

[Cite as *State v. Fritz*, 2009-Ohio-6690.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
 Plaintiff-Appellee : C.A. CASE NO. 23054
 vs. : T.C. CASE NO. 08CERB12099
 DONOVYN T. FRITZ : (Criminal Appeal from
 Defendant-Appellant : Municipal Court)

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O P I N I O N

Rendered on the 18th day of December, 2009.

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John Danish, Director of Law; Stephanie Cook, Acting Chief
 Prosecutor; Ebony N. Wreh, Asst. City Prosecutor, Atty. Reg.
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 Attorneys for Plaintiff-Appellee

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 Attorney for Defendant-Appellant

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GRADY, J.:

Defendant, Donovyn Fritz, appeals from his conviction and
 sentence for possession of a counterfeit controlled substance,
 R.C. 2925.37(A), which were entered on Defendant's plea of no
 contest following the trial court's denial of his Crim.R. 12(C)(3)

motion to suppress evidence.

ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED IN DENYING DEFENSE COUNSEL'S MOTION TO SUPPRESS, BECAUSE THE OFFICER DID NOT HAVE THE REASONABLE ARTICULABLE SUSPICION NECESSARY TO CONDUCT A PATDOWN OF THE APPELLANT."

The evidence Defendant moved to suppress was discovered in a weapons pat-down search of his person. The search was performed by an officer who had stopped Defendant for two minor misdemeanor violations of the City of Dayton's traffic code.

Defendant was riding a bicycle when he was stopped. The officer who stopped him intended to issue a citation for the traffic violations, and when Defendant was unable to verify his identity, the officer decided to put Defendant in the rear seat of his police cruiser while he took steps to verify Defendant's identity. The weapons pat-down was performed as a predicate to that step.

Following seizure of the evidence that was found, Defendant was arrested and placed in the cruiser. The officer then ran Defendant's name, date of birth, and social security number through his computer and discovered that a warrant for Defendant's arrest was outstanding.

Defendant argues that the officer's decision to place him in the officer's police cruiser, which prompted the officer to

perform the pat-down that led to discovery of the contraband that Defendant moved to suppress, was not justified under the rule of *State v. Lozada* (2001), 92, Ohio St.3d 241. In *Lozada*, the Supreme Court held that it is unreasonable for Fourth Amendment purposes for an officer to perform a weapons pat-down of a person detained in a routine traffic stop as a predicate to placing the person in the officer's cruiser, if the sole reason for placing the person in the cruiser is the officer's convenience.

The driver in *Lozada* had produced identification necessary to issue a citation. In the present case, Defendant could not produce any verification of the identity he gave the officer, prompting the officer to place Defendant in his cruiser while the officer verified his identity, presumably through a radio or other contact with his department.

The State relies on *State v. Edwards* (Nov. 12, 1999), Montgomery App. No. 17735, in which we held that a weapons frisk performed prior to placing a suspect in a cruiser while his identity was being verified was not objectively unreasonable where inclement weather conditions prevailing at the time supported placing the defendant in the cruiser. No like justification exists in the present case. The officer merely decided to place the Defendant in his cruiser while the officer took steps to verify Defendant's identity, presumably for the officer's convenience. In that

circumstance, performing the weapons pat-down that yielded drugs was unreasonable. *Lozada*.

Nevertheless, we believe the trial court was correct when it denied Defendant's motion to suppress. The officer had probable cause to charge Defendant with a minor misdemeanor offense. In that circumstance, an officer may not arrest a defendant and instead must issue a citation unless "[t]he offender cannot or will not offer satisfactory evidence of his identity." R.C. 2935.26(A)(2).

That section confers a substantive right of freedom from arrest, subject to the condition stated. *State v. Slatter* (1981), 66 Ohio St.2d 452.

When Defendant was unable to offer any evidence of his identity, the officer acted reasonably to obtain verification through contact with police sources. As it subsequently did, that contact would have revealed an outstanding warrant for Defendant's arrest. A lawful search performed incident to that arrest would inevitably have produced the drugs that the officer seized from Defendant's pocket. Under the doctrine of inevitable discovery, evidence that was obtained illegally is admissible, nonetheless, if it inevitably would have been obtained lawfully.

Nix v. Williams (1984), 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377; *State v. Perkins* (1985), 18 Ohio St.3d 193.

The assignment of error is overruled. The judgment of the

trial court will be affirmed.

FAIN, J. And FROELICH, J. concur.

Copies mailed to:

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Hon. John S. Pickrel