

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SASO MLADENOVIC,

Defendant-Appellant.

UNPUBLISHED

October 4, 2002

No. 232061

Oakland Circuit Court

LC No. 98-158694-FC

Before: O’Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction for felonious assault, MCL 750.82.¹ The trial court sentenced defendant as a second-offense habitual offender, MCL 769.10, to 4 to 6 years’ imprisonment. We affirm.

Defendant first argues that he was denied his constitutional right to present a defense and effectively cross-examine the witnesses against him when he was prohibited from introducing a medical report. Defendant appears to claim that introduction of the medical report or its use to refresh the victim’s memory would have confirmed inconsistencies in the victim’s testimony and would have supported his claim that his sexual relationship with the victim was a consensual “cocaine for sex” exchange. We review a trial court’s evidentiary rulings and limitation of cross-examination for an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000); *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

A defendant’s constitutional right to present a defense and confront his accusers is secured by the right to cross-examination guaranteed by the Confrontation Clause. US Const, Am VI; Const 1963, art 1, § 20; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). However, the right to present a defense is not absolute and cross-examination may be limited. See *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984); *People v Arenda*, 416

¹ The jury acquitted defendant on the other charges, including two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(f), and two counts of assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g(1).

Mich 1, 8; 330 NW2d 814 (1982). “[N]either the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject.” *Adamski, supra*. Rather, courts have wide latitude to impose reasonable limits on cross-examination based on concerns such as prejudice, confusion of the issues, or questioning that is only marginally relevant, among others. *Id.*; *Canter, supra* at 564.

Here, the medical report at issue concerned an individual with whom the victim and defendant spent part of the evening. The report indicated that the individual’s “girlfriend,” supposedly the victim, told someone at the hospital that he had been drinking and doing cocaine on the evening in question. Defense counsel wanted to refresh the victim’s recollection of this statement that she made at the hospital, but the prosecution objected. The trial court sustained the objection on the basis that the evidence was about someone that was not involved in the present case. Contrary to defendant’s argument, this evidence in no way suggests that the victim was trading sexual favors for drugs or that defendant did not commit a sexual offense against her. The trial court’s decision concerning use of the medical report of someone not involved in the case did not deny defendant the right to present a defense or impede effective cross-examination at trial. Thus, we find no abuse of discretion.

Further, even if error existed, it was harmless. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999); *People v Anderson (After Remand)*, 446 Mich 392; 521 NW2d 538 (1994). The jury found defendant not guilty of both counts of first-degree criminal sexual conduct and both counts of assault with intent to commit criminal sexual conduct involving penetration, for which defendant raised the “sex for drugs” defense. With regard to the felonious assault conviction, overwhelming evidence existed to establish that defendant assaulted the victim with a dangerous weapon with the intent to injure her or place her in reasonable fear or apprehension of an immediate battery. MCL 750.82; *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Testimony at trial indicated that defendant beat the victim with a cordless phone, the victim sustained bruising on her body, including a reddened, swollen, and black and blue eye area. Thus, any error was harmless beyond a reasonable doubt.

Defendant next argues, in essence, that the trial court erred in admitting rebuttal evidence. We disagree. “Admission of rebuttal evidence is within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of discretion.” *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996).

“Rebuttal evidence is admissible to contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same.” *Figgures, supra* at 399 (citations omitted). The test that determines whether rebuttal evidence was properly admitted is “whether the evidence is properly responsive to evidence introduced or a theory developed by the defendant.” *Id.*

At trial, defendant testified that he and the victim engaged in consensual sexual activity, including fellatio and digital penetration, and he tried to penetrate her vaginally and anally. Further, defendant testified that he and the victim got into a fight because he did not have any more cocaine, and in the process, the victim scratched him over the eye. Defendant further testified that he pushed the victim and she fell over and hit her head on a bedpost. The prosecutor called a police officer as a rebuttal witness to rebut defendant’s testimony. The officer testified that defendant told him that he never engaged in sexual relations with the victim

because he was married and that the scratch over his eye was the result of a scuffle with someone else earlier that evening. The officer also testified that the bed did not have bedposts. Because the rebuttal testimony was responsive to evidence introduced, there is no abuse of discretion.

