[Cite as *State v. Dickman*, 2015-Ohio-1915.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
		No. 14AP-597
v.	:	(C.P.C. No. 13CR-4696)
Michael Dickman,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on May 19, 2015

Ron O'Brien, Prosecuting Attorney, and *Stephen L. Taylor*, for appellant.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

BRUNNER, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals from a decision of the Franklin County Court of Common Pleas, which suppressed the evidence against defendant-appellee, Michael Dickman. We overrule both of the state's assignments of error and affirm the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On March 7, 2013, Sergeant Sheila Murphy, with the Gahanna Police Department, was using an automated scanner to read and run license plates in the Kroger parking lot across from the police station. As she drove slowly through the lot, she passed near where Dickman and another man were sitting in an SUV. As she did, the driver did not acknowledge her but simply stared straight ahead. Sergeant Murphy found this suspicious. She circled the aisle of cars, parked her patrol car, got out, and walked toward

the SUV. At some point when the SUV was out of Sergeant Murphy's view, the driver apparently left the car so as Sergeant Murphy approached only Dickman remained. Dickman was sitting in the passenger seat and fumbling with something (which was later discovered to be trading cards). However, Sergeant Murphy is 5'4" in height and she could not see what Dickman was doing in the passenger seat of the SUV.

{¶ 3} As Sergeant Murphy watched Dickman, he glanced up and appeared startled to see her standing there. Dickman tried and failed to open the door of the SUV. He unlocked the SUV, opened the door (which set off the alarm), slid out, shut the door, and stood by the door. He also dropped some plastic baggies as he got out of the SUV and asked Sergeant Murphy if he could pick them up. She said he could; he did so; and stuffed them in his pocket. The blaring alarm and the plastic baggies had made Sergeant Murphy more suspicious still and she asked Dickman what else he had in his pockets. He replied that he just had some baggies and trading card wrappers.

{¶ 4} Sergeant Murphy then told Dickman that there had been a number of break-ins recently in that Kroger lot and asked what he was doing. He replied that his friend had gone into the grocery store to buy groceries and thereafter stated that the constitution allowed him to refuse to speak to the officer. Sergeant Murphy asked for Dickman's identification. Dickman refused to provide it, again citing the constitution. Sergeant Murphy then asked Dickman for his name and social security number and Dickman said he would not give her that information and that if she wanted it, she would have to arrest him. At that point, Sergeant Murphy decided to arrest Dickman and informed him of that.

{¶ 5} She told Dickman to turn around and stand against the SUV. Then she took out her handcuffs and made him spread his legs. At that point, in Sergeant Murphy's words, "he started screaming about his constitutional rights, and this was against the law." (Tr. 12-13.) Still, Sergeant Murphy persisted with the arrest and began to handcuff Dickman. Dickman tried to run, but Sergeant Murphy (with the help of a passerby) caught and restrained him. After successfully restraining and arresting Dickman, Sergeant Murphy searched him and discovered a white substance in his pocket that is alleged to be a chemical from the cathinone family of chemicals, commonly known as "Bath Salts." She

also ran his identification and discovered there was a warrant for his arrest on another offense.

{¶ 6} After taking testimony on these matters in a hearing on July 24, 2014, the trial court suppressed the evidence against Dickman. The suppression of the evidence made effective prosecution of the state's case impracticable, and under the statute authorizing appeal, the state appealed the trial court's suppression decision under Crim.R. 12(K) and R.C. 2945.67(A).

II. ASSIGNMENTS OF ERROR

{¶ 7} The state advances two assignments of error for our review:

> [I.] THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT THE ARREST OF DEFENDANT WAS UNJUSTIFIED.
>
> [II.] THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FAILED TO ADDRESS OR APPLY THE GOOD-FAITH EXCEPTION TO THE FEDERAL EXCLUSIONARY RULE.

