[Cite as *State v. Chappell*, 2017-Ohio-5712.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	
	)	
PLAINTIFF-APPELLEE	)	
	)	CASE NOS. 16 MA 0004
VS.	)	16 MA 0005
	)	
JASON CHAPPELL and	)	OPINION
FLETCHER MORGAN	)	
	)	
DEFENDANTS-APPELLANTS	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the County Court No. 2, Mahoning County, Ohio Case Nos. 2015 CRB 182 2015 CRB 184
JUDGMENT:	Affirmed.
APPEARANCES: For Plaintiff-Appellee	Attorney Paul Gains Mahoning County Prosecutor Attorney Ralph Rivera Assistant Prosecutor 21 West Boardman Street, 6th Floor Youngstown, Ohio 44503-1426
For Defendants-Appellants	Attorney Scott Cochran 19 East Front Street, Suite 1 Youngstown, Ohio 44503

JUDGES:

Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: June 21, 2017

[Cite as *State v. Chappell*, 2017-Ohio-5712.]
DeGENARO, J.

{¶1} In these consolidated appeals, Defendants-Appellants, Jason Chappell and Fletcher Morgan, appeal the trial court's judgment convicting them of criminal damaging, asserting there is insufficient evidence to support their convictions as they are protected by R.C. 2713.22 because they were searching for a fugitive pursuant to a bond. As the statute does not grant bail bondsmen absolute power and privilege to arrest a fugitive, there was sufficient evidence supporting their convictions. Accordingly, the judgments of the trial court are affirmed.

{¶2} The facts are not in dispute. Brandon Bennett applied for a bail bond using a Youngstown address. Bennett was accompanied by Sarah Greenwalt, who signed the bond application as a co-signer giving an Austintown address as her residence. Subsequently, a bench warrant was issued for Bennett.

{¶3} Bail bondsmen Chappell and Morgan were searching for Bennett, which took them to the address listed by Sarah on the bond application. This property was owned by Sarah's mother Deborah Woodruff who permitted Sarah and son-in-law, Lloyd Greenwalt, to live in the Austintown residence. At that time the residence was vacant and being renovated. Deborah testified she expressly forbade Bennett from being on the property, and neither Chappell nor Morgan received her permission to enter the property.

{¶4} Lloyd Greenwalt testified that on the date in question he was remodeling the residence, that it was not livable at that time, and that he finished working that day at 9 p.m. The next morning, he drove past the property and noticed that the gate was open, which he always closed. Upon further inspection he saw the rear door was kicked open and a footprint was on the door. He called the police and after they said it was permitted, he went inside the home. He noted all the drawers in a bedroom dresser had been pulled out and pictures had been gone through. All of the clothes in the hallway closet had been thrown onto the floor. Lloyd testified he had not given Chappell or Morgan permission to enter the property at that time.

{¶5} Chappell recounted his professional experience; pertinent to this appeal, he was a licensed bail bondsman and served about 9 to 10 years in this

capacity prior to this incident.

{¶6} Chappell was cooperative with law enforcement and admitted that they did not speak with Lloyd prior to going into the house. Chappell called the police, verified the warrant, and told them that he was going to the Austintown address to serve a warrant on Bennett, accompanied by Morgan and another bondsman. Chappell proceeded to the front door and the other two proceeded to the rear door of the residence. Around 9:00 p.m. Chappell knocked on the front door twice. On the second knock he heard a loud noise. He announced himself as fugitive recovery. Concerned that Bennett may be escaping, Chappell kicked in the front door; simultaneously, Morgan kicked in the back door. After Chappell searched the residence, he saw a bat wedged in the door and believed that had created the loud noise. The bondsmen secured the doors as best they could prior to leaving. Chappell and Morgan caused over $1,200.00 in damages to the property. Bennett was later apprehended by other agents.

{¶7} Morgan and Chappell were both charged with criminal damaging, R.C. 2909.06(A)(2) a second degree misdemeanor and criminal trespass, R.C. 2911.21(A)(1), a fourth degree misdemeanor. At a bench trial counsel argued that bail bondsmen have an absolute defense to criminal charges obtained while attempting to apprehend a fugitive. Morgan and Chappell were found guilty of criminal damaging and not guilty of criminal trespass. Sentencing was set at a later date. Morgan and Chappell filed a motion to reconsider the criminal damaging convictions, which the trial court denied. The trial court sentenced Morgan and Chappell to a suspended 90-day jail term, a fine and costs, restitution to the homeowner, and three months of non-reporting community control. The sentences were stayed pending appeal.

{¶8} In their sole assignment of error, Morgan and Chappell assert:

> The trial Court decision is against the manifest weight of the evidence as the Appellants introduced sufficient credible evidence of the affirmative defense of privilege and that State of Ohio failed to offer any

evidence to rebut the defense.

{¶9} R.C. 2713.22 provides:

> For the purpose of surrendering the defendant, the bail [sic] may arrest him at any time or place before he is finally charged, or, by a written authority indorsed on a certified copy of the bond, may empower any person of suitable age and discretion to do so.

{¶10} Morgan and Chappell argue that this statute grants bail bondsmen an absolute power and privilege to arrest a fugitive at any place or time, and support this premise with *State v. Kole*, 92 Ohio St.3d 303, 2001-Ohio-191, 750 N.E.2d 148. Kole was a bail bondsman attempting to apprehend a fugitive. He entered the residence of a third party without permission and was later convicted of several criminal offenses related to his entry on the premises. At trial, defense counsel relied on case law for the proposition that a common law defense existed for bounty hunters pursuing a fugitive, but failed to present R.C. 2713.22 as an alternative defense. The Ohio Supreme Court found this to be ineffective assistance of counsel and remanded the matter for a new trial. Contrary to Morgan and Chappell's assertion otherwise, the Court expressly declined to decide whether R.C. 2713.22 authorized a bail bondsman as a matter of law to enter the home of a third party for purposes of apprehending a fugitive when the third party is not a party to the bail contract.

{¶11} In *Mota v. Gruszczynski*, 197 Ohio App 3d. 750, 2012-Ohio-275, 968 N.E.2d (8th Dist.) the court observed, "no Ohio court has interpreted R.C. 2713.22 as providing carte blanche authority to a bounty hunter in pursuit of a fugitive to enter the dwelling of a third party who is not a party to the bail contract." *Id.* at ¶ 15. The statutory language at issue here is straightforward. It merely authorizes bail bondsmen to arrest a fugitive; it does not authorize them to ignore Fourth Amendment protections when doing so. To interpret R.C. 2713.22 as argued by Chappell and Morgan would grant bail bondsmen greater authority to enter the

private dwellings of nonconsenting third parties than that vested in law enforcement officers. See *Steagald v. United States*, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981) (absent exigent circumstances or consent, law enforcement officers may not constitutionally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant).

{¶12} Here, Chappell and Morgan did not have consent of the home owner or the occupant, and they do not argue that they did. Further, the bond agreement did not provide them with consent. Had Chappell and Morgan been police officers, they would have been required to get a warrant and execute it in conformity with statutory and constitutional constraints. The plain language of R.C. 2713.22 does not give bail bondsmen the unfettered authority to enter the residence of a third party in order to arrest a fugitive.

{¶13} Thus, the trial court did not err in finding Chappell and Morgan guilty of criminal damaging, and their sole assignment of error is meritless. Accordingly, the judgments of the trial court are affirmed.

Waite, J., concurs.

Robb, P. J., concurs.