[Cite as *State v. Edwards*, 2010-Ohio-826.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-L-101**
- vs -	:	
DEON J. EDWARDS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Willoughby Municipal Court, Case No. 09 CRB 00944.

Judgment: Affirmed.

Judson J. Hawkins, City of Eastlake Prosecutor, Center Plaza North, 35350 Curtis Boulevard, Suite 441, Eastlake, OH 44095 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Deon J. Edwards, appeals the ruling of the Willoughby Municipal Court, denying his motion to suppress evidence resulting from the search of his residence. At issue is whether exigent circumstances existed such that the police were authorized to enter his home without a search warrant. For the reasons that follow, we affirm.

{¶2} Between December 2008 and January 2009, Karima Dudley rented a single-family residence at 1315 Hulett Avenue in Eastlake, Ohio, where she resided with her two children, Deyon Edwards, who at the time was one-year old, and India Edwards, who was then four. Appellant, Karima's former boyfriend and the father of her children, stayed with them four to five times a week overnight to watch the children during the day while Karima was at work. Appellant testified that while he and Karima were no longer in a relationship, he spent most of his time at their house.

{¶3} On March 19, 2009, Michael Merker, intake officer for the Lake County Department of Job and Family Services, received a complaint concerning the welfare of children living at the subject residence. The complainant advised that the water had been shut off at the residence and that conditions in the home were deplorable. Also, at that time, Paul Kasden, an officer with the Eastlake Health Department, contacted Merker and reported the conditions at the house to him. Kasden also discussed the trash outside the residence with the owner. She told him that she did not reside at the residence and gave Kasden permission to walk around the house and to enter it.

{¶4} On March 20, 2009, Eastlake Police Officer David Koehnle escorted Merker and Kasden to the residence on a welfare check of the children. Upon arrival, they knocked at the front door. After not getting any response, they walked along the side of the house to the back. In the backyard they saw trash and soiled diapers. They then knocked on the windows and the back door, again with no response. After being at the house for about ten minutes and getting no response, Officer Koehnle decided to leave.

{¶5} As they walked down the driveway along the side of the house, Merker noticed a light inside the house and two children inside sitting in what appeared to be the back bedroom. From the outside of the house, Merker could see through the living room into the back bedroom because the door leading to that room was open. There were no curtains or blinds on the window and Merker's view of the children from outside the house was unobstructed. Merker told Officer Koehnle what he had seen and told him he believed the children were alone in the house. The officer looked inside and also saw the children sitting in the bedroom.

{¶6} Officer Koehnle then returned to the front door and knocked to see if anyone would answer, but no one did. The officer then radioed to his officer-in-charge, and asked him if he should enter the house to check on the welfare of the children. His sergeant then instructed him to do so.

{¶7} While waiting for backup, Officer Koehnle checked the front door and found that it was not locked. Shortly thereafter, a second officer arrived to assist Officer Koehnle. The two officers then announced themselves as Eastlake Police before opening the door. After no one answered, they entered the house. Inside the house Koehnle smelled a strong stench of garbage; it smelled like a garbage dump.

{¶8} Inside the floors were filthy. Clothes were piled on the floor in the living room. There was rotten food on the floor, including old chicken bones. The stench of feces emanated from the bathroom. There was garbage on the floor leading to the bedroom.

{¶9} The officers saw two children in the bedroom. A baby boy was naked crawling on the floor and a young girl was sitting on a urine-stained mattress. Shortly

thereafter, appellant entered the house. He said he was the children's father. He identified the baby as one-year old Deyon Edwards and the young girl as four-year old India Edwards. Appellant told the police that, while he is no longer in a relationship with the children's mother, he spends most of his time at their house.

{¶10} The officers took the children to the station and appellant was arrested. He was charged with two counts of child endangering, misdemeanors of the first degree, in violation of R.C. 2919.22(A). Appellant pled not guilty and filed a motion to suppress, challenging the officers' warrantless entry into his house. Following a hearing, the trial court denied appellant's motion to suppress. Appellant pled no contest and was found guilty of both counts. This appeal now follows. Appellant states the following for his sole assignment of error:

{¶11} "The trial court erred by denying the defendant-appellant's motion to suppress in violation of his due process rights and rights against unreasonable search and seizure as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Sections 10 and 14, Article I of the Ohio Constitution."

{¶12} On review of a trial court's ruling on a motion to suppress, an appellate court determines whether the trial court's findings are supported by some competent, credible evidence. An appellate court may not disturb a trial court's decision on a motion to suppress where some competent, credible evidence supports its decision. *Bainbridge v. Kaseda*, 11th Dist. No. 2007-G-2797, 2008-Ohio-2136, at ¶20; *State v. Retherford* (1994), 93 Ohio App.3d 586, 592. In determining a motion to suppress, the trial court serves as the trier of fact and determines the credibility of the witnesses and weight of the evidence. The appellate court is required to accept the trial court's factual

findings as true, and determine, without deference to the trial court, whether the court met the appropriate legal standard. *Kaseda*, supra; *State v. Jackson*, 11th Dist. No. 2003-A-2005, 2004-Ohio-2920, at ¶12.