III. DISCUSSION

{¶ 8} Though the parties use different adjectives and describe the facts differently, the facts related above are undisputed. The state challenges the trial court's interpretation of the law and its application to the facts at hand. Our review is de novo. *State v. Curry*, 95 Ohio App.3d 93, 96 (8th Dist.1994), citing *State v. Claytor*, 85 Ohio App.3d 623, 627 (4th Dist.1993).

A. First Assignment of Error – Whether the Trial Court Erred in Finding that Dickman's Arrest was Unconstitutional and Unjustified

{¶ 9} "The law recognizes three types of police-citizen interactions: 1) a consensual encounter, 2) a brief investigatory stop or detention, and 3) an arrest." *State v. Millerton*, 2d Dist. No. 26209, 2015-Ohio-34, ¶ 20, citing *State v. Jones*, 188 Ohio App.3d 628, 2010-Ohio-2854, ¶ 13 (10th Dist.); *accord State v. Mitchem*, 1st Dist. No. C-130351, 2014-Ohio-2366, ¶ 17, citing *Florida v. Royer*, 460 U.S. 491, 501-07 (1982). We have previously explained:

> "[N]ot all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer,

> by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred" within the meaning of the Fourth Amendment.

Jones at ¶ 11, quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968) fn. 16; *Brendlin v. California*, 551 U.S. 249, 254 (2007).

{¶ 10} In this case, Sergeant Murphy followed her intuition in approaching the SUV to give it and its occupants a closer look. (Sergeant Murphy found it suspicious that the driver did not look at her as she passed and this drew her attention.) However, because her approach (which, initially, went unnoticed) did not prevent Dickman or his companion from leaving, the application of constitutional safeguards was not yet implicated. Nor was it when Dickman disembarked the SUV of his own volition; Sergeant Murphy did not order him from the automobile. Hence, initially, the encounter was consensual and so the constitution was still not yet implicated. However, as Dickman clambered down from the SUV, he set off the alarm and dropped some cellophane baggies. Sergeant Murphy testified that, at this point, her suspicion was aroused to the point that Dickman was not free to leave. What had been a consensual encounter between a citizen and the police progressed to an investigative stop, because Sergeant Murphy now believed Dickman's behavior was suspicious.

{¶ 11} In the seminal case on investigative stops, *Terry*, the subjects who were stopped were clearly "casing" a shop for the purpose of robbing it; they "casually" strolled by it, peering in the window on each occasion, approximately 12 times in a few minutes, and conferred with each other between each circuit. *Id.* at 5-6. In the case under review, Dickman got out of the passenger side of an SUV upon a police officer's approach, accidentally set off the alarm in exiting the vehicle, dropped some cellophane baggies and asked for and received permission to pick them up. These acts have been found to be not criminal nor suggestive of particular criminal activity. *See, e.g., State v. Embry*, 2d Dist. No. 2014-CA-30, 2015-Ohio-193 (finding a *Terry* stop and search unjustified when based on a high crime area and possession of a cellophane baggie).

{¶ 12} After allowing Dickman to retrieve the dropped baggies, Sergeant Murphy attempted to question Dickman. Dickman refused to answer her questions and refused to

identify himself. Upon Dickman's repeated refusal to identify himself, Sergeant Murphy arrested him. Sergeant Murphy's testimony is not consistent about what crime Dickman had committed and for which she arrested him. At one point she said she arrested him for failure to identify himself; at another point she suggested that it was the crime of obstruction.

{¶ 13} We examine each of these crimes individually and in relation to one another, beginning with failure to identify. The circumstances in which the failure to identify oneself constitutes a crime are outlined in the statute:

> (A) No person who is in a public place shall refuse to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects either of the following:
>
> (1) The person is committing, has committed, or is about to commit a criminal offense.
>
> (2) The person witnessed any of the following:
>
> (a) An offense of violence that would constitute a felony under the laws of this state;
>
> (b) A felony offense that causes or results in, or creates a substantial risk of, serious physical harm to another person or to property;
>
> (c) Any attempt or conspiracy to commit, or complicity in committing, any offense identified in division (A)(2)(a) or (b) of this section;
>
> (d) Any conduct reasonably indicating that any offense identified in division (A)(2)(a) or (b) of this section or any attempt, conspiracy, or complicity described in division (A)(2)(c) of this section has been, is being, or is about to be committed.
>
> (B) Whoever violates this section is guilty of failure to disclose one's personal information, a misdemeanor of the fourth degree.