Defendant also argues that the prosecution committed misconduct by improperly vouching for the credibility of the victim and by failing to correct the victim's perjured testimony. We disagree. This Court reviews claims of prosecutorial misconduct case by case, examining the remarks in context, to determine whether the defendant received a fair and impartial trial. *People v Rice (On Remand)*, 235 Mich App 429, 435; 597 NW2d 843 (1999). A prosecutor may not vouch for a witness' credibility or suggest that the government have special knowledge that a witness testified truthfully. *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). Moreover, a prosecutor may not knowingly present false or perjured testimony. *People v McWhorter*, 150 Mich App 826, 831; 389 NW2d 499 (1986).

Defendant's claims that the prosecution improperly vouched for the victim's credibility by preventing the introduction of evidence supporting the "cocaine for sex" defense and by having knowledge of the victim's perjury are without merit. The first of defendant's claims is without merit because it is unsound and the jury acquitted defendant on the four counts involving criminal sexual conduct. With respect to the knowledge of perjury claim, there is no evidence that the prosecution believed that the victim was committing perjury. Moreover, the victim's testimony at trial was consistent with her injuries. Furthermore, as discussed above, the victim's statement contained in the medical report was a collateral matter, and thus the prosecution committed no misconduct in objecting to its admission into evidence. Moreover, credibility determinations of the witnesses are a matter for the trier of fact to ascertain. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). We find no prosecutorial misconduct.

Next, defendant argues that he was denied a fair trial because the trial court failed to allow defendant to rebut the evidence that the prosecution presented in rebuttal. We disagree. This issue is unpreserved because defense counsel made no offer of proof regarding the nature of defendant's prospective testimony. See MRE 103(a)(2); *People v Stacy*, 193 Mich App 19, 31; 484 NW2d 675 (1992). Thus, our review is for plain error affecting defendant's substantial rights. *Carines, supra*. Reversal is warranted only where the plain error resulted in the conviction of an innocent defendant or if the error seriously affected the fairness, integrity or public reputation of judicial proceedings. *Id.*

It is not reversible error for the trial court to prohibit a defendant from presenting rebuttal testimony that only serves to reiterate evidence previously presented. *People v Solak*, 146 Mich App 659, 675; 382 NW2d 495 (1985). Defendant can show no plain error affecting his substantial rights because defendant made no offer of proof to indicate that defendant would not merely reiterate his previous testimony. Therefore, there is no evidence that the trial court erred in not allowing defendant's surrebuttal testimony.

Defendant also argues that "even assuming that no one error standing alone warrants relief, the cumulative effect of the aforementioned errors influenced the jury's verdict to [defendant's] disfavor." However, defendant fails to expand on this assertion, and thus we need not address it. *People v Kevorkian*, 248 Mich App 373, 388-389; 639 NW2d 291 (2001). Regardless, based on the foregoing analysis, defendant has failed to establish that the alleged

errors seriously prejudiced him to support a finding that he was denied a fair trial. *Knapp, supra* at 388.

Defendant also contends that the prosecution presented insufficient evidence to support defendant's conviction for felonious assault. This issue is not properly before us because it was not raised in the questions presented. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000); *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999). Regardless, viewing the evidence presented in the light most favorable to the prosecution, a rational trier of fact could conclude that the elements of felonious assault were proved beyond a reasonable doubt where defendant struck the victim multiple times with a cordless telephone² causing multiple injuries. *People v DeKorte*, 233 Mich App 564, 567; 593 NW2d 203 (1999); *Lawton, supra*, at 349; see also MCL 750.82.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra

² An instrument used for peaceful purposes may become a dangerous weapon if the instrument is used with the purpose of inflicting serious bodily injury. *People v DeLisle*, 202 Mich App 658, 672; 509 NW2d 885 (1993).