[Cite as *State v. Taylor*, 2011-Ohio-5462.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio	Court of Appeals No. L-10-1302
Appellee	Trial Court No. CR0200903115
v.	
Edward Lamale Taylor	**DECISION AND JUDGMENT**
Appellant	Decided: October 21, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kathryn J. T. Sandretto, Assistant Prosecuting Attorney,
for appellee.

Stephen D. Long, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals his conviction for carrying a concealed weapon, entered on a finding of guilty after a no contest plea in the Lucas County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} In the early morning hours of August 27, 2009, on a street near the University of Toledo, a university police officer timed appellant, Edward Lamale Taylor, exceeding the speed limit by 20 miles per hour. The officer stopped appellant and, on approaching the van appellant was driving, noted a strong odor of an alcoholic beverage from inside. The officer also observed that appellant's speech was slurred and his eyes glassy.

{¶ 3} The officer asked appellant to exit his vehicle and perform a series of field sobriety tests upon which appellant performed poorly. The officer arrested appellant for operating a motor vehicle while intoxicated.

{¶ 4} Police impounded appellant's van, but, in conformity with university police policy, conducted an inventory search of the vehicle before it was towed. Under the van's passenger seat, police found a laptop computer bag containing a loaded .44 caliber revolver wrapped in a plastic grocery bag.

{¶ 5} On November 4, 2009, the Lucas County Grand Jury named appellant in a single count indictment for carrying a concealed weapon in violation of R.C. 2923.12(A)(2) and (F), a fourth degree felony. Appellant entered a plea of not guilty and moved to suppress the gun found in the warrantless search of his van, arguing that the initial vehicle stop was pretextual and the subsequent search without warrant or consent.

{¶ 6} The court conducted a hearing on the suppression motion at which officers testified to the reason for the traffic stop, appellant's OVI arrest and the discovery of the handgun. Introduced by the state in the hearing was also the university police's written policy on an inventory search.

{¶ 7} Appellant conceded in his post-hearing argument that police may constitutionally conduct an inventory search if such a search is in conformity with a written standard. See *Florida v. Wells* (1990), 495 U.S. 1, 4. Nevertheless, appellant argued, the written policy only permitted a search of a closed container "prior to securing the trunk" of the vehicle. Since the van at issue technically had no trunk, appellant insisted, the rule was at least ambiguous and should be construed against the state.

{¶ 8} When the trial court denied appellant's motion to suppress, appellant elected to withdraw his not guilty plea and instead pled no contest to the indictment. The court accepted his plea, found him guilty and sentenced him to a 17 month term of imprisonment. It is from the judgment of this conviction that appellant brings this appeal.

{¶ 9} Appellant sets forth the following single assignment of error:

{¶ 10} "Appellant's conviction for carrying a concealed weapon was not supported by the substantial weight of the evidence, obtained through prosecutorial misconduct and/or due to the ineffective assistance of counsel where the testimony at the suppression hearing clearly establishes that the weapon in question was not 'ready at hand.'"

{¶ 11} R.C. 2923.12(A)(2), in material part, provides:

{¶ 12} "(A) No person shall knowingly carry or have, concealed on the person's person or concealed *ready at hand*, any of the following:

{¶ 13} "* * *

{¶ 14} "(2) A handgun * * *." (Emphasis added.)

{¶ 15} Appellant argues that since the handgun found in appellant's van was under the passenger seat, in a computer bag, and wrapped in a plastic grocery bag, it was not

"ready at hand." Since this is an element of the offense, appellant maintains, a finding of guilt is against the weight of the evidence, the prosecutor's statement that the gun was "ready at hand" during the plea colloquy was prosecutorial misconduct and appellant's trial counsel was ineffective for failing to bring this deficiency to the attention of the court below.

{¶ 16} The state responds that appellant's plea forecloses any of the arguments he now makes on appeal. Moreover, even if the court could consider appellant's arguments, case law supports an interpretation of the phrase "ready at hand" sufficient to encompass the location in which the gun in this matter was discovered.

{¶ 17} "The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint * * *." Crim.R.11(B)(2). While a no contest plea generally waives all nonjurisdictional defects in a felony conviction, the plea leaves open a challenge to the sufficiency of the indictment. *State v. Watson*, 12th Dist. No. CA2007-04-020, 2008-Ohio-629, ¶ 11. Even so, such a challenge is deemed waived and may only be raised on appeal under a plain error standard unless raised in the trial court. Id.

{¶ 18} In this matter, appellant does not challenge the sufficiency of the indictment as much as the sufficiency of the evidence. The indictment is written in the language of the statute and plainly states that the firearm in question was "ready at hand." The effect of appellant's no contest plea is an admission to all of the allegations in the indictment, including the element for which he now claims there was insufficient evidence. Concomitantly, since appellant is deemed to have admitted the allegations in

the indictment, there is no prosecutorial misconduct in the prosecutor reciting the language of the indictment during the plea hearing.

{¶ 19} With respect to ineffective assistance of trial counsel, following a guilty or no contest plea, the only issue available on appeal is whether by counsel's deficient performance appellant was induced to involuntarily enter a plea. When claiming ineffective assistance of counsel where a plea has been entered, an appellant must show that but for counsel's deficient performance, he or she would not have pled guilty or no contest and would have insisted on going to trial. *State v. Lett*, 7th Dist. No. 08-MA-84, 2010-Ohio-4188, ¶ 32; *Hill v. Lockhart* (1985), 474 U.S. 52, 58-59.

{¶ 20} In this matter, appellant asserts only that trial counsel's performance was deficient because he failed to pursue the "ready at hand" issue. Appellant makes no assertion concerning the voluntariness of his plea. Consequently, we must conclude that appellant failed to meet his burden on this issue. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 21} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE

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