

[Cite as *State v. Baird*, 2021-Ohio-1962.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : Nos. 109448 and 109449
 v. :
 :
 STACEY BAIRD, ET AL., :
 :
 Defendants-Appellants. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: June 10, 2021

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-18-626412-A and CR-18-626412-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney,
Frank Romeo Zeleznikar, Katherine Mullin, Kristin L. Sobieski,
and Tasha Forchione, Assistant Prosecuting Attorneys, *for*
appellee.

Tina R. Haddad, *for appellant* Stacey Baird.

Nancy A. Zoller, *for appellant* Michael Baird

MICHELLE J. SHEEHAN, J.:

{¶ 1} In this consolidated appeal, appellants Michael and Stacey Baird challenge the trial court's denial of their motions to withdraw guilty plea. Because

the trial court did not abuse its discretion in denying the motions, we affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

A. Procedural History.

{¶ 2} On February 26, 2018, Michael and Stacey Baird were indicted. Michael Baird was indicted on two counts of felonious assault, with firearm and forfeiture specifications. They were both indicted for one count of illegal manufacture of drugs with firearm, juvenile, and forfeiture specifications; one count of assembly or possession of chemicals used to manufacture controlled substances with firearm, juvenile, and forfeiture specifications; two counts of trafficking drugs with firearm, juvenile, and forfeiture specifications; two counts of drug possession with firearm and forfeiture specifications; and possession of criminal tools with forfeiture specifications.

{¶ 3} On May 8, 2018, both Michael and Stacey Baird filed motions to suppress evidence in which they challenged the ability of the police to enter their home, which entry led to the issuance of a search warrant. Prior to a hearing on their motions to suppress, they each entered into plea agreements with the state of Ohio.

{¶ 4} On September 25, 2018, Michael Baird pleaded guilty to one count of negligent assault, a misdemeanor of the third degree; one count of attempted illegal manufacture/cultivation of drugs with forfeiture specifications; one count of attempted drug possession with forfeiture specifications; one count of drug

possession; and one count of possession of criminal tools with forfeiture specifications. Stacey Baird pleaded guilty to one count of attempted illegal manufacture/cultivation of drugs with forfeiture specifications; one count of attempted drug possession with forfeiture specifications; one count of drug possession; and one count of possession of criminal tools with forfeiture specifications. On the same day, the trial court sentenced Michael Baird to a 60-day jail sentence for the negligent assault charge and to community control sanctions for one and one-half years on the remaining charges. The trial court sentenced Stacey Baird to community control sanctions for the same one and one-half year duration.

{¶ 5} On September 6, 2019, both Michael and Stacey Baird filed postsentence motions to withdraw their guilty plea. The motions raised claims that they would not have entered guilty pleas because the state withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The state filed a brief in opposition to the motions. On January 3, 2020, the trial court denied the motions. Michael and Stacey Baird filed appeals of the judgment denying their motions to withdraw guilty plea, and this court consolidated the appeals.

B. Claims Within the Motions to Withdraw Plea.

{¶ 6} Prior to their pleas of guilt, Michael and Stacey Baird filed motions to suppress evidence. Within the motions, the Bairds characterized the events that led to their convictions, stating that members of the Brook Park Police Department were called to the Baird residence upon Michael Baird's report that he was shooting at his

stepson. Officer Nikodym arrived on scene with Officer Jaklitch and found Michael Baird exiting his house with his hands up. Michael Baird was taken into custody. Officer Jaklitch talked with a woman outside the house who advised that the shooting victim, Ryan Snyder was inside the house. Officer Jaklitch entered and began first aid on Snyder. Thereafter, Officer Tesar, Officer Jones, and paramedics arrived. The officers saw a firearm on the kitchen counter and were told additional people were in a back bedroom. Officers told the people to stay in the room and proceeded to go through the house to search for other people, finding a marijuana grow operation in the basement. Officers then secured the house and waited for a search warrant to be obtained. The Bairds argued that the police exceeded their authority to go through the house, claiming that the protective sweep of the home by officers was an unreasonable search that violated the Fourth Amendment to the United States Constitution.

