

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ALAN WALTHER,

Defendant-Appellant.

UNPUBLISHED

July 22, 1997

No. 190301

Bay Circuit Court

LC Nos. 94-001261-FH;

94-001313-FH;

94-001314-FH

Before: Saad, P.J., and Neff and Reilly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count each of entering without breaking with intent to commit a felony, MCL 750.111; MSA 28.306, attempted larceny from a building, MCL 750.92(2); MSA 28.287(2) and MCL 750.360; MSA 28.592, and two counts each of larceny from a building, MCL 750.360; MSA 28.592, and breaking and entering a building with intent to commit a felony, MCL 750.110; MSA 28.305. He thereafter pleaded guilty of habitual offender, fourth offense, MCL 769.12; MSA 28.1084, and was sentenced to concurrent terms of six to fifteen years' imprisonment for each offense. Defendant appeals as of right. We affirm.

Defendant first argues the trial court erred by determining that his statement to the police was admissible. We disagree. As determined by the trial court, the clear import of defendant's words was that he would pick and choose the questions he would answer, not that he was asserting his right to remain silent. At best, defendant's statement was an equivocal assertion of his right to remain silent, which is not sufficient to require a halt in questioning. See *People v Catey*, 135 Mich App 714, 722-726; 356 NW2d 241 (1984).

Defendant also claims that his statement was inadmissible as the fruit of an illegal arrest because it was conducted without warrant or probable cause. Defendant correctly states that, generally, a confession that resulted from an illegal arrest is inadmissible. *People v Spinks*, 206 Mich App 488, 496; 522 NW2d 875 (1994). However, defendant was neither under arrest nor in custody when he made his statements to the police. *People v Mayes (After Remand)*, 202 Mich App 181, 190; 508 NW2d 161 (1993). Accordingly, his argument must fail.

In relation to the admissibility of his statement, defendant also argues that his *Miranda*¹ rights should have been readministered following a break in the questioning. We disagree. The police are not required to read *Miranda* rights every time a defendant is questioned. *People v Godboldo*, 158 Mich App 603, 605; 405 NW2d 114 (1986). Defendant was advised of his *Miranda* rights prior to being taken to the police station. At that time, he indicated he fully understood those rights. Although he was questioned about thefts which occurred at the church in both February and April of 1994, the entire interview lasted only one hour. No circumstances occurred which would have required defendant to be readvised of his *Miranda* rights. The trial court did not clearly err by finding that defendant's statement to the police was voluntary. *Godboldo, supra* at 606-607.

Defendant next claims the trial court abused its discretion by allowing him to be impeached with prior convictions. This argument is without merit. The trial court performed the required balancing test, MRE 609(b), and determined that the crimes did reflect on defendant's veracity. Having reviewed the record, we do not find this decision to be an abuse of discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995).

Defendant next argues that the prosecutor's motion to consolidate the four files at issue herein should not have been granted. We disagree. All charged crimes constituted part of a single scheme or plan to rob church offices during a time it was known the employees would be at church. MCR 6.120(B); *People v Miller*, 165 Mich App 32, 44-45; 418 NW2d 668 (1987). Accordingly, the consolidation order was not an abuse of discretion.

Defendant argues that improper testimony regarding uncharged crimes was admitted into evidence. Review of this issue is precluded because defendant failed to raise and preserve the issue below. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *People v Jacques*, 215 Mich App 699, 702; 547 NW2d 349 (1996).

Defendant next argues that reversal is required because Officer Mynsberge was allowed to testify that it was his opinion defendant was responsible for the thefts. Defendant also failed to preserve this issue and has accordingly waived appellate review. *Grant, supra; Jacques, supra*.

Defendant's challenge to the admissibility of Sharon Dupuis' out-of-court identification is without merit. There is no evidence that the identification was anything other than accident or happenstance. See *United States v Wade*, 388 US 218; 87 S Ct 1926; 18 L Ed 2d 1149 (1967); *People v Yacks*, 49 Mich App 444, 447-449; 212 NW2d 249 (1973). Accordingly, admission of the prior identification was proper.

Finally, defendant's sentences are proportionate to the seriousness of the circumstances surrounding the offenses and the offender. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).

Affirmed.

/s/ Henry William Saad
/s/ Janet T. Neff
/s/ Maureen Pulte Reilly

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).