GARNER *v.* STATE.

Opinion delivered January 11, 1932.

1. CRIMINAL LAW—UNLAWFUL SEARCH.—Evidence obtained by officers overtaking and arresting defendant and searching his automobile without a warrant *held* admissible.
2. CRIMINAL LAW—OBJECTIONS NOT RAISED BELOW.—Objection to questions of the prosecuting attorney, not made at the trial nor incorporated in motion for new trial, will not be considered on appeal.
3. CRIMINAL LAW—EXCESSIVE PUNISHMENT.—Fixing the amount of fine for a liquor violation being within the province of the jury, a fine within the statutory limits will not be reduced on appeal.

Appeal from Crittenden Circuit Court; *G. E. Keck*, Judge; affirmed.

Wils Davis and *A. B. Shafer,* for appellant.

Hal L. Norwood, Attorney General, and *Pat Mehaffy,* Assistant, for appellee.

HUMPHREYS, J. This is an appeal from a judgment of conviction in the circuit court of Crittenden County for the crime of transporting liquor.

Three alleged errors in the trial of the cause are assigned as grounds for a reversal of the judgment, as follows:

First, because the liquor being transported was seized by the officers of the law without a search warrant.

Second, because the prosecuting attorney interrogated the appellant in an effort to show that he had purchased the license for his automobile under the name of Gaston Whitmore.

Third, because the verdict was excessive.

(1) The officers overtook appellant on a highway, arrested him, searched his car, and found two five gallon cans of whiskey therein in gunney sacks. Their evidence was admitted over appellant's objection. In cases of this character evidence procured without a search warrant is admissible. *Knight* v. *State,* 171 Ark. 882, 286 S. W. 1013.

(2) Objection was not made to the questions propounded by the prosecuting attorney relative to the name under which appellant bought a license for his car, nor was this matter incorporated in his motion for a new trial in the circuit court. Under the well-settled rule of this court, the question presented cannot be considered as a cause for the reversal of the judgment. *Maroney* v. *State,* 177 Ark. 355, 6 S. W. (2d) 290.

(3) A fine of $750 and ninety days in the county jail was imposed upon appellant as a punishment for the crime. The jury did not exceed the maximum punishment fixed by the statute, so this court cannot reduce the penalty. That matter was within the peculiar province of the jury. *Cox* v. *State,* 164 Ark. 133, 261 S. W. 303.

No error appearing, the judgment is affirmed.