[Cite as *State v. Baker*, 2009-Ohio-2340.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. JERMAINE C. BAKER Appellant	C.A. No. 23713 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 06 09 3464(A)

DECISION AND JOURNAL ENTRY

Dated: May 20, 2009

CARR, Judge.

{¶1} Appellant, Jermaine Baker, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On October 4, 2006, Baker was indicted on one count of possession of cocaine in violation of R.C. 2925.11(A), a felony of the fourth degree; one count of possession of marijuana in violation of R.C. 2925.11(A), a minor misdemeanor; one count of possession of drugs in violation of R.C. 2925.11(A), a misdemeanor of the second degree; one count of having weapons under disability in violation of R.C. 2923.13(A)(2)/(A)(3), a felony of the third degree; one count of receiving stolen property in violation of R.C. 2913.51(A), a felony of the fourth degree; one count of disorderly conduct in violation of R.C. 2917.11(A)(2), a misdemeanor of the fourth degree; and one count of obstructing official business in violation of R.C. 2921.31(A), a misdemeanor of the second degree. Baker pled not guilty to the charges.

{¶3} Baker filed a motion to suppress. The trial court held a hearing on the motion on November 15, 2006, and granted leave to the State to file a responsive brief. The State filed its post-hearing brief on November 28, 2006. The State supplemented its brief on December 4, 2006. Baker filed a post-hearing brief in support of his motion to suppress on December 18, 2006. On January 30, 2007, the trial court denied Baker's motion to suppress and confirmed the date scheduled for trial.

{¶4} At the close of the State's case at trial, the trial court directed a verdict for Baker on the charges of possession of marijuana, possession of drugs, and disorderly conduct. At the conclusion of trial, the jury found Baker not guilty of possession of cocaine and receiving stolen property. The jury found Baker guilty of obstructing official business and having weapons under disability, with an additional finding that Baker had been previously convicted of a crime of violence or an offense involving illegal possession of any drug of abuse. The trial court sentenced Baker to 2 years in prison for having weapons under disability and to 90 days in jail for obstructing official business, with the sentences to be served concurrently. Baker timely appeals, raising three assignments of error for review.

II.

ASSIGNMENT OF ERROR I

> "DEFENDANT'S MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED AS A MATTER OF LAW BECAUSE THE POLICE FORCIBLY ENTERED DEFENDANT'S HOME WITHOUT A WARRANT."

{¶5} Baker argues that the trial court erred by denying his motion to suppress. This Court disagrees.

> "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. *State v. Mills* (1992), 62 Ohio St.3d 357,

> 366. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19. 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. *State v. McNamara* (1997), 124 Ohio App.3d 706." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶8.

Accordingly, this Court reviews the trial court's legal conclusions de novo. *State v. Russell* (1998), 127 Ohio App.3d 414, 416.

{¶6} The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution enunciate the right of persons to be free from unreasonable searches and seizures. "Warrantless search and entry upon property by police are per se unreasonable." *Russell*, 127 Ohio App.3d at 417, citing *Katz v. United States* (1967), 389 U.S. 347, 357. Exigent circumstances may justify warrantless entries upon property. *State v. Applegate* (1994), 68 Ohio St.3d 348, syllabus. The "emergency aid" doctrine is a narrow type of exigent circumstance which allows the police "to enter a dwelling without a warrant and without probable cause when they reasonably believe, based on specific and articulable facts, that a person within the dwelling is in need of immediate aid." *State v. Gooden*, 9th Dist. No. 23764, 2008-Ohio-178, at ¶6. We premise this exception to the warrant requirement on the following:

> "[T]he roles the officers are playing at each step bears upon reasonableness. Police officers are not simply criminal law enforcers, charged with investigating criminal conduct and developing and maintaining evidence of crime. They have other roles, one of which is their community health, safety, and protection role. Police officers are charged with the duty to prevent crime, preserve the peace, and protect persons and property." *Russell*, 127 Ohio App.3d at 417, citing *State v. Hyde* (1971), 26 Ohio App.2d 32, 33.