R.C. 2921.29. Sergeant Murphy asked Dickman for his social security number, information not required of a suspect under the statute. There is no suggestion in the

record that Sergeant Murphy thought that Dickman was a witness to a violent felony, a felony that creates a substantial risk of serious harm or any conduct that led to such potential dangers. R.C. 2921.29(A)(2)(a) through (d). The key question is whether Sergeant Murphy "reasonably suspect[ed]" that Dickman "[wa]s committing, ha[d] committed, or [wa]s about to commit a criminal offense." R.C. 2921.29(A)(1). If so, it was criminal for Dickman to have refused to identify himself; if not, Dickman committed no crime, and his arrest was unjustified and unlawful.

{¶ 14} Sergeant Murphy testified that, at the time she asked Dickman for his identification, she believed there was a possibility that a crime had been committed or was about to be committed. However, when pressed by defense counsel on cross-examination, Sergeant Murphy could not identify any particular crime that she had suspected Dickman of committing. She said she initially considered whether the SUV might have been stolen because Dickman set off the alarm. However, Dickman was the passenger and not the driver of the SUV when he set off the alarm. Sergeant Murphy did not testify that she "reasonably suspect[ed]" that Dickman had stolen the SUV. R.C. 2921.29(A). In the end, after much questioning, Sergeant Murphy was unable to identify any offense that she "reasonably suspect[ed]" that Dickman had committed or was about to commit, except failure to identify himself, (and later, obstruction of official business relating to that failure). Under these circumstances, that Dickman failed to identify himself was not a crime. R.C. 2921.29(A)(1).

{¶ 15} By the time Sergeant Murphy decided to arrest Dickman, their encounter had progressed to its third level, an arrest. Considering obstruction of official business separately from Sergeant Murphy's other proffered reason for arresting Dickman (failure to identify), a predicate for the crime of obstruction is that the official business (the arrest) be an "authorized act." R.C. 2921.31(A). The state could not prove to the trial court that the arrest of Dickman was authorized under the law. Sergeant Murphy's demand that Dickman identify himself and provide his social security number exceeded the authority given to her under the law. Dickman refused, citing his constitutional rights. His assertion of those rights was not a basis to suspect that he had committed a crime, and moving to the third level of encounter, an arrest, was unwarranted. Dickman's resistance to an illegal arrest was not an obstruction. It occurred *after* their encounter moved to the

level of an arrest, and it was not the *cause* of the arrest. *See, e.g.*, R.C. 2921.33 (resisting arrest is only a crime when the arrest is "lawful").

{¶ 16} In Ohio, the crime of obstruction is set forth at R.C. 2921.31 and provides:

> (A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.
>
> (B) Whoever violates this section is guilty of obstructing official business.

Ohio courts have held that a violation of this statute prohibiting obstruction of official business requires some affirmative act of obstruction on the part of the defendant. *See, e.g.*, *State v. King*, 3d Dist. No. 9-06-18, 2007-Ohio-335, ¶ 58. The failure to identify oneself, alone, is not an act of obstruction. *Id.*, citing *State v. Collins*, 88 Ohio App.3d 291, 294 (2d Dist.1993). Sergeant Murphy did not have a basis to lawfully arrest Dickman for the crime of obstruction when he refused to identify himself as she demanded.

