STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON LORENZO WASHINGTON,

Defendant-Appellant.

UNPUBLISHED
October 6, 1998

No. 199923
Recorder's Court
LC No. 96-501688 FY

Before: Gribbs, P.J., and Sawyer and Doctoroff, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two years' imprisonment for his felony-firearm conviction, followed by thirty-six to ninety-six months' imprisonment as a third habitual offender, MCL 769.11; MSA 28.1083. We affirm.

Defendant first argues that the trial court erred in allowing the prosecution to present a rebuttal witness where the evidence tended to prove the commission of the crime and should have been included in the prosecution's case in chief. We disagree. Admission of rebuttal evidence is within the trial court's discretion and will not be reversed on appeal absent a clear abuse of that discretion. *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996).

Rebuttal testimony may be used to explain, dispel or contradict evidence that an opposing party has presented in order to weaken and impeach that evidence. *People v Leo*, 188 Mich App 417, 422; 470 NW2d 423 (1991). The evidence to be refuted must be relevant and material to the issues presented at trial. *People v JC Williams*, 118 Mich App 266, 270; 324 NW2d 599 (1982). The relevancy of rebuttal testimony is determined by the evidence which it is offered to rebut. *People v Bettistea*, 173 Mich App 106, 126; 434 NW2d 138 (1988). The test of whether rebuttal evidence was properly admitted is not whether the evidence could have been offered by the prosecutor in his case in chief, but whether the evidence is "properly responsive to evidence introduced or a theory developed by the defendant." *Figgures, supra*, 451 Mich 399; *Bettistea, supra*, 173 Mich App 126. Evidence that is responsive to material presented by the defense is properly classified as rebuttal evidence even if it involves evidence admitted in the prosecutor's case in chief. *Id.*

During its case in chief, the prosecution in this case presented testimony that defendant had a gun and committed the crimes. In response, defendant, through his own testimony as well as others' testimony, argued that he did not have a gun at any time. The prosecution then called a rebuttal witness to testify that she had seen something "shiny" in defendant's hands. Only after defendant put his case on did the prosecution feel the need to place the rebuttal witness on the stand to respond to the evidence presented by defendant. Her testimony was responsive to the evidence defendant presented and was properly classified as rebuttal testimony. *Figgures, supra,* 451 Mich 399; *Bettistea, supra,* 173 Mich App 126.

Defendant next argues that the trial court abused its discretion in finding that the contents of a police report were inadmissible hearsay when the statements within the report were offered, not for the truth of the matter asserted, but in order to impeach the prosecution's witnesses. However, defendant has failed to preserve the issue for appeal. A party seeking admission of excluded evidence is obliged to make an offer of proof to provide the trial court with an adequate basis on which to make its ruling and to provide an appellate court with the information it needs to evaluate the claim of error. MRE 103(a)(2); *People v Grant,* 445 Mich 535, 545-546; 520 NW2d 123 (1994). Defendant failed to state what the witness' response would have been had he been allowed to testify as to the contents of his preliminary police investigation report. As such, appellate review is precluded. *Grant, supra,* 445 Mich 545-546. Moreover, to the extent that defendant was trying to prove that he was not in the VFW Hall, any error is harmless in light of defendant's own testimony that he was in the hall and involved in the altercation.

Defendant's final argument on appeal is that the trial court erred in failing to determine the existence of defendant's prior convictions before sentencing defendant as a third habitual offender where the prosecution failed to file a notice of enhancement of sentence or supplemental information with the lower court. Defendant also argues that the trial court erred in enhancing his minimum sentence. We disagree. The lower court file contains a supplemental information charging defendant as a third habitual offender and lists his prior convictions. This information was filed by the prosecutor the same day as defendant's arraignment. In addition, defendant's argument that the trial court erred in failing to determine the existence of defendant's prior convictions before sentencing is without merit where prior convictions may be established by any relevant evidence, including information contained in a presentence report. MCL 769.13(5); MSA 28.1085(5); *People v Green, 228* Mich App 684; 700 NW2d (1998) slip op p 7. Defendant's prior convictions were stipulated to by defense counsel at the time of sentencing when defense counsel acknowledged that the contents of the report were accurate. Due process is satisfied if the sentence is based on accurate information and the defendant had a reasonable opportunity at sentencing to challenge the information. *People v Williams,* 215 Mich App 234, 236; 544 NW2d 480 (1996).

Finally, the trial court did not err in enhancing defendant's minimum sentence where MCL 769.11(2); MSA 28.1023(2) allows a trial court to fix the length of a defendant's minimum and maximum terms as a third habitual offender.

Affirmed.

/s/ Roman S. Gribbs
/s/ David H. Sawyer

/s/ Martin M. Doctoroff