# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL E. PATTERSON,

Defendant-Appellant.

UNPUBLISHED
May 2, 1997

No. 187026
Kent Circuit Court
LC Nos. 94-001517-FH
& 94-001518-FH

Before: Murphy, P.J., and Markey and A.A. Monton*, JJ.

PER CURIAM.

Defendant appeals as of right his convictions for receiving and concealing stolen property over $100, MCL 750.535; MSA 28.803, and receiving and concealing a stolen firearm, MCL 750.535b; MSA 28.803(2). Defendant received concurrent sentences of 3½to 7½years' imprisonment for the receiving and concealing stolen property conviction, and 4 to 15 years' imprisonment for the receiving and concealing a stolen firearm conviction. We affirm.

I

First, defendant claims that items seized from his home pursuant to the search warrant issued in this case should be suppressed because the prosecution did not produce the affidavit in support of the search warrant to show that the warrant was based on probable cause. In the trial court, defendant sought to suppress the items seized, but did not argue that the warrant was invalid because the prosecution failed to produce the affidavit. Because generally, issues not raised in and addressed by the trial court are not properly preserved, *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995), and an issue based on one ground is not preserved by an objection at trial based on another ground, *People v Lino (After Remand)*, 213 Mich App 89, 94; 539 NW2d 545 (1995), overruled in part on other grounds, *People v Carson*, 220Mich App 662; ___ NW2d ___ (1996), we decline to review this issue.

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

II

Next, defendant claims that the prosecutor improperly referred to the fact that defendant was in jail while awaiting trial in this case. Defendant did not object to any allegedly improper references at trial, therefore, review by this Court is limited to preventing a miscarriage of justice. See *People v Rivera*, 216 Mich App 648, 651; 550 NW2d 593 (1996). In this case, the allegedly improper references to defendant's incarceration were made after defendant had elicited such testimony. In addition, any error concerning references to defendant's incarceration or parole could have been remedied by a prompt curative instruction. Under the circumstances of this case, we find no manifest injustice. See *Id*. at 651-652; *People v Simon*, 174 Mich App 649, 655; 436 NW2d 695 (1989).

III

Next, defendant claims that the trial court erred by failing to grant his motion to dismiss for lack of a speedy trial. In determining whether a defendant has been denied a speedy trial, four factors must be balanced: (1) the length of the delay, (2) the reasons for the delay; (3) whether the defendant asserted his right to a speedy trial, and (4) prejudice to the defendant from the delay. *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *People v Chism*, 390 Mich 104, 111; 211 NW2d 193 (1973); *People v O'Quinn*, 185 Mich App 40, 47-48; 460 NW2d 264 (1990).

In this case, the length of the delay was approximately ten months. A review of the record indicates that defendant was equally as culpable as the prosecution for the delays in this case. When the delay is under eighteen months, it is up to the defendant to prove prejudice. *Daniel*, *supra* at 51. Defendant claims that he was personally prejudiced because he was incarcerated for ten months prior to trial because he could not post bail. Pretrial incarceration is always prejudicial in that the accused is denied many of his civil liberties. *People v Ovegian*, 106 Mich App 279, 284; 307 NW2d 472 (1981). However, such prejudice is not as crucial as prejudice to a defendant's case. *Chism, supra* at 114-115. Defendant may have suffered personal deprivation by a lengthy incarceration, but we have not been convinced that this personal prejudice was excessively oppressive or that his ability to defend himself was in any way significantly prejudiced. Defendant has not been denied his right to a speedy trial.

IV

Next, defendant claims error because the trial court did not comply with MCR 6.005(E) by failing to adequately advise him at each stage of the prosecution about the perils of proceeding in pro per. We agree that the trial court did not comply with MCR 6.005(E); however, the error does not require reversal.

A violation of MCR 6.005(E) is to be treated as any other trial error. *People v Lane*, 453 Mich 132, 139; 551 NW2d 382 (1996). In this case, because the error is unpreserved, we will not consider defendant's claim unless the error could have been decisive of the outcome or unless it falls under the category of cases where prejudice is presumed or reversal automatic. *Id*. at 140. This case

does not fall under the latter category, and because defendant has advanced no argument that the error has prejudiced him in any way, we will not reverse. *Id*. at 140-142.

V

Next, defendant claims that the trial court improperly instructed the jury on the elements of receiving and concealing a stolen firearm, MCL 750.535b; MSA 28.803(2). Defendant failed to object to this instruction at trial, and such a failure waives review unless relief is necessary to avoid a manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). We have reviewed the instructions as a whole and find no manifest injustice.

VI

Next, defendant, who is indigent, claims that the trial court improperly denied his motion to give him transcripts from the pre-trial evidentiary hearings, and argues that the trial court's denial significantly prejudiced his ability to proceed at trial.

The state must provide an indigent defendant with a transcript of prior proceedings when that transcript is necessary for an effective defense or appeal. *People v Goodwin*, 48 Mich App 692, 697; 211 NW2d 73 (1973), citing *Britt v North Carolina*, 404 US 226, 227; 92 S Ct 431, 433, 30 L Ed 2d 400, 403 (1971). Defendant argues that he was denied an effective defense because he was unable to impeach police officers' trial testimony with inconsistent statements made at the pre-trial hearings. Defendant only argues one inconsistency with any specificity. We agree that there was such an inconsistency, but do not consider defendant's inability to impeach, with the hearing transcript, regarding this single inconsistency to have deprived defendant of an effective defense. Defendant contends that there were "many" other inconsistencies between the officers' hearing testimony and trial testimony. However, defendant has failed to articulate what these other inconsistencies were. Because defendant has failed to argue the merits of this issue concerning the other inconsistencies, his claims are not properly presented for review. *People v Jones (On Remand)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993).

VII

Last, defendant claims that the trial court erred in denying his motion to suppress evidence seized during a search of defendant's vehicle. We disagree. We review the trial court's decision for clear error. *People v Martinez*, 187 Mich App 160, 171; 466 NW2d 380 (1991).

In order to make a constitutionally valid investigative stop, the totality of the circumstances must yield a reasonable and articulable suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity. *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996). When dealing with a vehicle, the reasonable and articulable suspicion must be directed at the vehicle. *Id*.

In this case, officers had information that defendant had been involved in a break-in, and that he was driving a maroon Pontiac Sunbird. When a vehicle matching that description was spotted and it was determined that the vehicle was registered to a resident at defendant's address, a radio broadcast requested that officers in the area stop the vehicle. The broadcast also warned officers to use caution because the driver of the vehicle was a suspect in a break-in that involved firearms. Based on these facts, the officers had a reasonable suspicion that defendant had been involved in criminal activity and was driving the vehicle to be stopped. Therefore, the initial stop of the vehicle was proper.

Even assuming that we agree with defendant that the officers actions of removing him from the vehicle, laying him on his stomach and handcuffing him are not elements of an investigative stop, but an arrest, see *People v Tebedo*, 81 Mich App 535, 539; 265 NW2d 406 (1978), we are of the opinion that the facts known by the officers prior to the stop, and defendant's uncooperative conduct when the stop was initiated, justified a warrantless arrest. MCL 764.15(1)(c); MSA 28.874(1)(c); *People v Richardson*, 204 Mich App 71, 78-79; 514 NW2d 503 (1994). Therefore, the officers were free to search defendant and the entire passenger compartment of the vehicle. *Yeoman*, *supra* at 412. The trial court did not clearly err in failing to suppress the seized evidence.

Affirmed.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Anthony A. Monton