{¶ 17} Nor did Dickman's struggle during the arrest constitute a "fresh" crime, as argued by the state. While a fresh crime, committed during or after arrest, can legitimize the Fourth Amendment[1] constitutional violation and subsequent, related searches incident to the arrest, the record bears no evidence of a "fresh" crime, such as an assault, occurring during the arrest. (*See* State's Brief, 38-39, citing *State v. Miller*, 10th Dist. No. 92AP-52 (Sept. 22, 1992); *State v. Cossack*, 7th Dist. No. 03-MA-263, 2005-Ohio-965, ¶ 28; *In re T.W.*, 3d Dist. No. 1-12-16, 2012-Ohio-5938, ¶ 11 (for the proposition that a new crime, committed during or after arrest, constitutes new justification for an arrest and subsequent search)).

{¶ 18} We find that when Sergeant Murphy arrested Dickman she lacked probable cause to believe that he had committed a criminal offense and, therefore, was not only unable to arrest him but also unable to search his person. "An officer has probable cause

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[1] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Fourth Amendment to the Constitution of the United States.

when 'the facts and circumstances known to the officer warrant a prudent [person] in believing that an offense has been committed.' " *Miller v. Sanilac Cty.*, 606 F.3d 240, 248 (6th Cir.2010), quoting *Henry v. United States*, 361 U.S. 98, 102 (1959); *see also Mott v. Mayer*, 524 Fed.Appx. 179, 187 (6th Cir.2013).

{¶ 19} Sergeant Murphy was unable to articulate an adequate offense that she believed justified her arresting Dickman. Sergeant Murphy finally testified that she arrested Dickman "[b]ased on the totality of everything" and, more specifically, "based on the fact that it was a suspicious behavior when he came out of the car and the car alarm blared, he had the baggies fall out of his pocket, he was purposely trying to keep his body away from me, he kept looking around, as if I thought he was going to run, the comments he made about his constitutional rights, and it was odd behavior for just a casual encounter." (Tr. 28; 12.) The reasons articulated by Sergeant Murphy for arresting Dickman better fit the paradigm of inchoate suspicion than probable cause, and we note that inchoate suspicion is not necessarily cause for even an investigative stop, the second level of encounter between citizens and police suspicion as opposed to an arrest, for which a "heightened level of certainty [is] required for probable cause." *State v. Fisher*, 10th Dist. No. 10AP-746, 2011-Ohio-2488, ¶ 18; *State v. Guinn*, 10th Dist. No. 99AP-630 (June 1, 2000), quoting *State v. Lynch*, 2d Dist. No. 17028 (June 6, 1998) (" 'An officer's belief that someone is "up to something" or that their actions are "not normal" does not necessarily justify a reasonable suspicion that criminal activity is afoot.' "). Thus, the arrest, as the trial court correctly concluded, was unconstitutional.

{¶ 20} The evidence against Dickman (alleged bath salts) was seized during a search incident to his arrest. The evidence obtained by "exploitation" of the illegal arrest and search incident thereto may not be used against Dickman. It must be excluded from any evidence used by the state to prove its case against Dickman beyond a reasonable doubt. *See, e.g., Sun v. United States*, 371 U.S. 471, 487-88 (1963). The state's first assignment of error is overruled.

B. Second Assignment of Error – Whether the Trial Court Erred in that it Found No Good Faith Exception to the Exclusionary Rule on the Facts of this Case

{¶ 21} The state argues that Sergeant Murphy acted in good faith when she arrested Dickman and that the trial court should not have excluded the evidence she recovered as a result of that unlawful arrest and search. The state quotes certain language from the United States Supreme Court to imply that there is or should be some overarching exception to Fourth Amendment enforcement whenever an officer acts in subjective good faith. While there are limited objective good-faith exceptions to the use of the exclusionary rule, there is no broad exception and there is no basis to find one here. *See Beck v. Ohio*, 379 U.S. 89, 97 (1964), quoting *Henry* at 102 (" '[G]ood faith on the part of the arresting officers is not enough.' If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police.").

{¶ 22} Except in circumstances where an established exception exists, the United States Constitution has been interpreted to presume that arrests and searches are unreasonable if not conducted pursuant to a warrant.

