

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY CARTER,

Defendant-Appellant.

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UNPUBLISHED

January 18, 2002

No. 225866

Wayne Circuit Court

LC No. 99-003795

Before: Saad, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of breaking and entering a building with intent to commit larceny, MCL 750.110. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to 21 to 120 months’ imprisonment. We affirm.

Defendant argues that the trial court erred in allowing the prosecutor to introduce defendant’s shoes into evidence on the second day of trial. Defendant claims that the prosecutor did not timely disclose this evidence and that its introduction caught defendant by surprise and significantly prejudiced him. We disagree.

Under MCR 6.201(A)(6), “a party upon request must provide all other parties: . . . a description of and an opportunity to inspect any tangible physical evidence that the party intends to introduce at trial.” “The decision whether to admit evidence is within the trial court’s discretion; this Court only reverses such decisions where there is an abuse of discretion.” *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). A trial court abuses its discretion when “‘an unprejudiced person,’ considering ‘the facts upon which the trial court acted, [would] say that there was no justification or excuse for the ruling made.’” *People v Hendrickson*, 459 Mich 229, 235; 586 NW2d 906 (1998), quoting *Detroit Tug & Wrecking Co v Gartner*, 75 Mich 360, 361; 42 NW 968 (1889).

The trial court correctly ruled that no discovery violation occurred. First, defendant was not unfairly surprised by the evidence because the preliminary complaint reports placed him “on notice” that the shoeprint on the display case matched defendant’s shoeprint when he was arrested. Further, nothing in the record supports defendant’s contention that he was denied access to the evidence or that the prosecutor failed to provide him with the evidence in question upon discovery. *People v Elston*, 462 Mich 751, 761-763; 614 NW2d 595 (2000). Rather, the shoes were in defendant’s possession, not the prosecutor’s, when trial began. Indeed, after the

first day of trial, the prosecutor did not know if the shoes existed, but, acting on a “hunch,” he asked jail officials to check if the shoes were among defendant’s personal items. Moreover, though the trial court denied his motion to suppress the evidence it granted him time to review it with the prosecution’s witness. Accordingly, defendant has failed to show that the admission of the shoes constituted an abuse of discretion.<sup>1</sup>

Defendant next contends that the trial court abused its discretion by allowing Officer Robert Roby, Jr. to testify regarding his observation that defendant’s shoe matched the shoeprint found at the scene of the incident. Specifically, Officer Roby testified that the tread and track of the shoes defendant wore at the time of his arrest appeared to match the imprint found on the display case. MRE 701 provides:

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.

Generally, police officers may provide lay opinions about matters that are not overly dependent on scientific, technical or specialized knowledge. *People v Oliver*, 170 Mich App 38, 49; 427 NW2d 898 (1988), modified on other grounds 433 Mich 862 (1989). Here, Officer Roby testified regarding his physical observation of the prints and his opinion, formed as a result of those observations, was not overly dependent on technical or specialized knowledge. Moreover, the officer’s observations helped provide the jurors with a “clear understanding of his testimony” and helped the jury determine “a fact in issue” regarding defendant’s involvement in the charged offense. MRE 701. Accordingly, the trial court did not abuse its discretion in admitting the testimony.

Defendant further claims that his sentence was disproportionate to the offense and to the offender.

This Court reviews sentencing issues for an abuse of discretion. *People v Garza*, 246 Mich App 251, 256; 631 NW2d 764 (2001). “A trial court abuses its discretion when it imposes a sentence that is not proportional to the seriousness of the circumstances surrounding the offense and the offender.” *Id.*

Here, defendant’s sentence of 21 to 120 months’ imprisonment does not violate the principle of proportionality. “[A] trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender’s underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society.” *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). The maximum sentence for breaking and entering with intent to commit larceny, MCL 750.110, is fifteen years’ imprisonment. In sentencing defendant, the trial court observed that defendant’s conduct harmed the complainant and her business and discussed

<sup>1</sup> Because no discovery violation occurred, we need not consider defendant’s argument about appropriate remedies for a discovery violation involving the prosecutor’s failure to disclose inculpatory evidence.

defendant's involvement in prior theft offenses. Defendant's sentence was well within the statutory limits and, considering the offense and defendant's criminal history, the sentence does not appear disproportionate.

We also reject defendant's claim that he was sentenced on the basis of inaccurate information. Though defendant questioned the accuracy of a prior misdemeanor conviction at his original sentencing hearing, the record reflects that, at the resentencing proceeding, he did not challenge the accuracy of the prior conviction and, indeed, defense counsel conceded that defendant had a prior misdemeanor conviction. Therefore, the record reflects that defendant abandoned the earlier challenge to the accuracy of this information and accepted the information as accurate, thus waiving the issue. See *People v Carter*, 462 Mich 206; 612 NW2d 144 (2000). Based on this waiver and because there is no indication that the trial court sentenced defendant based on inaccurate information, a remand for resentencing or correction of the presentence report is unnecessary.

Affirmed.

/s/ Henry William Saad  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell