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

STATE OF OHIO, CITY OF BLUE ASH, Plaintiff-Appellee, vs. SCOTTIE M. BULLOCK, Defendant-Appellant.	: : : : : :	APPEAL NO. C-100327 TRIAL NO. M-09CRB-22301 *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Defendant-appellant Scottie M. Bullock appeals his conviction for violating the Blue Ash vicious-dog ordinance. We affirm.

On June 5, 2009, Blue Ash Police Officer Ken Johnson was attacked by a Chihuahua on the porch of Bullock's home. The dog first bit Johnson's left hand and then his right. Another police officer, Roger Pohlman, tried to subdue the dog with a Taser gun, but the dog continued to latch onto Johnson's hand. Pohlman then shot the dog with his service revolver, striking it three times. After the third and fatal shot, the dog released Johnson's bloodied hand. Bullock, the dog's owner, was out of town at the time.

When Bullock returned to town, Pohlman cited him for failing to confine a vicious dog in violation of Blue Ash Codified Ordinances 505.14(b)(1), which proscribes failing to

---

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

"securely confine" a "vicious dog" "while the dog is on the premises of the owner." In addition, Pohlman cited Bullock for violating Blue Ash's running-at-large ordinance because Bullock had also "permitted or allowed" his dog to "run" over the "public" sidewalk.[2] The running-at-large violation was based on a complaint from a jogger, Sarah Hansen, who had been bit by the dog on the public sidewalk in front of Bullock's home on June 5, 2009, and whose complaint the officers had been investigating when the dog bit Johnson.

The violations were set for the same court date. On that date, Bullock pleaded guilty to the running-at-large violation by signing the back of the citation. He pleaded not guilty to the vicious-dog violation and then later moved to dismiss the charge, relying on the Fifth Amendment's Double Jeopardy Clause. The trial court overruled his motion. After a jury trial, Bullock was convicted of the vicious-dog violation. This appeal followed.

In his first assignment of error, Bullock argues that the trial court erred by failing to dismiss the vicious-dog violation because the "second" prosecution violated the Double Jeopardy Clause and because the ordinance was unconstitutional. But Bullock could not demonstrate a double-jeopardy violation arising from a "successive" prosecution because the two ordinances satisfied the *Blockburger*[3] comparison-of-the-elements test,[4] and there was not a "successive" prosecution[5] or a relitigation of facts after an acquittal.[6]

---

[2] Blue Ash Codified Ordinances 505.01(c)(1).
[3] *Blockburger v. United States* (1932), 284 U.S. 299, 52 S.Ct. 180.
[4] See *University of Cincinnati v. Tuttle*, 1st Dist. No. C-080357, 2009-Ohio-4493, at ¶13, citing *United States v. Dixon* (1993), 509 U.S. 688, 113 S.Ct. 2849, and *State v. Zima*, 102 Ohio St.3d 61, 2004-Ohio-1807, 806 N.E.2d 542.
[5] See *Ohio v. Johnson* (1984), 467 U.S. 493, 104 S.Ct. 2536; see, also, *State v. Boomershine* (1993), 85 Ohio App.3d 21, 619 N.E.2d 52.
[6] See *Yeager v. United States* (2009), ___ U.S. ___, 129 S.Ct. 2360, 2366-2367, citing *Ashe v. Swenson* (1970), 397 U.S. 436, 90 S.Ct. 1189.

Bullock's failure to challenge the constitutionality of the statute at trial amounted to a waiver of the issue,[7] and he cannot now demonstrate plain error[8] where the Ohio Supreme Court has upheld the constitutionality of a similar statute.[9] Accordingly, we overrule the first assignment of error.

In his second assignment of error, Bullock contends that the trial court erred by admitting hearsay and "other acts" evidence. According to Bullock, the police report that was admitted into evidence contained out-of-court statements by Hansen that were admitted for their truth. Our review of the record indicates that Bullock did not object to the admission of the report on hearsay grounds and that he had pursued a strategy premised upon the admission of the report. His only objection to the report was that it contained markings that were not included on the copy that he had sought to admit. We reject a finding of plain error[10] and concur with the state that any error by the court was invited by Bullock.

Bullock argues also that the trial court's admission of evidence of the dog's propensity for violence violated Evid.R. 404(B). But that rule of evidence only proscribes the use of prior bad acts to establish the character of a person. Therefore, the court's admission of evidence concerning the dog's propensity for violence did not violate Evid.R. 404(B). Accordingly, we overrule the second assignment of error.

In his final assignment of error, Bullock contends that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. We overrule this assignment of error.

---

[7] *State v. Awan* (1986), 22 Ohio St.3d 120, 489 N.E.2d 277, syllabus.
[8] Crim.R. 52(B).
[9] See *Youngstown v. Traylor*, 123 Ohio St.3d 132, 2009-Ohio-4184, 914 N.E.2d 1026.
[10] Crim.R. 52(B).

First, upon the evidence adduced at trial, reasonable minds could have reached different conclusions as to whether each element of the strict-liability offense[11] had been proved beyond a reasonable doubt.[12] And second, we find nothing in the record of the proceedings below to suggest that the trier of fact, in resolving the conflicts in the evidence adduced on the charged offense, and in particular on the element of lack of provocation, lost its way or created such a manifest miscarriage of justice as to warrant the reversal of Bullock's conviction.[13] We note that the weight of the evidence and the credibility of the witnesses were primarily for the trier of fact.[14]

Accordingly, we affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and **CUNNINGHAM, JJ.**

To the Clerk:

Enter upon the Journal of the Court on June 8, 2011

per order of the Court _____.
Presiding Judge

---

[11] See *State v. Squires* (1996), 108 Ohio App.3d 716, 718-719, 671 N.E.2d 627 (holding that "no person shall fail" language in statute that promotes the public safety imposed strict liability); see, also, *State v. Rife* (June 13, 2000), 10th Dist. No. 99AP-981; *State v. Judge* (Apr. 19, 1989), 1st Dist. No. C-880317.

[12] See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781.

[13] See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

[14] See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.