> Searches conducted without warrants have been held unlawful "notwithstanding facts unquestionably showing probable cause," *Agnello v. United States*, 269 U.S. 20, 33 [1925], for the Constitution requires "that the deliberate, impartial judgment of a judicial officer * * * be interposed between the citizen and the police * * *." *Wong Sun v. United States*, 371 U.S. 471, 481-482 [1963]. "Over and again this Court has emphasized that the mandate of the (Fourth) Amendment requires adherence to judicial processes," *United States v. Jeffers*, 342 U.S. 48, 51 [1951], and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.

(Footnote deleted.) *Katz v. United States*, 389 U.S. 347, 357 (1967); *see also Johnson v. United States*, 333 U.S. 10, 14 (1948) ("The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in

requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."). Items obtained through violations of the Fourth Amendment are not to be used in court. *Weeks v. United States*, 232 U.S. 383 (1914) (setting forth the rule); *Mapp v. Ohio*, 367 U.S. 643 (1961) (applying it to the states); *Sun* (enunciating the "fruit of the poisonous tree" doctrine). This is known as the exclusionary rule.

{¶ 23} There are exceptions to the warrant requirement. For instance, an exception exists when arrests in public are made by an officer who sees someone commit a crime in her presence, such as to prevent an offender from escaping. *See, e.g., Virginia v. Moore*, 553 U.S. 164, 176 (2008); *Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001). There are also limited exceptions to the exclusionary rule. For example, when an officer obtains a warrant based on probable cause, acts in good-faith reliance upon a facially valid warrant, even if probable cause later turns out to be lacking; the evidence recovered will not be excluded (unless the officers acted somehow unreasonably in obtaining the warrant). *United States v. Leon*, 468 U.S. 897, 922-24 (1984). This "good faith exception" has been permitted to encourage police practices of taking appropriate actions consistent with the aim of deterring unlawful searches, and such efforts should not be punished by exclusion.

> [W]here the officer's conduct is objectively reasonable, "excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that . . . the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty."

Id. at 919-20, quoting *Stone v. Powell*, 428 U.S. 465, 539-40 (1976) (White, J., dissenting).

{¶ 24} The United States Supreme Court has recently slightly expanded the "good faith exception" to the exclusionary rule in *Davis v. United States*, __ U.S. __, 131 S.Ct. 2419 (2011). In *Davis*, officers had relied on a previously established (*New York v. Belton*, 453 U.S. 454 (1981)) "bright line rule" concerning the scope of automobile searches incident to the arrest of its recent occupants. *Davis* at 2424. After the officers

conducted the search, the United States Supreme Court changed the scope of the "bright line rule." *Id.* at 2425 (discussing the alterations to the "bright line rule" of *Belton* made by the decision in *Arizona v. Gant*, 556 U.S. 332 (2009)). The high court in *Davis* held that because the officers had acted in proper reliance upon *Belton*, but the rule had subsequently changed in *Gant* to render the search unconstitutional, exclusion was not necessary to deter illegal police conduct. *Davis* at 2423-24. The *Davis* court reasoned that it makes little sense to exclude evidence where officers acted appropriately based on existing precedent, but the law in the mean time changed course.

{¶ 25} Other "good faith exceptions" to the exclusionary rule have been recognized. However, these concern good-faith reliance on a warrant or good-faith reliance on laws that changed after the time of the search. *Leon* (where a magistrate has erroneously issued a warrant); *Illinois v. Krull*, 480 U.S. 340 (1987) (where an unconstitutional statute purported to authorize the search); *Arizona v. Evans*, 514 U.S. 1 (1995) (where a database has erroneously informed police that they have a warrant); *Herring v. United States*, 555 U.S. 135 (2009) (same); *Davis* (where a "bright line rule authorized" a search and then later changed to prohibit it); *see also State v. Johnson*, 141 Ohio St.3d 136, 2014-Ohio-5021 (where past United States Supreme Court rulings authorized tracking an automobile in public and then a new United States Supreme Court case held that placement of a GPS device for the purpose of tracking an automobile in public was nonetheless a search for purposes of the Fourth Amendment); *State v. Brown*, 142 Ohio St.3d 92, 2015-Ohio-486 (where a probate judge improperly issued a warrant).

