

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESHAWN LASHEEN BILLINGS,

Defendant-Appellant.

UNPUBLISHED

April 4, 2000

No. 213143

Saginaw Circuit Court

LC No. 97-014179 FH

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of two counts of delivery of less than fifty grams of cocaine. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to consecutive prison terms of five to ten years. We affirm.

Defendant's sole argument on appeal centers on rebuttal testimony introduced by the prosecution. He argues that the trial court abused its discretion by allowing the prosecutor to introduce testimony by police officers Terry Williams, John Moten, Jr., and Michael Winters, so as to rebut testimony given by defendant's mother, Constance Billings. We disagree. We review a trial court's decision regarding the admission of rebuttal evidence under an abuse of discretion standard. *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996).

Defendant's argument encompasses two separate lines of rebuttal testimony. One addressing Mrs. Billings' denial, on both direct and cross-examination, of ever having made threatening remarks to officers Williams and Moten.¹ On rebuttal, Williams testified that Mrs. Billings directed threatening remarks at him.² Moten's testimony confirmed that Mrs. Billings had made the threatening remarks to Williams.³ The second involved refutation of Mrs. Billings' denial on cross-examination that she had ever told Moten that defendant was selling drugs in order to help her with her bills.⁴ On rebuttal, both officers Moten and Winters testified that Mrs. Billings had indeed given the foregoing explanation of her son's behavior.⁵

Before defendant began his case-in-chief, he brought a motion in limine to preclude the admission of the rebuttal testimony addressing the alleged threatening remarks by Mrs. Billings.

Defendant argued that the proposed testimony was “infinitely more prejudicial than it is probative of any issue in this case.” The trial court denied defendant’s motion without comment. Upon conclusion of defendant’s proofs, defendant once again raised an objection to the admission of rebuttal testimony concerning threatening remarks. Here, defendant argued that the proposed testimony was beyond the scope of proper rebuttal evidence. Specifically, defendant argued that the testimony was not admissible because it was extrinsic evidence being used to impeach a witness on a collateral matter. The trial court rejected the claim:

Since Mrs. Billings is, for the most part, the only defense witness—notwithstanding the sergeant from the jail who identified the records, Mrs. Billings really is the defense, . . . and credibility is of the utmost importance, and the Court believes that this is a matter of credibility. So the Court will allow it.

As the Michigan Supreme Court observed in *People v Teague*, 411 Mich 562, 566; 309 NW2d 530 (1981), Michigan courts “have long adhered to the familiar rule that a witness may not be impeached by producing extrinsic evidence of collateral facts.” See also MRE 608(b). A witness’s potential bias is, however, not a collateral matter. *Untied States v Abel*, 469 US 45, 52; 105 S Ct 465; 83 L Ed 2d 450 (1984);⁶ *People v Rosen*, 136 Mich App 745, 759; 358 NW2d 584 (1984). We believe that the testimony regarding threats made by Mrs. Billings is evidence of potential bias on her part. Hence, it was properly introduced to impeach her. *Abel, supra* at 49; McCormick, Evidence (4th ed, abridged), § 39, p 52.

Furthermore, acknowledging the racially charged nature of Mrs. Billings threats, we conclude that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. Indeed, it is, in part, the nature of the animosity that shows both the source and depth of Mrs. Billings’ potential bias. See *Abel, supra* at 54. Accordingly, we hold that the trial court did not abuse its discretion in admitting it.

As for Mrs. Billings having said that her son was selling drugs to help her with her bills, we note that defendant failed to specifically object to this testimony before the trial court. MRE 103(a)(1); *People v Grant*, 445 Mich 535, 545; 520 NW2d 123 (1994). Both the motion in limine and the objection raised at the close of defendant’s proofs focused solely on the threatening remarks. Further, defendant never raised an objection when Moten was testifying on the matter. Defendant’s failure to specifically object at any point to the introduction of this testimony means that this issue is not properly before us. *People v Kilbourn*, 454 Mich 677, 685; 563 NW2d 669 (1997).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Michael R. Smolenski
/s/ Jeffrey G. Collins

¹ Mrs. Billings was called as witness by the defense. On direct examination, she testified as follows:

Q. Have you, in fact, threatened anybody that was involved as a witness in this case?

A. No, I just told them I'll say a prayer for them.

On cross-examination, Mrs. Billings testified as follows:

Q. Ma'am, do you remember saying to [Williams], "white motherfucker, you're ugly, and God hates ugly. You're going to die. A cop just got shot, and your next?"

