**[Cite as *State v. Lowe*, 2010-Ohio-4155.]**

**IN THE COURT OF APPEALS OF OHIO**
**SECOND APPELLATE DISTRICT**
**MONTGOMERY COUNTY**

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| STATE OF OHIO | : | Appellate Case No. 23569 |
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| Plaintiff-Appellee | : | Trial Court Case No. 08-CR-3944 |
| | : | |
| v. | : | (Criminal Appeal from |
| | : | Common Pleas Court) |
| JOHN F. LOWE, JR. | : | |
| | : | |
| Defendant-Appellant | : | |

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OPINION

Rendered on the 3rd day of September, 2010.

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DINKELACKER, J.

**{¶ 1}** In his sole assignment of error, defendant-appellant John F. Lowe, Jr. claims that his conviction for carrying a concealed weapon[1] was against the manifest weight of the evidence. For the reasons set forth below, we disagree and affirm the conviction.

[1] R.C. 2923.12(A)(2)

**{¶ 2}** On October 4, 2008, Dayton Police Officers Cornwell and Beavers were on bicycle patrol when they saw a van leaving an apartment complex that matched the description of a van that had been used in an aggravated robbery a few weeks before. They noted that the van appeared to be traveling at a high rate of speed and had failed to use its turn signal. The two officers radioed for assistance and began to follow the van. Police Officer Wolpert, driving a patrol car, heard the radio call, and responded. He pulled the van over a few blocks from where it was initially seen.

**{¶ 3}** Almost immediately after Wolpert initiated the stop, a second patrol car arrived, followed by Cornwell and Beavers. The driver was Dwight Cooper and Lowe was a passenger in the front seat. The two of them were driving to their weekly card game. While the two were in the vehicle, Cornwell saw Lowe lean back between the seats and reach down to the floorboard. Beavers witnessed similar movement, but neither officer could see what Lowe was actually doing. Cooper and Lowe were then removed from the vehicle. Wolpert searched the vehicle in the area where Lowe had been seen to be reaching. After a short period of time, Wolpert found a loaded, silver revolver two feet from the rear left corner of the passenger seat, concealed under a garbage bag. Wolpert testified that the gun was within the reach of someone sitting in the passenger seat.

**{¶ 4}** Cooper also testified, but his version of the story differed somewhat from what the officers testified to. Cooper said that the van was in poor mechanical shape and could not possibly have been speeding. He also said that, after the stop, the van was first searched by three officers for several minutes and nothing was found. He said that one of the bicycle officers had accused him of almost running him over and

had been yelling at him, using profanity, until other officers told him to cool off.[2] Cooper said that it was this officer who then searched the van, after the others had found nothing, and was the one who found the gun. He could not say whether Lowe had reached back during the encounter, as he was distracted by watching the police officers in the rear-view mirror. He said that he told the police that the gun did not belong to him and that he did not know it was in the van.

**{¶ 5}** Lowe was indicted on one count of carrying a concealed weapon, and the case proceeded to a jury trial. The jury found Lowe guilty, and he was convicted and sentenced accordingly. He now appeals, raising one assignment of error.

**{¶ 6}** In this case, Lowe argues that the state failed to establish that he had or "possessed" the weapon recovered from the van. In his brief, he writes that "the State presented no testimony placing the gun in Lowe's hand or on his person." Thus, while his assignment asserts only that the claim was against the manifest weight of the evidence, a close reading of Lowe's argument reveals that he also claims that the evidence was insufficient to support his conviction.

**{¶ 7}** The standards for determining whether a conviction was based upon insufficient evidence or was against the manifest weight of the evidence are well established. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.[3] On the other hand, when reviewing whether a judgment is against the

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[2] Cooper was the only witness to testify that one of the officers claimed that he was almost struck by Cooper's van. None of the officers who testified said anything about this, including the two officers who had been on bicycles, nor were they asked about the matter.

[3] See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52.

manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.[4]

**{¶ 8}** In order to achieve a conviction in this case, the state had to establish that Lowe knowingly carried or had, concealed on the person's person or concealed ready at hand, a handgun.[5] "Ready at hand" means "so near as to be conveniently accessible and within immediate physical reach."[6] This court has found that a weapon is "ready at hand" when it is on the floorboard in front of the seat next to the driver.[7] This court also found that a weapon is "ready at hand" when it is concealed under the carpet in the passenger area, even if the defendant would have to exit the vehicle to retrieve it.[8]

**{¶ 9}** In this case, Officers Cornwell and Beavers saw Lowe lean back and do something they could not see in the area behind his seat. And Officer Wolpert found the handgun, under a garbage bag, two feet from the left rear corner of the passenger seat. He testified that the gun, where it was found, was accessible to someone sitting in the passenger seat. Further, Mr. Cooper testified that he had never owned a gun, had never placed a gun in the vehicle, and did not know that there was a handgun in the van. This testimony was enough to allow the jury to properly conclude that the weapon belonged to Lowe and that it was "concealed ready at hand."

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4 See id. at 387.

5 See R.C. 2923.12(A)(2).

6 *State v. Miller*, Montgomery App. No. 19589, 2003-Ohio-6239, at ¶15, citing *Porello v. State* (1929), 121 Ohio St. 280.

7 *State v. Thornton* (May 4, 2001) Mont. App. 18545.

8 *Miller*, supra, at ¶16 ("[T]he hidden guns were conveniently accessible to Miller and within his immediate reach had he merely pushed the front seat down and reached under the dashboard for the weapons. Miller could have also exited the vehicle and reached for the guns that were recovered. The guns were not in a locked glove compartment nor were they in a locked trunk.").

**{¶ 10}** Lowe claims that the officers' testimony was inconsistent, especially when compared to the testimony of Mr. Cooper. But a review of the testimony of the officers reveals no material inconsistencies. The officers were in different positions during the stop and saw different aspects of the stop. This accounts for the fact that each individual's officer's account was different in some, nonmaterial aspects. And, as for the version testified to by Mr. Cooper, we note that matters as to the credibility of evidence are for the trier of fact to decide.[9] This is particularly true regarding the evaluation of witness testimony.[10] We will not reverse a conviction simply because the jury chose one credible version of events over another.

**{¶ 11}** Having reviewed the testimony presented at trial, we conclude that Lowe's conviction for carrying a concealed weapon was based upon sufficient evidence and was not against the manifest weight of the evidence. Therefore, we overrule Lowe's sole assignment of error.

**{¶ 12}** The judgment of the Montgomery County Common Pleas Court is affirmed.

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BROGAN, J. and FAIN, J., concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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[9] *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, at ¶116.

[10] Id.