{¶7} This Court has recognized a three-prong test to determine the propriety of warrantless entry in emergency situations: 1) the police must have "reasonable grounds to believe that there is immediate need" to protect the lives or property of themselves or others; 2)

the circumstances, as viewed objectively, justify the warrantless entry; and 3) there is a reasonable basis, short of probable cause, to associate the place to be searched with an emergency. Id. at ¶10. Anonymous tips, when corroborated by other factors, events or circumstances, may provide the requisite reasonable grounds to justify the warrantless entry. See *Gooden* at ¶11; *State v. Sandor*, 9th Dist. No. 23353, 2007-Ohio-1482, at ¶18.

{¶8} At the suppression hearing, the State presented the testimony of one witness, Officer Eric Wood of the Akron Police Department ("APD"). Officer Wood testified that he was dispatched to 1940 Preston Avenue regarding a domestic fight between a male and a female. Upon arriving in the area, he discovered that there was no such address and no such activity in the immediate area. He testified that he contacted the APD search channel which called the telephone number of the woman who had reported the fight. Officer Wood testified that the woman gave her own address and stated that the fight was at the house across the street from her own, on the corner of Brittain Road and Preston Avenue, that there was a "for sale" sign in the yard, and that the fighting parties had entered the home. Based on the identifying information, Officer Wood testified that he realized that the subject house was 1540 Preston, not 1940. He testified that he did not know whether dispatch misunderstood the woman's original report or whether the woman had misstated the address. Officer Wood further testified as follows.

{¶9} Officer Wood approached the house and knocked on the front door. He heard people talking inside, and he could see several people in the living room through the wavy glass of the window. Eventually, a man came to the window, told the officer through the glass that there was no fight there, and left towards the back of the house. The officer noticed a lot of movement inside the house, and he heard thumping from upstairs. Based on information that the fighting male and female had entered the home, Officer Wood called for back up assistance. At

that time, a man came out of the house, shut the door behind himself, and identified himself as Jermaine Baker.

{¶10} Baker became agitated by the presence of the police, cussing and swearing. Officer Wood testified that Baker's behavior corroborated the informant's call reporting a fight on the property. The officer explained:

> "In my experience, people that are engaged in fights often don't want the police assistance and also they take their anger and their frustration and being involved in a fight out on the police officers when they arrive and that's my experience handling fight calls."

{¶11} Officer Wood testified that Baker then admitted that there had been a fight on the property, "that he was involved in a fight with some bitches and that the bitches f***ing left." Officer Wood explained that, given Baker's admission that there was a fight, and the neighbor's report that the fighting parties had entered the house, he needed to make sure that no one inside was injured. At that time, a second police car arrived on scene and went to the back of the house. The responding officers saw several men exiting the back of the house, attempting to flee. They stopped the men, who identified themselves. The officers reported their names to Officer Wood, who recognized two of the men as people who had previously been charged with felonious assault and were known to carry firearms.

{¶12} Baker then turned to reenter the house, but he had inadvertently locked the door. Baker became more profane and belligerent and the police placed him under arrest for disorderly conduct.

{¶13} Officer Wood testified that he then entered 1540 Preston without Baker's consent or a warrant based on:

> "The nature of the call, the fact there was male, females involved. I could only see males inside that were visible at the time. The changing of the story that there was no fight to actually being a fight. The history of the people that we knew had

> left. The sounds and things that I could hear from inside the house while I'm knocking on the door. The people attempting to leave. It did seem to me that they're, given all the things going on, there may have been someone actually hurt inside this house."

He asserted that the purpose of the entry was "[t]o check the welfare for any possible victims seriously injured inside."

{¶14} There is competent, credible evidence to support the trial court's findings of fact that 1) Officer Wood's experience led him to believe that the informant's report of a fight at the home was accurate based on Baker's agitation and behavior; 2) the officer was aware that people fleeing the home had prior criminal records; 3) Baker admitted there had earlier been a fight on the property despite his initial denial; 4) the officer heard sounds coming from the home; and 5) the officer only saw males in and around the property although the informant reported, and Baker admitted, that the fight involved women. Accepting these facts as true, the trial court did not err by concluding that Officer Wood had objectively reasonable grounds to believe that there was a woman inside the house who had been injured in the fight and was in need of emergency aid. Accordingly, the trial court did not err in concluding that exigent circumstances existed pursuant to the emergency aid doctrine, that the APD's warrantless entry and search of 1540 Preston Avenue was reasonable, and that the evidence was lawfully seized. Baker's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> "THE DEFENDANT WAS DENIED A FAIR TRIAL DUE TO PLAIN ERROR WHEN JOURNAL ENTRIES OF DEFENDANT'S TWO PRIOR CONVICTIONS WERE PUBLISHED TO THE JURY."

{¶15} Baker argues that the trial court committed plain error by publishing journal entries of his prior convictions to the jury in lieu of allowing Baker to stipulate to the prior convictions. This Court disagrees.

{¶16} Pursuant to Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." To constitute plain error, the error must be obvious and have a substantial adverse impact on both the integrity of, and the public's confidence in, the judicial proceedings. *State v. Tichon* (1995), 102 Ohio App.3d 758, 767. A reviewing court must take notice of plain error only with the utmost caution, and only then to prevent a manifest miscarriage of justice. *State v. Bray*, 9th Dist. No. 03CA008241, 2004-Ohio-1067, at ¶12. This Court may not reverse the judgment of the trial court on the basis of plain error, unless appellant has established that the outcome of the trial clearly would have been different but for the alleged error. *State v. Kobelka*, 9th Dist. No. 01CA007808, 2001-Ohio-1723, citing *State v. Waddell* (1996), 75 Ohio St.3d 163, 166.

{¶17} Baker was charged with having weapons while under disability in violation of R.C. 2923.13(A)(2)/(A)(3). To secure a conviction, the State was required to prove all necessary elements of the offense beyond a reasonable doubt. The State had to prove, in part, that Baker had been convicted of any felony offense of violence (A)(2)/any offense involving the illegal possession of any drug of abuse (A)(3).

{¶18} Baker argues that the trial court should have excluded the judgment entries of conviction on the authority of *Old Chief v. United States* (1997), 519 U.S. 172. We rejected this same argument in a previous appeal by Baker in regard to an earlier conviction for having weapons while under disability. *State v. Baker*, 9th Dist. No. 23840, 2008-Ohio-1909. Baker appealed that decision to the Ohio Supreme Court, which accepted his appeal, as well as certification of a conflict. The Supreme Court recently dismissed those causes as having been improvidently certified and accepted. *State v. Baker*, Slip Opinion No. 2009-Ohio-1675, at ¶1. The high court further ordered that this Court's opinion in *State v. Baker*, 9th Dist. No. 23840,

2008-Ohio-1909, not be cited as authority except as by the instant parties. *State v. Baker*, Slip Opinion No. 2009-Ohio-1675, at ¶2. Because this assignment of error involves the identical parties, our rejection of Baker's argument in a prior appeal remains applicable to the instant appeal. Furthermore, this Court rejected these same arguments initially in *State v. Kole* (June 28, 2000), 9th Dist. No. 98CA007116, and several times since then. See, e.g., *State v. Simmons*, 9th Dist. No. 24218, 2009-Ohio-1495. Baker has presented no compelling argument to cause this Court to deviate from our prior precedent. Accordingly, it was not error for the trial court to admit journal entries of Baker's prior convictions into evidence. Baker's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> "DEFENDANT WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO EFFECTIVE COUNSEL WHEN HIS TRIAL ATTORNEY CONSENTED TO PRESENTING TO THE JURY REDACTED JOURNAL ENTRIES OF DEFENDANT'S PRIOR FELONY CONVICTIONS."

{¶19} Baker argues that his trial counsel was ineffective for consenting to the publication to the jury of redacted journal entries of his prior convictions for robbery and possession of cocaine. This Court disagrees.

{¶20} To establish the existence of ineffective assistance of counsel, Baker must satisfy a two-pronged test:

> "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *State v. Hoehn*, 9th Dist. No. 03CA0076-M, 2004-Ohio-1419, at ¶43, quoting *Strickland v. Washington* (1984), 466 U.S. 668, 687.

{¶21} Based on our resolution of the second assignment of error, Baker has failed to demonstrate that counsel's performance was deficient when he agreed that journal entries of Baker's prior convictions should be submitted to the jury. Accordingly, he has failed to establish the first prong of the *Strickland* test. Baker's third assignment of error is overruled.

III.

{¶22} Baker's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
CONCURS

BELFANCE, J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶23} I concur with the result in this case, in part out of deference to our precedent. However, if I were to write without regard to stare decisis, I would analyze the potential applicability of *Old Chief v. United States* (1997), 519 U.S. 172, differently.

APPEARANCES:

DONALD GALLICK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.