

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THERESA MARIE OUDA,

Defendant-Appellant.

UNPUBLISHED

July 27, 2010

No. 292274

Midland Circuit Court

LC No. 08-003905-FH

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial of embezzlement between \$1,000 and \$20,000 from a vulnerable adult, MCL 750.174a(4)(a). She was sentenced to three years probation and appeals as of right. We affirm.

The decision to admit rebuttal evidence rests within the sound discretion of the trial court, and it will not be reversed absent a clear abuse of that discretion. *People v Steele*, 283 Mich App 472, 485-486; 769 NW2d 256 (2009). “Because the scope of rebuttal is based on the trial judge’s discretionary authority to preclude the trial from turning into a trial of secondary issues, it is the trial court that must, of necessity, evaluate the overall impression that might have been created by the defense proofs.” *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996). Rebuttal evidence is admissible to contradict, repel, explain, or disprove evidence presented by the other party in an attempt to weaken or impeach it. *Id.* at 399. The propriety of rebuttal evidence is contingent upon the proofs introduced by the defense, not solely on the testimony offered by the defendant during cross-examination. *Id.* “[T]he test of whether rebuttal evidence was properly admitted 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.” *Id.* Evidence is properly characterized as rebuttal when it responds to “material presented by the defense” even if it coincides with evidence admitted during the prosecutor’s case in chief. *Id.*

Review of the record reveals that defense counsel questioned the veracity of admissions made by defendant in her interview with the detective. As set forth in the opening statement, it was the defense theory that any admissions made by defendant during the interview was the result of frustration or an attempt to leave and go to work. In light of the theory raised by the defense, the trial court did not abuse its discretion by allowing the videotape as rebuttal evidence. *Figgures*, 451 Mich at 399. Defendant cannot complain about the prosecutor’s use of evidence

to which the defendant “opened the door.” See *People v Lipps*, 167 Mich App 99, 108; 421 NW2d 586 (1988).

Affirmed.

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

/s/ Cynthia Diane Stephens