

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
May 19, 2011

v

SUMMER MARLENE CARTER,
Defendant-Appellant.

No. 296242
Allegan Circuit Court
LC No. 09-016098-FH

Before: HOEKSTRA, P.J., and MURRAY and M. J. KELLY, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3), and larceny in a building, MCL 750.360. The trial court sentenced defendant as an habitual offender, second offense, MCL 769.10, to 30 months' probation, with 120 days in jail for the home invasion conviction and 90 days in jail for the larceny conviction. Defendant appeals as of right. We affirm.

On appeal, defendant argues that the trial court erred in allowing Detective Mathis to provide lay opinion testimony that the theft of the pills was committed by a person familiar to Gerald and Tracy Carter. We disagree. We review a trial court's evidentiary decisions for an abuse of discretion. *People v Unger*, 278 Mich App 210, 216; 749 NW2d 272 (2008). A trial court abuses its discretion when it selects an outcome that falls outside the range of reasonable and principled outcomes. *Id.* at 217.

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.

We conclude that under the circumstances presented here the trial court did not abuse its discretion in allowing Mathis to testify that it was "highly unlikely" that the person who stole the pills was a person unfamiliar to the Carters. Mathis's opinion was rationally based on his perception of the incident that only 15 minutes passed from when Tracy Carter left the house to when defendant arrived, that not all the medications and pills in the safe were taken, and that

other valuables from the safe remained. In addition, Mathis's testimony was relevant to the determination of the identity of the perpetrator.

Defendant also argues that the trial court erred in denying her motion for a directed verdict because there was insufficient evidence for the jury to find that she lacked permission to enter the house. We disagree. In reviewing a trial court's decision on a motion for directed verdict, we consider the evidence presented up to the time of the motion in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001).

To be convicted of second-degree home invasion, one must enter a dwelling, either by breaking or without permission. MCL 750.110a(3). Tracy Carter testified that defendant did not have permission to enter the Carter house. Similarly, Gerald Carter testified that he would never give defendant permission to be in the house unsupervised. Viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could find that defendant did not have permission to enter the house. The trial court did not err in denying defendant's motion for a directed verdict.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Kelly