# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IDELL DERICO CLEVELAND, III,

Defendant-Appellant.

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UNPUBLISHED
June 17, 1997

No. 194236
Genesee Circuit Court
LC No. 95-052986-FC

Before: MacKenzie, P.J., and Neff and Markey, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree murder, MCL 750.316; MSA 28.548, two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and armed robbery, MCL 750.529; MSA 28.797. He was sentenced to two terms of life imprisonment without parole, two terms of two years' imprisonment and one term of life imprisonment respectively. He now appeals as of right. We affirm.

I

Defendant first argues that the trial court erred in failing to suppress evidence obtained during questioning by police. Two Grand Blanc Township police officers received information that two black males were seen fleeing the scene of a double homicide. They spotted defendant walking across a parking lot, and they stopped him for questioning. In response to their questions, defendant gave his name, address, and date of birth, and said that he had been driving with a white male named Jason. Defendant told the police that he did not have any identification, and they asked him to empty his pockets. He placed the contents of his pockets, which included a large sum of money, on top of the police car. When the police were finished, defendant took the money and walked away.

Defendant brought a motion in the trial court to suppress testimonial evidence regarding the money found in his possession. The trial court denied the motion on the grounds that the stop was not a seizure within the meaning of the Fourth Amendment.

The Fourth Amendment to the United States Constitution, and the analogous provision of the Michigan Constitution, Const 1963, art 1, § 11, guarantee the right of the people to be free

from unreasonable searches and seizures. *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996). Searches and seizures conducted without a warrant are unreasonable per se, subject to several specific, well delineated exceptions. *Id.* at 98.

The Fourth Amendment applies to all seizures of a person, including those that involve only a brief detention. *People v Shabaz*, 424 Mich 42, 52; 378 NW2d 451 (1985). However, if there is no detention, there is no seizure within the meaning of the Fourth Amendment. *Id.* at 57 (citing *Florida v Royer*, 460 US 491, 497-498; 103 S Ct 1319; 75 L Ed 2d 229 (1983). A person has been "seized" within the meaning of the Fourth Amendment only if, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Michigan v Chesternut*, 486 US 567, 573; 108 S Ct 1975; 100 L Ed2d 565 (1988).

The Fourth Amendment does not prohibit police from approaching an individual on the street or in another public place, asking him if he is willing to answer some questions, and offering in evidence in a criminal prosecution his voluntary answer to such questions. *Royer, supra* at 497; *Shabaz, supra* at 56-57. The police may also ask a person to produce identification. *People v Daniels*, 160 Mich App 614, 619; 408 NW2d 398 (1987). Police questioning of an individual in a public place amounts to a consensual encounter unless there exist intimidating circumstances leading the person to reasonably believe that he was not free to leave or the person rebuffs the police officer by refusing to answer and walking away. *Id.*

This Court reviews for clear error a trial court's decision whether to suppress evidence on the ground that it was seized in violation of the Fourth Amendment. *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996). In the present case, the police officers testified that they did not draw their weapons or turn on the overhead lights on their police car, and did not touch defendant. Officer Stamm testified that he spoke to defendant in an ordinary, conversational tone of voice, and that defendant was polite and cooperative. On this record, we find that there is no evidence of intimidating circumstances that would lead defendant to reasonably believe that he was not free to leave. There was no detention and, therefore, no seizure; accordingly, the trial court did not clearly err in denying defendant's motion to suppress.

II

Defendant next argues that the prosecutor made numerous remarks which improperly vouched for the credibility of police witnesses, denigrated defense counsel, argued matters outside of the record, injected personal opinion, and improperly shifted the burden of proof to defense counsel. On review, this Court examines the pertinent portion of the record and evaluates the prosecutor's remarks in context in order to determine whether the defendant was denied a fair and impartial trial. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996).

Defendant objected at trial to several remarks by the prosecutor during his rebuttal argument that suggested that defendant should have produced exculpatory evidence at trial. The trial court sustained the objection and instructed the jury that the remarks were improper and that they were to

disregard them. The Court also instructed the jury regarding defendant's presumption of innocence and plaintiff's burden of proof. Therefore, whatever prejudice may have been caused by the improper remarks was eliminated by the trial court's timely curative instructions, and defendant was not denied a fair and impartial trial.

Defendant also argues on appeal that other comments by the prosecutor denied him a fair trial. However, he did not object at trial to these comments. Because we find that any prejudice caused by the remarks would have been eliminated by a timely curative instruction, we decline to review this issue. See *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Rivera*, 216 Mich App 648, 651-652; 550 NW2d 593 (1996).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Janet T. Neff
/s/ Jane E. Markey