{¶13} The Fourth Amendment to the United States Constitution and Section 14, Article 1 of the Ohio Constitution require police to obtain a search warrant based on probable cause prior to conducting a search unless the search falls within an exception to this requirement. *Katz v. United States* (1967), 389 U.S. 347, 357; see, also, *State v. Totten* (Feb. 15, 2001), 10th Dist. No. 00AP-535, 2001 Ohio App. LEXIS 524, *5-*6.

{¶14} "*** Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionably showing probable cause,' *** for the Constitution requires 'that the deliberate, impartial judgment of a judicial officer *** be interposed between the citizen and the police ***.' *** 'Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes,' *** and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions." (Internal citations omitted.) *Katz*, supra, at 357.

{¶15} In *State v. Stanberry*, 11th Dist. No. 2002-L-028, 2003-Ohio-5700, this court held:

{¶16} "***The doctrine of exigency is an exception to the general, constitutional prohibition against warrantless searches. 'Exigency' denotes the existence of 'real immediate and serious consequences' that would certainly occur were a police officer to postpone action to get a warrant. *Welsh v. Wisconsin* (1984), 466 U.S. 740, 751***. As

such, a court will not 'excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative.' *McDonald v. United States* (1948), 335 U.S. 451, 456***.

{¶17} "The United States Supreme Court has held that the doctrine of exigency applies in two separate sets of circumstances: first, police may commence a warrantless search and seizure to avoid 'the imminent destruction of vital evidence.' *Wong Sun v. United States* (1963), 371 U.S. 471, 484***. Second, a warrant is unnecessary where the police are faced with a 'need to protect or preserve life or avoid serious injury.' *Mincey v. Arizona* (1978), 437 U.S. 385, 391-392***." *Stanberry*, supra, at ¶14-15.

{¶18} In *Mincey*, supra, the Court stated:

{¶19} "*** [T]he Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. *** 'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" (Internal citations omitted.) Id. at 392.

{¶20} We note that neither party has cited any case law authority involving a situation where children were left alone and unattended in a residence. However, our independent research reveals that the issue is not one of first impression. In *State v. Wyatt*, 9th Dist. No. 22070, 2004-Ohio-6546, the Ninth District held:

{¶21} "*** In this case, the police were told that there were unsupervised children in the house. The exigent circumstances exception to the warrant requirement applies

when the police have a reasonable basis to believe someone inside the premises requires immediate aid. *Parma v. Jackson* (1989), 58 Ohio App.3d 17, 18***. Young children left unsupervised in a house provided exigent circumstances to permit a warrantless entry into the premises to locate the children, determine if they are in need of aid, and secure their safety." *Wyatt*, supra, at ¶13.

{¶22} We find the holding of the Ninth District in *Wyatt* to be highly persuasive. Here, Officer Koehnle went to appellant's residence pursuant to a complaint submitted to the Lake County Department of Job and Family Services that children were residing there in deplorable conditions and that the water had been shut off.

{¶23} Upon arrival, Officer Koehnle, along with officers from Job and Family Services and the city Health Department, banged on the front door and then the windows and back door of the residence for ten minutes to investigate the complaint. After these efforts proved fruitless, Officer Koehnle ultimately decided to leave the area. However, while they were walking down the driveway, Merker noticed the children in the house. He so advised Officer Koehnle and said he believed the children were alone. The officer also observed the children from outside of the house. Appellant does not challenge the officer's right to look inside the house from outside. After Officer Koehnle saw the children, he banged on the front door and, again, got no response. These facts supported the inference that the children were home alone and unsupervised. The officer testified he was concerned for the safety of the children. As a result, he reported his observations to his superior, who instructed him to enter the house.

{¶24} Appellant argues that the officers could have kept the children in view while a search warrant was obtained. The trial court found "the facts of this case

indicate that young (perhaps infant) children were home without supervision in a home, the condition of which increased fear for their welfare." In light of the fact that the children were apparently left alone in a house where there was no water service, Officer Koehnle had reason to believe the children needed immediate aid, and that the safety of the children required immediate intervention. Based on the facts of this case, the trial court concluded "waiting at the premises while the police obtained a warrant may have been sufficient to protect an inanimate object, but not young children." Appellant concedes in his brief that the officer believed no one was with the children. Based on the foregoing, we hold the trial court did not err in finding that the safety and welfare of the children provided exigent circumstances, which authorized Officer Koehnle to enter appellant's residence without a warrant.

{¶25} For the reasons stated in the Opinion of this court, the assignment of error is not well taken. It is the judgment and order of this court that the judgment of the Willoughby Municipal Court is affirmed.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.