

[Cite as *State v. Boatwright*, 2003-Ohio-5010.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO)	CASE NO. 02 CA 176
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION
)	
JOHN BOATWRIGHT, II)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Court of
Common Pleas of Mahoning County, Ohio
Case No. 02 CR 71

JUDGMENT: Affirmed

APPEARANCES:

For Plaintiff-Appellee:	Atty. Paul J. Gains Mahoning County Prosecutor Atty. Joseph R. Macejko Assistant Prosecuting Attorney 21 West Boardman Street, 6 th Floor Youngstown, Ohio 44503
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For Defendant-Appellant:	Atty. Michael L. Gollings 4410 Market Street Youngstown, Ohio 44512
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JUDGES:

Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich

Hon. Mary DeGenaro

Dated: September 18, 2003

WAITE, P.J.

{¶1} Appellant John A. Boatwright, II, is challenging his conviction and sentence for carrying a concealed weapon, R.C. 2923.12(A), on the grounds that the statute runs afoul of his constitutional right to bear arms. Appellant entered a guilty plea to the charge. Due to his guilty plea, he has waived all challenges to his conviction except those relating to the voluntariness of his plea. *Ross v. Common Pleas Court of Auglaize Cty.* (1972), 30 Ohio St.2d 323, 323-324, 285 N.E.2d 25; *State v. Awan* (1986), 22 Ohio St.3d 120, 22 OBR 199, 489 N.E.2d 277. The constitutional issue raised by Appellant does not affect the voluntariness of his plea, and therefore, is not a proper subject for review. For this reason, we must overrule Appellant's assignment of error.

{¶2} On February 14, 2002, Appellant was indicted on one count of carrying a concealed weapon, in violation of R.C. 2923.12, a fourth degree felony. The charge arose from events which took place on January 17, 2002. On that day Appellant entered the home of Lillie Hudson. Appellant was prohibited from having contact with Ms. Hudson due to a civil protection order. Ms. Hudson found Appellant hiding in the shower. There was an altercation between Appellant and Ms. Hudson. Appellant fled when he learned that the police had been called. After getting a description, the police found Appellant walking on a Youngstown street. When they arrested Appellant, they found a loaded .380 caliber gun in his jacket pocket.

{¶3} On March 29, 2002, Appellant entered into a Crim.R. 11 plea agreement. Appellant pleaded guilty to the count in the indictment, and the prosecutor agreed to remain silent at sentencing. The sentencing hearing was rescheduled a number of times, eventually being set for July 10, 2002.

{¶4} On April 10, 2002, the First District Court of Appeals released the case of *Klein v. Leis* (2002), 146 Ohio App.3d 526, 767 N.E.2d 286. The *Klein* decision held that Ohio's concealed carry law violated Section 4, Article 1 of the Ohio Constitution.

{¶5} On July 5, 2002, Appellant filed a Motion to Dismiss based on the arguments set forth in the *Klein* decision. The court scheduled a hearing on the motion for September 5, 2002, and rescheduled the sentencing hearing for the same day. At the hearing, the trial court noted that Appellant had not filed a motion to vacate his plea. The court overruled the motion to dismiss and proceeded to sentencing. The court sentenced Appellant to one year of community control sanctions. The court's decision was memorialized by Judgment Entry filed on September 11, 2002. Appellant filed this timely appeal on October 4, 2002.

{¶6} Appellant's single assignment of error states:

{¶7} "It was Error by the Lower Court to Overrule the Defendant-Appellants [sic] Motion to Dismiss the charges as unconstitutional under the Ohio Constitution."

{¶8} Although Appellant raises a constitutional issue in this appeal, we find that he has waived the right to assert this issue by pleading guilty to the charge in the indictment. When a criminal defendant pleads guilty pursuant to a plea agreement, this acts as a waiver of all issues on appeal except for errors relating to the voluntary nature of the plea itself:

{¶9} “A defendant who enters a voluntary plea of guilty while represented by competent counsel waives all nonjurisdictional defects in prior stages of the proceedings.” *Ross*, supra, 30 Ohio St.2d at 323-324, 285 N.E.2d 25, quoting *Crockett v. Haskins* (C.A.6, 1966), 372 F.2d 475.

{¶10} The Ohio Supreme Court has held that constitutional issues may be waived if not properly and timely asserted in the trial court. *Awan*, supra, 22 Ohio St.3d 120, 22 OBR 199, 489 N.E.2d 277, at syllabus. “Constitutional rights may be lost as finally as any others by a failure to assert them at the proper time.” *State v. Childs* (1968), 14 Ohio St.2d 56, 62, 236 N.E.2d 545. This waiver doctrine applies to allegations that a statute is unconstitutionally vague or overbroad. *State v. Campbell* (2000), 90 Ohio St.3d 320, 347, 738 N.E.2d 1178.

{¶11} Although Appellant did file a motion with the trial court attempting to dismiss the case because of alleged constitutional problems with the statute, he filed

this motion after he had already pleaded guilty to the charge. Furthermore, as the trial court noted and as Appellee argues, Appellant has never asked to withdraw his plea in this case. Therefore, Appellant has not alleged any infirmity with the plea process, and he has waived all other errors by pleading guilty.

{¶12} The Second District Court of Appeals dealt with this exact issue in *State v. Earley*, 2nd Dist. No. 19161, 2002-Ohio-4112. In *Earley*, the defendant was charged with possession of crack cocaine and carrying a concealed weapon. He pleaded no contest to the cocaine charge in exchange for dismissing the concealed weapons charge. After the court accepted his plea, the *Klein* decision was released. The defendant then filed a motion to withdraw his plea on the theory that he did not know at the time that the concealed weapons charge was unconstitutional. The Second District held that: “[a]bsent misrepresentation by State agents, a voluntary plea of guilty, intelligently made in light of the then applicable law, does not become invalid because later judicial decisions indicate that the plea rested upon a faulty premise.” *Id.* at 4.

{¶13} Similarly, Appellant’s plea of guilty does not become invalid simply because a subsequent Court of Appeals decision from another appellate district provided him with a new legal theory after he entered his guilty plea.

{¶14} We cannot reach the merits of Appellant's argument because he has waived the issue for purposes of appellate review. We overrule Appellant's assignment of error and affirm the judgment of the trial court.

Judgment affirmed.

Vukovich and DeGenaro, JJ., concur.