

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHANIEL VINCENT,

Defendant-Appellant.

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UNPUBLISHED  
October 11, 1996

No. 179503  
LC No. 94-000333-FC

Before: Fitzgerald, P.J., and O'Connell and T.L Ludington,\* JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 29.797, and pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to a prison term of ten to twenty-five years. He appeals as of right. We affirm.

I

First, defendant asserts that testimony of police officers that shoe prints found near the scene of the robbery matched defendant's footwear was improperly admitted. However, because defendant failed to object at trial, this evidentiary issue is not preserved for appeal. *People v Hyland*, 212 Mich App 701, 709; 538 NW2d 465 (1995); *People v Miller (After Remand)*, 211 Mich App 30, 42; 535 NW2d 518 (1995). Nonetheless, the challenged testimony was properly admitted as lay opinion testimony. MRE 701.

II

Defendant claims that the prosecutor improperly cross-examined defendant's alibi witness, Bridget Bundle, regarding her failure to promptly come forward with exculpatory information. We disagree. Cross-examination concerning the failure of an alibi witness to come forward and tell his story is permissible if there is some showing on the record as to why it would have been natural for the alibi witness to relate his information to the police. *People v Fuqua*, 146 Mich App 250, 254-255; 379 NW2d 442 (1985). A review of the record shows that it would be natural for someone with Bundle's

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

relationship with defendant, with the exculpatory information she claimed to have, to promptly relate this information to the police.

### III

Defendant claims that he was denied a fair trial when the prosecutor introduced hearsay testimony that defendant had committed the offense. However, because defendant did not object at trial, appellate review is precluded absent a miscarriage of justice. *People v Slocum*, 213 Mich App 239, 241; 539 NW2d 572 (1995). After a careful review of the record, we conclude that no miscarriage of justice will result from our refusal to review this issue. The testimony at issue was a nonresponsive, volunteered statement made by a witness for the prosecution. Generally, such statements will not support a claim of prosecutorial misconduct, *People v Williams*, 114 Mich App 186, 198-199; 318 NW2d 671 (1982). A timely objection and curative instruction would have cured any prejudice.

### IV

Defendant contends that there was insufficient evidence presented to prove that defendant was the perpetrator of the armed robbery. We disagree.

A witness, familiar with defendant, identified the voice of the masked perpetrator as defendant's. Clothing seized from defendant at the time of his arrest was identified as the clothing worn by the perpetrator. There was testimony that shoe prints in the snow near the scene contained a distinct pattern that matched defendant's footwear. There was also testimony that a tracking dog followed a scent from the scene of the robbery to a driveway where defendant was observed entering a vehicle. Viewing this evidence and the inferences arising therefrom are looked at in a light most favorable to the prosecution, a rational trier of fact could have found, beyond a reasonable doubt, that defendant committed the armed robbery. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

### V

Last, defendant claims that his sentence is disproportionate. In light of the circumstances surrounding the offense and the offender in this case, we conclude that defendant's ten to twenty-five year sentence does not violate the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), and the trial court did not abuse its discretion in sentencing defendant, *People v Cervantes*, 448 Mich 620, 627, 630, 637; 532 NW2d 831 (1995).

### VI

Throughout his appellate brief, defendant raises, in cursory fashion, the claim that he was denied effective assistance of counsel. However, because this issue was not properly presented in defendant's statements of questions involved, this Court need not address this issue. *People v Wilkins*, 184 Mich App 443, 451 n 4; 459 NW2d 57 (1990). However, were we to address this issue, we would find that defense counsel was not ineffective.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Peter D. O'Connell  
/s/ Thomas L. Ludington