

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD LEE NELSON,

Defendant-Appellant.

---

UNPUBLISHED

March 17, 2000

No. 203204

Macomb Circuit Court

LC No. 97-000234-FC

Before: Murphy, P.J., and Hood and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count each of bank robbery, MCL 750.531; MSA 28.799, assault with a dangerous weapon, MCL 750.82; MSA 28.277, and fleeing or eluding a police officer, MCL 257.602a; MSA 9.2302(1). He was sentenced to concurrent terms of twelve to twenty-four years' imprisonment for the bank robbery conviction, thirty-two to forty-eight months' imprisonment for the assault conviction, and 235 days' imprisonment for the fleeing or eluding conviction. Defendant appeals as of right. We affirm.

We are satisfied that the trial court did not abuse its discretion in ruling that defendant was not a proper rebuttal witness. *People v Figures*, 451 Mich 390, 398; 547 NW2d 673 (1996). Defendant failed to establish that he had relevant and material evidence on a substantive issue to contradict the prosecution's expert witnesses' testimony. *People v Vasher*, 449 Mich 494, 505; 537 NW2d 168 (1995); *People v Humphreys*, 221 Mich App 443, 446; 561 NW2d 868 (1997). We also conclude that defendant did not properly move to reopen the proofs in order to testify regarding other matters. Even if the court erred in not allowing defendant to testify, however, either on rebuttal or regarding other matters upon a reopening of the proofs, the error was harmless beyond a reasonable doubt. *People v Belanger*, 454 Mich 571, 576; 563 NW2d 665 (1997); *People v Solomon (After Remand)*, 220 Mich App 527, 532-538; 560 NW2d 651 (1996). Defendant's proposed testimony, as outlined in his offer of proof, would not reasonably have affected the outcome of the case. *Belanger, supra*.

Next, the trial court did not err in considering defendant's lawful occupation as a police officer at the time he committed the charged crimes as an aggravating factor for purposes of sentencing. In the context of this case, defendant's occupation was not considered as an arbitrary classification, but was

properly viewed as a relevant and material consideration, especially since the facts also demonstrated that defendant was able to use his special knowledge and skills as a police officer to facilitate his commission of the crimes. See *People v Gjidoda*, 140 Mich App 294, 300-302; 364 NW2d 698 (1985). The trial court was required to take into account all facts bearing upon the seriousness of the circumstances surrounding both the offense and the offender, which in this case entailed defendant's lawful occupation. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant was not denied his right to equal protection under the law. See *El Souri v Dep't of Social Services*, 429 Mich 203, 207; 414 NW2d 679 (1987). Finally, while the new statutory sentencing guidelines forbid a trial court from considering a defendant's lawful occupation as a basis for departure from the guidelines, the statutory guidelines do not apply to defendant. *People v Alexander*, 234 Mich App 665, 679 n 3; 599 NW2d 749 (1999).

Finally, we conclude that defendant's bank robbery sentence does not violate the principle of proportionality. *Milbourn, supra*. The trial court's sentence and its reasons for departing from the sentencing guidelines properly reflect the seriousness of this matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995); *People v Rockey*, 237 Mich App 74, 79; 601 NW2d 887 (1999).

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ E. Thomas Fitzgerald