A. I said—no, I did not say anything about no cop got shot. I said to him that there was a police officer that died from stress. That's all I said. And I wasn't talking to him anyway.

Q. Now, do you recall being in an elevator leaving the Court building probably after the preliminary examination where Detective Moten was in the elevator with you and probably your son?

A. Yes.

Q. Do you recall having a conversation with Detective Moten?

A. I just told him that I was going to pray for him like I've been telling him all along.

Q. Did you tell him that Detective Moten and Detective Williams were, quote, fucking lying?

A. No, I didn't.

Q. Did you look at Detective Williams and say again he's ugly, God did not like ugly, he was going to die, stating a cop just got shot and Williams was next?

A. No, I did not. No, I did not.

Q. And she hopes he dies?

A. No. We're all going to die sooner or later, but I did not say that to him. I don't even know the man.

² Williams testified on direct examination as follows:

Q. Did you have a conversation with [Mrs. Billings], or were comments directed to you by her?

A. I would say it's comments directed from her to me.

Q. And what were the comments?

A. She said, white motherfucker, you're ugly, and God hates ugly. She said, a cop just got shot . . . and you're going to die, and you're next. Something to that effect. Verbatim I don't recall exactly.

³ Moten testified on direct examination as follows:

Q. In terms of Mrs. Billings talking about officers involved in the case, did she make any comments about that?

A. At which time?

Q. The time that you're with her in the elevator

A. She made a statement that you can't trust the fucking police.

Q. Was there another occasion in the courthouse when she's directing comments to you or engaging comments—engaging in conversation with you?

A. Leaving the courtroom after the preliminary exam, I don't know if the comments were towards me—well, actually, I believe they were more towards Detective Williams.

Q. Do you recall what the comments were?

A. She was stating that he was ugly, God don't like ugly, and she made the statement that a cop had just got shot, and he was next, and she hopes he dies.

⁴ Mrs. Billings testified on cross-examination as follows:

Q. Okay. Did you then tell Detective Moten that—well, did Detective Moten tell you that your son was selling cocaine to an undercover officer?

A. He just said did you know your son was selling drugs, and I said no.

Q. Did you respond to him that's because I don't have a job, and he was trying to help me with the bills?

A. Come on. No, I did not say that.

Q. You did not say that to Detective Moten?

A. No, I did not say anything like that.

Q. You're sure?

A. I'm very sure. He's telling a story.

⁵ Moten testified on direct examination as follows:

Q. Do you recall if Mrs. Billings was told by you or Lieutenant Winters basically why her son had been arrested?

A. Yes, I believe I told her why he was arrested.

Q. And do you recall telling her it involved delivery of cocaine?

A. That is correct.

Q. To an undercover police officer?

A. Yes, sir.

Q. Did she make any kind of response to this?

A. Her response was that she had wished he would have stayed in Grand Rapids, and not giving an excuse but she felt that one of the reasons why he was out there doing it was because she wasn't working at the time, and he felt he had to help pay the bills.

Q. That he was out doing what?

A. Selling crack.

Winters testified on direct examination as follows:

Q. Did you discuss with Mrs. Billings what her son had been involved in that led him to being arrested?

A. Yes, we did.

Q. Did you tell her that you believed anyways that he had been involved in delivering cocaine to an undercover officer?

A. That's correct.

Q. Did she make any response to you?

A. Yes, sir.

Q. And what did she say?

A. Basically that he had been in Grand Rapids and had returned back to Saginaw from Grand Rapids, and she wished he would have stayed in Grand Rapids. And another reason he might have been doing what he was doing is because she was out of work, and he was kind of helping her out with money for bills and stuff.

Q. Now, "doing what he was doing," did you get any more specific or did she get any more specific?

A. Not no more specific than that. I took it as talking about the selling of dope.

⁶ "Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." *Abel, supra* at 52.