

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE HARRY PRETTY,

Defendant-Appellant.

UNPUBLISHED
February 26, 2008

No. 272493
St. Clair Circuit Court
LC No. 06-000981-FH

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

A jury convicted defendant Lawrence Pretty of two counts of uttering and publishing.¹ The trial court sentenced Pretty to concurrent prison terms of two to fifteen years. Pretty appeals as of right, and we affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Pretty was accused of presenting two forged checks to his friend, Diana Harris, in return for cash from Harris. Pretty asked Harris to help him cash the two checks, explaining that the checks were payments for work he had done for someone. The checks, which were drawn on a closed account, were allegedly taken from the home of Janelle Taylor where the account holder, a former resident of the home, had apparently left her checkbook. In Pretty's defense, Ken Alexander testified that he met Pretty at a temporary employment agency and invited Pretty to assist him in doing some drywall work for Taylor, whom Pretty did not know. According to Alexander, Taylor paid him and Pretty with the allegedly forged checks. In rebuttal, the prosecution introduced the testimony of Taylor, who maintained that Pretty had previously stayed in her home. She also stated that she asked neither Alexander nor Pretty to perform drywall work for her. Over objection, the prosecution also presented testimony by an investigating officer who stated that Pretty had told him during a recorded interview that Pretty performed the drywall work with an individual named "Mike." Pretty allegedly also told the officer that he did not know Taylor.

¹ MCL 750.249.

II. Rebuttal Testimony

A. Standard Of Review

Pretty's sole argument on appeal is that the trial court erred in allowing the prosecution to present the rebuttal testimony of the police officer who interviewed him. We review for an abuse of discretion a trial court's decision to admit rebuttal evidence.² An abuse of discretion occurs where a trial court's decision falls outside of the range of principled outcomes.³

B. Legal Standards

Rebuttal testimony is admissible to "contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same."⁴

[T]he test of whether rebuttal evidence was properly admitted is not whether the evidence could have been offered in the prosecutor's case in chief, but, rather, whether the evidence is properly responsive to evidence introduced or a theory developed by defendant. As long as evidence is responsive to material presented by the defense, it is properly classified as rebuttal, even if it overlaps evidence admitted in the prosecutor's case in chief.⁵

C. Applying The Standards

Here, the challenged rebuttal testimony was limited and was responsive to evidence that Pretty introduced. Alexander's testimony conveyed the impression that Taylor, and not Pretty, wrote the allegedly forged checks, and that Pretty innocently tried to have Harris cash them for him. However, the officer's rebuttal testimony served both to undermine Alexander's credibility and directly refute Pretty's assertion that he and Alexander had performed work for Taylor. We thus find its introduction permissible because it properly "responded to evidence and impressions raised by the defendant during direct examination."⁶

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Alton T. Davis

² *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996).

³ *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

⁴ *Figgures, supra* at 399 (citations omitted).

⁵ *Id.* (citation omitted).

⁶ *Id.* at 400.