{¶ 7} Attached to their motions to withdraw plea was a Brook Park Police Department Incident Report and the deposition of Snyder, taken August 9, 2019¹. The Bairds claim that the report differed from that which was disclosed during discovery. They did not file the police report that was provided in discovery nor did they file a copy of the search warrant and affidavit that was at issue in the case.

{¶ 8} The Bairds assert that Snyder's statement that he told police about their marijuana grow operation was known to the Brook Park police before the protective

¹ The deposition was taken in *Snyder v. Baird*, Cuyahoga C.P. No. CV-19-911561.

search and that such evidence was not provided in discovery. They equate Snyder's statements to *Brady* material and aver that had they known that the police obtained a search warrant for their residence based upon a tip from Snyder, they would not have entered guilty pleas.

C. The Trial Court's Denial of the Motions to Withdraw Plea.

{¶ 9} On January 5, 2020, both motions to withdraw plea were denied. The trial court noted in its review of the evidence that Michael Baird, having been mirandized, detailed the facts of the assault and admitted that marijuana was grown in his basement. The trial court further found that it was apparent in the record presented on the motions that a search warrant was issued, but that neither the Bairds nor the state presented the warrant for consideration by the trial court. As such, the trial court found that the fact that Snyder, a family member, may have tipped police off was not "exculpatory in nature." Further, the trial court found that the Bairds, by entering guilty pleas, waived their challenges to the search warrant. Finally, the trial court concluded that the Bairds did not establish any manifest injustice.

II. LAW AND ARGUMENT

A. Appellants' First and Second Assignments of Error.

{¶ 10} Appellants have filed identical assignments of error, which are intertwined. Their first assignment of error reads:

The trial court erred in denying appellant[s'] motion to withdraw guilty plea since appellant[s] convincingly established that a manifest

injustice occurred entitling appellant to relief or at least a hearing. Said denial of hearing was an abuse of discretion.

{¶ 11} The second assignment of error reads:

The appellant[s] received ineffective assistance of counsel with respect to [their] guilty pleas and sentencing proceeding.

B. Standard of Review of the Denial of Motion to Withdraw Plea.

{¶ 12} We review the denial of a motion to withdraw guilty plea for an abuse of discretion. Pursuant to Crim.R. 32.1, an offender may move to withdraw a guilty plea after sentence is imposed to “correct manifest injustice.” A postsentence motion to withdraw a guilty plea is permitted in extraordinary cases, and it is within the discretion of the trial court to assess the good faith, credibility, and weight to the assertions made. *State v. Legree*, 61 Ohio App.3d 568, 572, 573 N.E.2d 687 (6th Dist.1988).

C. The Trial Court Did Not Abuse Its Discretion In Denying the Motions to Withdraw Guilty Plea.

{¶ 13} In arguing their assignments of error, the Bairds contend the trial court erred because the information in Snyder’s affidavit and the police report demonstrates that the state of Ohio withheld material information pursuant to *Brady* and had that information been disclosed, they would have maintained their motion to suppress. Alternatively, they argue that they received ineffective assistance of counsel because had counsel obtained the alleged *Brady* information, they would have proceeded with the motion to suppress.

{¶ 14} The state argues that the information alleged to be new was not in the state's possession, that it is not *Brady* material, that the Bairds waived their ability to challenge the evidence by entering guilty pleas, and that the protective sweep of the property following the shooting did not offend the Fourth Amendment. Finally, the state alleges that the Bairds waived their ability to claim ineffective assistance of counsel, but that if this court determines that the Bairds may maintain a claim of ineffective assistance of counsel, there was none.

{¶ 15} No appeal was taken of the convictions in these cases. "In a motion to withdraw a guilty plea, *res judicata* bars the assertion of claims that were or could have been raised at trial or on appeal." *State v. Patrick*, 8th Dist. Cuyahoga No. 99418, 2013-Ohio-5020, ¶ 7, citing *State v. Ford*, 8th Dist. Cuyahoga No. 98049, 2012-Ohio-4597, ¶ 2. In this case, the Bairds each filed a motion to suppress and thereafter entered guilty pleas. *Res judicata* precludes litigation of the motion to suppress. Moreover, *res judicata* is applicable in this case because the trial court specifically found that the information learned in Snyder's deposition was not exculpatory. Further, had that information been available to defense, we do not believe it shows that the prior motion to suppress would have been successful.