{¶ 26} Despite the relative narrowness of these holdings, the state cites broad language from *Davis* regarding the deterrent aims of the Fourth Amendment as justification for urging us to go further and hold that the "good faith exception" should act as a balancing test in all cases. The state urges us to give broad application to what it calls the "*Herring-Davis* test," citing the windfall to defendants when the exclusionary rule is applied. (State's Brief, 49.) However, we have interpreted that an exception to the exclusionary rule as enunciated in *Leon* and recognized in *Davis* is that, error for applying the exception to the rule " 'rests with the issuing magistrate, not the police officer, and "punish[ing] the errors of judges" is not the office of the exclusionary rule.' " *State v. Thomas*, 10th Dist. No. 14AP-185, 2015-Ohio-1778, ¶ 43, quoting *Davis* at 2428. We

explained further in *Thomas* that Ohio courts have declined to apply the exception to the rule "in cases in which officers, conducting warrantless searches, relied on their own belief that they were acting in a reasonable manner, as opposed to relying upon another's representations." *Id.* at ¶ 46, citing *State v. Forrest*, 10th Dist. No. 11AP-291, 2011-Ohio-6234. We continue to recognize and hold that " '*Leon's* good-faith exception applies only narrowly, and ordinarily only where an officer relies, in an objectively reasonable manner, on a mistake made by someone other than the officer.' " *Id.* at ¶ 47, quoting *United States v. Herrera*, 444 F.3d 1238, 1249 (10th Cir.2006). In the case under consideration, the officer of the city of Gahanna did not rely on laws or precedent that changed. Consistent with *Thomas*, we find that there is no good-faith exception here.

{¶ 27} The exclusionary rule has existed for a century to broadly protect our rights to be free from unlawful search and seizure. We find no basis for applying a good-faith exception under these admittedly subjective circumstances. " '[G]ood faith on the part of the arresting officers is not enough.' " *Beck* at 97, quoting *Henry* at 102. If subjective good faith created an exception to the exclusionary rule, enforcement of the Fourth Amendment for people to be "secure in their persons, houses, papers, and effects," would be at the discretion of the police. *Id.*

{¶ 28} Mr. Justice Jackson, remembering his experience in Nuremberg and the aftermath of Nazi Germany stated:

> But the right to be secure against searches and seizures is one of the most difficult to protect. * * * [T]here is no enforcement outside of court.
>
> Only occasional and more flagrant abuses come to the attention of the courts, and then only those where the search and seizure yields incriminating evidence and the defendant is at least sufficiently compromised to be indicted. If the officers raid a home, an office, or stop and search an automobile but find nothing incriminating, this invasion of the personal liberty of the innocent too often finds no practical redress. There may be, and I am convinced that there are, many unlawful searches of homes and automobiles of innocent people which turn up nothing incriminating, in which no arrest is made, about which courts do nothing, and about which we courts do nothing, an about which we never hear.

> Courts can protect the innocent against such invasions indirectly and through the medium of excluding evidence obtained against those who frequently are guilty. * * * So a search against Brinegar's car must be regarded as a search of the car of Everyman.

Brinegar v. United States, 338 U.S. 160, 181 (1949) (Jackson, J., dissenting); *see also Leon* at 972-73 (Stevens, J., dissenting and concurring).

{¶ 29} The state's second assignment of error is overruled.

IV. CONCLUSION

{¶ 30} We overrule both the state's assignments of error and affirm the decision of the Franklin County Court of Common Pleas excluding the evidence obtained from Dickman's unlawful arrest and the search conducted incident to such arrest.

Judgment affirmed.

BROWN, P.J., and TYACK, J., concur.