# STATE OF MICHIGAN

# COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER CHARLES WALKER,

Defendant-Appellant.

UNPUBLISHED
July 30, 1999

No. 201536
Macomb Circuit Court
LC No. 96-000545 FH

---

Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of unlawfully driving away an automobile (UDAA). MCL 750.413; MSA 28.645. The trial court sentenced defendant to three to five years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erred in refusing to suppress evidence of a jacket and camera seized by the police following an illegal search of his car. We review for clear error the trial court's findings of historical fact in deciding a motion to suppress, but we review de novo the trial court's ultimate decision regarding a motion to suppress. *People v Garvin*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 203354, released 4/9/99), slip op at 2.

The Fourth Amendment of the United States Constitution and the analogous provision in Michigan's Constitution 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). Warrantless searches and seizures are unreasonable per se, subject to a few specific and well-delineated exceptions, *id*. at 98, including the automobile exception.[1] *People v Taylor*, 454 Mich 580, 587-588; 564 NW2d 24 (1997). That exception provides that a search of a vehicle without a warrant is reasonable if probable cause exists to believe it contains contraband. *People v Clark*, 220 Mich App 240, 242; 559 NW2d 78 (1996). Probable cause to search exists when facts and circumstances warrant a reasonably prudent person to believe that a crime has been committed and that the evidence sought will be found in a stated place. *People v Jordan*, 187 Mich App 582, 586-587; 468 NW2d 294 (1991).

At the suppression hearing, Royal Oak Police Officer Kenneth Evancho testified that some time either later on October 23, 1995 or on October 24, 1995 he received information concerning a vehicle theft in St. Clair Shores. The information indicated that someone had observed in the area of the theft a gold and black TransAm that had "Running from the Popos" written on the vehicle's rear, and that one white male suspect in the theft had worn a multicolored jacket. Detective Patrick Jones of the Ferndale Police Department testified that he was aware that the person reporting the stolen vehicle had indicated it contained compact discs and a camera, and that he had received information that a vehicle matching the TransAm's description had been spotted in the area where the stolen vehicle was eventually recovered. Evancho and Jones had recently observed a vehicle matching the TransAm's description in the parking lot of a Ferndale 7-11 store, at which time Jones stated, "That's Chris Walker's car." Evancho and Jones therefore returned to the area of the 7-11 store to conduct surveillance. They observed defendant's TransAm again parked in the 7-11 lot. They also saw defendant, who wore a multicolored leather jacket matching the description Evancho had received, return to his vehicle then reenter the store several times. On one trip out to his vehicle, defendant reached inside and then placed an item in his jacket pocket. Eventually, the officers approached defendant in the 7-11 parking lot, explained that they were police officers, and patted him down. Evancho informed defendant that the officers were looking for defendant's vehicle and his jacket in connection with a reported vehicle theft, and that defendant was a suspect in the crime. Evancho then informed defendant that he was not under arrest, but that the officers had to impound defendant's vehicle and jacket as evidence. Defendant told the officers at this point that he knew exactly what they were talking about and that he knew who had committed the theft, but that he had not been involved. When defendant removed the jacket, Evancho discovered a thirty-five millimeter Nikon camera in the jacket's pocket.[2]

We conclude that the facts and circumstances available to the officers at the time of their search reasonably warranted their belief that defendant and his vehicle were involved in the theft of another vehicle, and that further evidence of the crime might be found inside defendant's TransAm. *Garvin*, *supra* at 5. Pursuant to the automobile exception, the officers properly searched and seized defendant's TransAm and properly seized the camera.[3] The trial court therefore correctly denied defendant's motion to suppress evidence regarding the TransAm and the camera.[4] While defendant suggests that the automobile exception cannot apply because the officers' search of his TransAm "was not conducted incident to a lawful stop of a motor vehicle," defendant's argument lacks merit. The United States Supreme Court clearly explained that the automobile exception applied whether "a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes—temporary or otherwise." *California v Carney*, 471 US 386, 392; 105 S Ct 2066; 85 L Ed 2d 406 (1985). Furthermore, to the extent defendant maintains that exigent circumstances must exist to justify application of the automobile exception, and that no such circumstances existed in this case because the officers "had ample opportunity to obtain a valid warrant," this argument is also without merit. See *Garvin*, *supra* at 5 (Where the police have probable cause to search an automobile, they may do so without a search warrant even if they would have had time and opportunity to obtain a warrant.); *Clark*, *supra* (Although one of the justifications for the automobile exception is exigency, where, as here, no exigency exists, if police have probable cause to search a car, they need not get a search warrant first even if they have the time and opportunity to do so.).

Defendant also argues that the jacket should have been suppressed because it was illegally seized. Defendant was wearing the jacket at the time the police seized it; it was not seized from his car. This seizure implicates the plain view doctrine. This doctrine allows police officers to seize items in plain view without first obtaining a search warrant, as long as the officers are lawfully in a position from which they view the item and the item's incriminating character is immediately apparent. *Champion*, *supra* at 101. "Immediately apparent" means that without further search the officers have probable cause to believe the items are seizable. *Id*. at 102.

In this case, the officers observed defendant wearing the jacket in a public place. The officers' testimony at the suppression hearing did not clearly reveal whether they observed defendant from the 7-11 parking lot or from a site across the street from the 7-11. Defendant did not allege, however, that the officers were in an unlawful position when they viewed the jacket. In any event, the officers did not violate the Fourth Amendment by merely approaching defendant in the 7-11 parking lot, a public place. *Taylor*, *supra* at 589, 590. Furthermore, the jacket's incriminating character was immediately apparent. In light of the officers' knowledge regarding the reported descriptions of defendant's car and a multicolored jacket, which description Evancho testified appeared to match the jacket worn by defendant, without further search the officers had probable cause to believe the jacket was seizable. *Champion*, *supra* at 102. Accordingly, we conclude that the trial court properly denied defendant's motion to suppress the jacket.

Defendant next contends that the jury verdict was against the great weight of the evidence. To preserve an objection going to the weight of the evidence, a defendant must timely raise the issue in a motion for a new trial in the lower court. MCR 2.611(A)(1)(e); *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Because defendant failed to raise such a motion, this issue has not been preserved for appeal, and we decline to address it. *Winters*, *supra*.

Lastly, defendant argues that his sentence, which fell within the guidelines' range, was disproportionate. Neither defendant nor his attorney presented any unusual circumstances to the sentencing judge in open court prior to sentencing so that the judge could have considered them. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Defendant has therefore waived our review of this issue. *Id*.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage

[1] While an individual has constitutionally protected privacy interests in his vehicle, those interests receive protection to a lesser extent than one's interests in stationary structures in light of (1) the vehicle's ready mobility, and (2) a reduced expectation of privacy with respect to a vehicle, given "the pervasive regulation of vehicles capable of traveling on the public highways." *California v Carney*, 471 US 386, 390-392; 85 L Ed 2d 406; 105 S Ct 2066 (1985).

[2] Jones testified that defendant was holding the camera in his hand when the officers approached him. Defendant stated that the officers removed the camera from the TransAm's middle console.

[3] The trial court noted as a factual matter that the camera was found inside defendant's TransAm. The suppression hearing testimony of defendant and the officers conflicted with respect to the camera's location at the time the officers discovered it. Because some testimony indicated that the camera was discovered inside the car, however, we are unable to conclude that the trial court clearly erred in so concluding. *Garvin*, *supra* at 2.

[4] To the extent the trial court based its decision that the officers appropriately searched the TransAm's interior on the plain view doctrine, this conclusion was erroneous. As the Supreme Court has explained, a fundamental characteristic of the plain view doctrine is that it is exclusively a seizure rationale. No searching, no matter how minimal, may be done under the auspices of the plain view doctrine. *Champion*, *supra* at 101. In light of our conclusion that the officers' properly searched defendant's TransAm pursuant to the automobile exception, however, we may nonetheless affirm the trial court's denial of defendant's motion to suppress. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998) (This Court will affirm a lower court's ruling when the court reaches the right result, albeit for the wrong reason.).