{¶ 16} First, any statement that Snyder tipped police off before they conducted their sweep of the home is not exculpatory information that would be subject to disclosure, even were it shown that such information was in the possession of the state. "*Brady* requires a reasonable probability of a different outcome with the exculpatory evidence, that is, an undermined confidence in the

trial result obtained without the exculpatory evidence.” *State v. Jackson*, 57 Ohio St.3d 29, 33, 565 N.E.2d 549 (1991), citing *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). A possibility that information might help the defense “‘does not establish ‘materiality’ in the constitutional sense.’” *Id.*, quoting *United States v. Agurs*, 427 U.S. 97, 109-110, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

{¶ 17} Here, officers of the Brook Park Police Department responded to a shooting at a residence. Officers took the self-professed shooter into custody, began first aid on Snyder, and went through the house to ascertain if anyone else was present within minutes of their arrival. The Fourth Amendment has been found to protect a person’s home from warrantless search, unless there is an exception. We found in *State v. Shaffer*, 8th Dist. Cuyahoga No. 93948, 2010-Ohio-1744, ¶ 21, that

“[a] ‘protective sweep’ is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.” *Maryland v. Buie* (1990), 494 U.S. 325, 327, 110 S.Ct. 1093, 108 L.Ed.2d 276. The Fourth Amendment permits an officer to perform a protective sweep “if the searching officer possessed a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted the officer in believing that the area swept harbored an individual posing a danger to the officer or others.” (Internal quotations, alterations, and citations omitted.) *Id.*

{¶ 18} The Bairds claim that any exigency was over once Michael Baird was in custody and because it was reported to the police on scene that no one else was in the house, establishing “that all parties [were] present and accounted for.” However, this contention belies the situation the responding officers faced. They responded

to a shooting, and their source of information was coming from the self-professed shooter and his family. Further, the sweep of the home was conducted immediately upon officers responding to the scene. Based upon this record, we cannot say that the actions by the police were unwarranted or violative of the Fourth Amendment, nor can we say even if the police were told of the grow operation in the minute or so prior to the sweep by Snyder, such information would negate the propriety of their actions.

{¶ 19} In order to substantiate a claim for ineffective assistance of counsel, a defendant must first show a substantial violation of defense counsel's essential duties to his client that fell below an objective standard of reasonableness. *State v. Bradley*, 42 Ohio St.3d 136, 141, 538 N.E.2d 373 (1989). In order to establish this first prong, a defendant must show that counsel's representation fell below an objective standard of reasonableness. *Id.* at 142, quoting *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). “[B]ecause of the difficulties inherent in making [such an] evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance * * *.” *Bradley* at 142, quoting *Strickland* at 689.

{¶ 20} The Bairds argument of ineffective counsel rests on their claim that the newly presented evidence would have changed the outcome of the motion to suppress and they would not have entered into a plea agreement. As we noted above, the sweep of the house was justified. Accordingly, the trial court did not abuse its discretion in denying the motions to withdraw plea and, further, the Bairds have not

shown that they were subject to ineffective assistance of counsel or that a manifest injustice occurred.

III. CONCLUSION

{¶ 21} The trial court correctly determined that the new evidence regarding statements from the victim was not exculpatory and, as such, not subject to disclosure under the *Brady* rule. Further, appellants entered guilty pleas, waiving their ability to challenge the evidence and their abandoned motions to suppress. Appellants have not presented evidence that clearly shows they would have prevailed on the merits of a motion to suppress had they not entered pleas; therefore they have not shown they suffered ineffective assistance of counsel.

{¶ 22} Appellants' first and second assignments of error are overruled, and the trial court's judgment is affirmed.

It is ordered that appellee recover of appellants 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. 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.

MICHELLE J. SHEEHAN, JUDGE

SEAN C. GALLAGHER, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR