# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM PREVELL GOVAN,

Defendant-Appellant.

UNPUBLISHED
May 7, 1996

No. 173207
LC No. 93-010154

Before: Griffin, P.J., and Smolenski and L. P. Borrello,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant was sentenced to three years' probation, the first six months of which was to be served in jail. Defendant appeals as of right. We affirm.

On appeal, defendant first contends that the trial court erred in ruling that the police did not violate his Fourth Amendment right to be free from unreasonable seizure when they stopped the vehicle in which he was traveling. We disagree. Brief investigative stops short of arrest are permitted where police officers have a reasonable, articulable suspicion of ongoing criminal activity. *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993), citing *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Freeman*, 413 Mich 492; 320 NW2d 878 (1982); *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994). So as to avoid an overly technical review of the common-sense decision of police officers, the reasonableness of an officer's suspicion about the probability of ongoing criminal activity is assessed in view of the totality of the circumstances. *Faucett, supra* at 168, citing *United States v Cortez*, 449 US 411; 101 S Ct 690; 66 L Ed 2d 621 (1981); *Christie, supra* at 308. Deference should be given to experienced law enforcement officers who are permitted, if not required, to draw from their past experiences to help deduce whether criminal activity is afoot. *People v Nelson*, 443 Mich 626, 636; 505 NW2d 266 (1993).

In *People v Whalen*, 390 Mich 672, 682; 213 NW2d 116 (1973), our Supreme Court held that the following rules apply with respect to the stopping, searching, and seizing of motor vehicles and their contents:

* Circuit judge, sitting on the Court of Appeals by assignment.

1. Reasonableness is the test that is to be applied for both the stop of, and the search of moving motor vehicles.

2. Said reasonableness will be determined from the facts and circumstances of each case.

3. Fewer foundation facts are necessary to support a finding of reasonableness when moving vehicles are involved, than if a house or a home were involved.

4. A stop of a motor vehicle for investigatory purposes may be based upon fewer facts than those necessary to support a finding of reasonableness where both a stop and a search is conducted by the police.

See also *Christie, supra* at 308-309; *People v Armendarez*, 188 Mich App 61, 67; 468 NW2d 893 (1991).

Here, two police officers personally observed defendant, a rear-seat passenger in a moving vehicle, drink from a bottle that was wrapped in a brown paper bag. Each officer observed the "neck" of the bottle and believed that the bag was large enough to contain a forty ounce bottle of beer. The officers made these observations in an area where the practice of "cruising" had become problematic. Based on their years of law enforcement experience, each officer suspected that defendant was committing the misdemeanor offense of transporting or possessing open intoxicants in a motor vehicle, MCL 257.624a; MSA 9.2324(1). Based on the totality of these circumstances, we conclude that the officers' suspicion that a misdemeanor offense was occurring in the vehicle was reasonable. See, e.g., *United States v Pullen*, 884 F Supp 410, 412 ( D Kan, 1995); *United States v Freeman*, 713 F Supp 1236, 1238 (N D Ill, 1989). Accordingly, the trial court did not err in concluding that the officers had grounds to make an investigatory stop of the involved vehicle and, thus, did not violate defendant's Fourth Amendment rights. See *People v Ward*, 73 Mich App 555, 561; 252 NW2d 514 (1977).

Next, defendant maintains that the trial court abused its discretion in admitting the involved weapon into evidence because the weapon was obtained during a vehicle search that violated defendant's Fourth Amendment right to be protected against unreasonable searches and seizures. We disagree. Defendant does not assert an ownership interest in the vehicle that was searched. Instead, the weapon was found in a vehicle in which defendant was riding as a passenger. Accordingly, defendant has no standing to challenge the constitutionality of the involved motor vehicle search. *Rawlings v Kentucky*, 448 US 98; 104-106; 100 S Ct 2556; 65 L Ed 2d 633 (1980); *Rakas v Illinios*, 439 US 128, 139; 99 S Ct 421; 58 L Ed 2d 387 (1978); *Armendarez, supra* at 71; *People v Smith*, 106 Mich App 203, 209; 307 NW2d 441 (1981); United S*tates v Cardona*, 955 F2d 976, 981 (CA 5, 1992). Likewise, defendant has no standing to challenge the seizure of the weapon that was obtained during the search. Accordingly, we find no abuse of discretion in the trial court's decision to admit the seized weapon into evidence.

Finally, defendant contends that the trial court reversibly abused its discretion by admitting defendant's two confessions into evidence in violation of his Fifth Amendment rights. We disagree.

First, defendant implies that his first confession was involuntary. However, defendant failed to either raise this issue below, present the issue in his statement of issues presented, or argue the proposition on appeal. Accordingly, we consider the unpreserved issue to have been waived. MCR 7.212(C)(4); *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990); see also *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993). Furthermore, our review of the record discloses no facts that could support a claim that defendant's first confession was the product of coercion or undue influence.

Second, defendant contends that the written confession he made after having been read his *Miranda*[1] rights should have been suppressed because it followed an earlier oral confession which was made without the benefit of *Miranda* warnings. However, defendant does not argue that the initial confession was the product of deliberately coercive or improper police conduct. Nor does defendant deny that he voluntarily and knowingly waived his right to remain silent before he executed his written confession. Therefore, the trial court did not abuse its discretion in admitting the written confession into evidence. *Oregon v Elstad*, 470 US 298; 105 S Ct 1285; 84 L Ed 2d 222 (1985).

Third, defendant claims that the trial court abused its discretion in admitting his first confession into evidence, a confession inspired by custodial interrogation not preceded by *Miranda* warnings. However, defendant did not raise this issue below. Therefore, the issue is unpreserved. MRE 103; *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *People v Dowdy*, 211 Mich App 562, 570; 536 NW2d 794 (1995); *People v Hoffman*, 205 Mich App 1, 14; 518 NW2d 817 (1994). Because we are not persuaded that defendant has established the prejudice necessary to avoid forfeiture of this unpreserved issue, we conclude that defendant has waived appellate review of this issue. *Grant, supra* at 553-554. We note that we do consider claims of constitutional error for the first time on appeal when the alleged error could have been decisive to the outcome of the case. See *Grant, supra* at 546-547. However, because *Miranda* warnings are not constitutional rights, but only procedural safeguards to protect constitutional rights, a *Miranda* argument does not implicate the "important constitutional question" exception to the preservation requirement. See *People v Todd*, 186 Mich App 625, 628; 465 NW2d 380 (1990), vacated on other grounds 440 Mich 870 (1992); *People v Calloway*, 169 Mich App 810, 818; 427 NW2d 194 (1988), vacated on other grounds 432 Mich 904 (1989); see generally *Michigan v Tucker*, 417 US 433, 443-444; 94 S Ct 2357; 41 L Ed 2d 182, 192-193 (1974).

Fourth, defendant claims that his confessions should be suppressed because they were the "fruit" of an unconstitutional stop and search. However, in view of our resolution of the preceding issues, this claim is without merit.

Affirmed.

/s/ Richard Allen Griffin
/s/ Michael R. Smolenski
/s/ Leopold P. Borrello

[1] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).