

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BEVERLY ANN WELLS,

Defendant-Appellant.

UNPUBLISHED

March 20, 2007

No. 266169

Ottawa Circuit Court

LC No. 05-028802-FH

Before: O’Connell, P.J., and Murray and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of embezzling more than \$1,000 but less than \$20,000 from a vulnerable adult, MCL 750.174a(4)(a), and was sentenced to four years’ probation, restitution, and costs. She now appeals her conviction as of right. We affirm.

Defendant’s sole argument on appeal is that the trial court erred by allowing the prosecutor to present rebuttal evidence regarding the amount of money then available in a bank account controlled jointly by defendant and her daughter, Ashley. We disagree. We review for abuse of discretion a trial court’s decision to admit evidence. *Campbell v Sullins*, 257 Mich App 179, 196; 667 NW2d 887 (2003). The standard for whether rebuttal evidence is admissible “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 the defendant.” *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996).

In this case, the evidence regarding the amount of money in the account at the time of trial was responsive to defendant’s assertion during her case-in-chief that the money was being used solely for Ashley’s college expenses, pursuant to the alleged wishes of the victim. Defendant presented evidence that the victim gave her control of roughly \$14,000 to pay for Ashley, her granddaughter, to go to college. Defendant denied using any of the victim’s money for her own personal use, and she testified during direct examination that the account still contained the money, except for a limited amount withdrawn to make payments for Ashley’s car. During the presentation of his rebuttal proofs, the prosecutor offered evidence that only about \$600 was left in the account. This evidence properly discounted the theory that defendant proffered in her proofs, so the trial court did not abuse its discretion by admitting it into evidence. *Id.*

Affirmed.

/s/ Peter D. O'Connell

/s/ Christopher M. Murray

/s/ Alton T. Davis