STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 20, 2001
v	No. 220277 Berrien Circuit Court
RICKY ALLEN TAYLOR, Defendant-Appellant.	LC No. 99-400166-FH

Before: Saad, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

The jury convicted defendant of unarmed robbery, MCL 750.530; MSA 28.798. The trial court sentenced defendant to fourteen to forty years' imprisonment as a fourth habitual felony offender, MCL 769.12; MSA 28.1084. Defendant appeals as of right, and we affirm.

Defendant contends that he received ineffective assistance of counsel because improper rebuttal evidence regarding his alibi was introduced without objection. He argues that the "rebuttal" evidence did not rebut his alibi, but rather impeached him improperly through evidence of collateral bad acts, such as drug use and prostitution. Defendant failed to preserve this issue for appeal, because no objection to this witness was made at trial, and his ineffective assistance of counsel claim is not set out as a question for appeal as required by MCR 7.212(C)(5). *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999). Moreover, this ground for appeal lacks merit. The rebuttal witness, the person with whom defendant claimed to be at the time of the crime, undermined the credibility of defendant's alibi. She testified that she was not sure on what date or at what time they were together, so she did not know whether they were together when the crime occurred. She contradicted a statement made by defendant in a letter to her regarding a television show he said they watched together, which was supposed to show that he was with her at the time the crime occurred. The witness also disputed other particulars of defendant's testimony concerning what transpired between them when they were together, again calling into doubt the truthfulness of defendant's alibi. This rebuttal testimony, which undermined the evidence introduced by defendant, is clearly admissible. *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996). Defendant, not the rebuttal witness, introduced the evidence of his collateral bad acts; the rebuttal witness contradicted his testimony concerning those acts only where she denied that they occurred (denying that he used her services as a prostitute). The rebuttal witness confirmed defendant's testimony regarding drugs, and

because defendant first raised the subject of drug use, he may not predicate his appeal on the introduction of this testimony by the prosecutor. Because there was no error, there is no basis for reversal on this unpreserved issue. *People v Carines*, 460 Mich 750, 753; 597 NW2d 130 (1999).

Defendant asserts that police improperly allowed complainant, the cashier at the convenience store, to watch a videotape of the crime before she viewed the lineup at which she identified defendant. Specifically, defendant argues that defense counsel was ineffective for failing to object to the viewing. We disagree.

If police showed complainant a photograph of defendant before the lineup, it would have impermissibly suggested that she identify defendant as the perpetrator of the crime. *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998). Here, however, complainant watched a videotape of the crime itself. Defendant maintained throughout trial that someone else committed the robbery. In fact, defendant requested the lineup because he thought complainant might identify the true assailant. Thus, it is unclear how complainant's review of the videotape could have prejudiced defendant, given his position that the videotape showed someone else committing the crime. Moreover, based on defendant's assertions about his alibi, defense counsel could have legitimately reasoned, as a matter of trial strategy, that complainant's review of the tape would help the defense by giving complainant a clearer picture of what the real assailant looked like. This view is supported by defense counsel's own assertion that, after viewing the tape himself, he felt comfortable with defendant's position that he was not the person shown on the tape. Accordingly, defense counsel's decision not to challenge the viewing was a matter of trial strategy which we will not second-guess on appeal. *People v Henry*, 239 Mich App 140, 148; 607 NW2d 767 (1999).

Finally, we disagree with defendant's assertion that the prosecutor failed to lay a proper foundation before showing the convenience store videotape to the jury. The store manager and the state trooper in charge of the robbery investigation established that the tape was the same one taken from the store video camera just after the crime occurred. Further, the investigating officer testified that he watched the videotape and saw the robbery and the events just before and after the crime. This testimony satisfied MRE 901(a) which requires "evidence sufficient to support a finding that the matter in question is what its proponent claims." *People v Berkey*, 437 Mich 40, 50; 467 NW2d 6 (1991). Accordingly, the videotape was properly admitted as evidence.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell