone's screen saver was the image of a black Cadillac Escalade. The investigating officers, including a police specialist with over 13 years of experience in drug enforcement, learned that Todd had a history of drug offenses including a 1994 conviction for drug trafficking. A Drug Enforcement Agency intelligence

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

database revealed that Todd had had recent involvement with an interstate drug-distribution organization.

When questioned, Todd refused to inform the officers where he lived. But the officers learned that Todd had paid for the utilities at an apartment located at 11651 Norbourne Drive in Forest Park, Ohio. Though the apartment was rented in the name of Sherry Todd, the apartment managers and neighbors could not recall seeing a woman at the apartment. But they told police that they had often seen a black male driving a black Cadillac Escalade at the apartment. The key found on Todd operated the apartment door lock.

Based upon these facts, and his experience that drug traffickers often maintained records, currency, scales, and other items to facilitate their trade at their homes, the police specialist prepared an affidavit in support of a request for a warrant to search Todd's apartment. A Hamilton County Municipal Court judge reviewed the documents and issued a search warrant. A search of the apartment found no drugs, but located two digital scales, United States currency, and a .40 caliber semi-automatic pistol.

Todd was indicted for trafficking in and possessing marijuana and for having a weapon under a disability. While the trial court twice overruled Todd's motion to suppress evidence found in his apartment, at the conclusion of a bench trial the trial court acquitted Todd of marijuana possession and trafficking. But the court convicted Todd of having a weapon under a disability and imposed a sentence of three years' community control.

Raising a single assignment of error, Todd now contests the trial court's denial of his motion to suppress. Todd contends that the affidavit submitted in support of the warrant failed to establish a sufficient nexus between his criminal conduct and items to be found in his apartment.

“A [magistrate’s] probable-cause determination must be ‘a practical, common-sense decision’ based upon the totality of the circumstances that there is a ‘fair probability’ that the contraband or evidence of a crime will be found in a particular place.”² As a reviewing court, we must accord great deference to the magistrate’s probable-cause determination, and we should resolve even doubtful or marginal cases in favor of upholding the warrant.³

Here, the affidavit in support of the search warrant informed the magistrate that Todd had been seized at an address where five pounds of marijuana had been delivered, that he had a history of drug trafficking, that he had links to the Forest Park apartment, that he had been in possession of a key that opened the door of that apartment, and that other evidence of drug trafficking was likely to be found there.

Since “probable cause can be, and often is, inferred by ‘considering the type of crime, the nature of the items sought, the suspect’s opportunity for concealment and normal inferences about where the criminal might hide’ ” evidence of his crimes, we overrule the assignment of error.⁴ The affidavit provided the magistrate with a substantial basis for concluding that evidence of Todd’s criminal activity would be found in his Forest Park apartment.⁵

² *State v. England*, 1st Dist. No. C-040253, 2005-Ohio-375, ¶16, quoting *Illinois v. Gates* (1983), 462 U.S. 213, 238, 103 S.Ct. 2317.

³ See *State v. George* (1989), 45 Ohio St.3d 325, 544 N.E.2d 640, paragraph two of the syllabus; see, also, *State v. Taylor*, 174 Ohio App.3d 477, 2007-Ohio-7066, 882 N.E.2d 945, ¶17.

⁴ *State v. England* at ¶10 (internal citations omitted); see, also, *State v. Mays*, 2nd Dist. No. 23986, 2011-Ohio-2684, ¶14.

⁵ See *State v. George*, paragraphs one and two of the syllabus; see, also, *State v. Taylor* at ¶17.

OHIO FIRST DISTRICT COURT OF APPEALS

Therefore, the trial court's judgment is affirmed.

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.

DINKELACKER, P.J., HILDEBRANDT and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 31, 2011
per order of the Court _____.
Presiding Judge