

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTIE JAVON RICKMAN,

Defendant-Appellant.

UNPUBLISHED

July 27, 2010

No. 292030

Kent Circuit Court

LC No. 08-007986-FH

Before: MURRAY, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction of first-degree home invasion, MCL 750.110a(2). Because the trial court did not violate defendant's right to present a defense, or otherwise abuse its discretion, in disallowing defendant to call her nephew as a witness, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arose from a fight that took place between defendant and the complaining witness. The latter testified that she had recently ended a two-week dating relationship with defendant's brother, who was on parole at the time. Complainant stated that she met defendant's brother at a friend's house, and that the brother had been drinking and pushed her against a wall, prompting a neighbor to call the police, who arrested the brother for violating his curfew. Complainant testified that defendant and defendant's sister came to her house the next day and asked where the brother was, and that defendant became angry on learning that police took him to jail. Complainant testified that defendant aggressively pursued her into her apartment within the house where she lived, and then struck her in the face. Defendant and her sister both testified that the fight took place entirely on the porch, and that defendant never entered complainant's home.

Defendant testified that she became upset with complainant only because complainant called her a "bitch." Defense counsel sought to call defendant's nephew, who was also present at the fracas, to rebut then-anticipated rebuttal testimony from complainant concerning whether complainant had in fact called defendant a "bitch." The trial court disallowed the witness on the grounds that the court "wishes to avoid surprise or unfairness," and that even if complainant did use the offensive word, that still provided no legal excuse for any home invasion that followed.

Complainant was recalled to the stand for rebuttal, and testified that she never called defendant a "bitch." The prosecutor also took the opportunity to ask her to describe her porch

again. Defense counsel objected, on the ground that such testimony lay outside the scope of rebuttal, but the trial court allowed the testimony, on the ground that the matter may not have been “fully explored,” or that there might be “some ambiguity with regard to the nature of this building.”

Defendant’s sole issue on appeal is that the trial court erred in disallowing the defense to call defendant’s nephew. We review a trial court’s evidentiary decisions for an abuse of discretion. *People v Martzke*, 251 Mich App 282, 286; 651 NW2d 490 (2002). An abuse of discretion occurs where the trial court chooses an outcome falling outside a “principled range of outcomes.” *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

A criminal defendant has a constitutional right to present a defense. *People v Hayes*, 421 Mich 271, 278; 364 NW2d 635 (1984), citing US Const, Ams VI and XIV, and Const 1963, art 1, §§ 13, 17, 20. See also *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973). However, that right does not necessarily trump a trial court’s prerogative to control proceedings and enforce rules. See MRE 403 (authorizing the court to limit presentations of prejudicial, confusing, or cumulative evidence); *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997) (a court has discretion to fashion remedies for failures to comply with discovery orders).

There is no dispute that defendant’s nephew was never endorsed as a witness. Defendant offers seemingly benign explanations for why the defense did not expect an objection when the defense indicated the desire to call the nephew to the stand, but defendant nowhere explains why the nephew was never included on any witness list. Moreover, defendant’s sole reason for wanting to call the nephew was to elicit testimony that complainant did call defendant a “bitch.” However, defendant herself offered just such testimony. Given that the defense sought to call a non-endorsed witness to repeat a factual account already in evidence from an endorsed witness, the trial court’s decision to confine the defense to the testimony of the endorsed witness was not an abuse of discretion.

Further, whether complainant used that particular insulting term against defendant does not bear on the question of defendant’s guilt or innocence in this matter. Indeed, defendant’s own brief on appeal states that “the allegation that [complainant] called [defendant] a bitch . . . was not a material issue,” and even quotes approvingly from the trial court’s statement that no such insult was relevant to the charge or defense. Although a court might reasonably excuse imperfect discovery compliance for the purpose of ensuring that material evidence comes to light, in this case, the factual representation in issue was not only already in evidence, but it was concededly of no materiality. For these reasons, the trial court did not violate defendant’s right to present a defense, or otherwise abuse its discretion, in disallowing the defense to call defendant’s nephew to testify.

Defendant additionally asserts that the trial court abused its discretion by allowing the prosecuting attorney to present some evidence in a rebuttal situation that should have been presented during the prosecution’s case in chief. However, that issue is not germane to the sole question presented in this appeal. Accordingly, we need not consider it. See MCR 7.212(C)(7); *People v Albers*, 258 Mich App 578, 584; 672 NW2d 336 (2003). In any event, the argument is weak. Although rebuttal testimony should not be used to introduce evidence that would properly have been introduced in the case in chief, see *People v Leo*, 188 Mich App 417, 422; 470 NW2d

423 (1991), a trial court has wide discretion to reopen proofs. See *People v Shields*, 200 Mich App 554, 561; 504 NW2d 711 (1993). Given the trial court's latter prerogative, allowing some clarification of testimony relating to the case in chief in the course of hearing what is styled as rebuttal testimony would rarely constitute an abuse of discretion.

Affirmed.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

/s/ Elizabeth L. Gleicher