

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERENCE ANTHONY SLACK,

Defendant-Appellant.

UNPUBLISHED

March 16, 2001

No. 219218

Oakland Circuit Court

LC No. 98-157544-FH

Before: Murphy, P.J., and Hood and Cooper, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of unlawfully driving away an automobile, MCL 750.413; MSA 28.645. He was sentenced as an habitual offender, third offense, MCL 769.11; MSA 28.1083, to forty months' to ten years' imprisonment and appeals as of right. We affirm.

Defendant first argues that the trial court erred in allowing rebuttal testimony by Detective Lawrence Jones regarding a photograph of defendant with braided hair. We disagree. Rebuttal evidence is properly admitted if it is responsive to a theory developed by the defendant or to introduced evidence. *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996). Review of the record reveals that Detective Jones' testimony was offered in response to the testimony of defendant's relatives that defendant never had braided hair. Accordingly, the trial court did not abuse its discretion by admitting the rebuttal testimony. *Figgures, supra* at 398. Furthermore, defendant has failed to demonstrate that a discovery order was violated, and the prosecution was only required to disclose exculpatory evidence. The testimony at issue did not involve exculpatory evidence. MCR 6.201(B)(1); *People v Tracey*, 221 Mich App 321, 324; 561 NW2d 133 (1997).¹

¹ Defendant's allegation that this "issue" was raised at the preliminary examination is without merit. On cross-examination, James Malone, the car salesperson, was asked to describe the difference between defendant's appearance at the car dealership and the "photo lineup." Malone testified that defendant had braids during his visit to the dealership, and this did not impair his ability to identify defendant. At trial, defendant's relatives testified that defendant never had braided hair. The significance of a photograph of defendant with braids did not become apparent

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Defendant next argues that the trial court erred in failing to instruct the jury regarding the prosecutor's failure to produce the photograph depicting defendant in braids. Defendant did not raise a timely objection to the instructions and has failed to demonstrate plain error that was outcome-determinative, or error that falls under the category of cases where prejudice is presumed or reversal is automatic. *People v Carines*, 460 Mich 750, 761-767; 597 NW2d 130 (1999).

Defendant next argues that Detective Jones improperly vouched for the credibility of the car salesman, James Malone. We disagree. Defendant failed to object to this testimony and appellate relief is foreclosed absent a showing of plain error affecting defendant's substantial rights. *Carines, supra*. Review of the record reveals that Detective Jones did not vouch for the credibility of Malone, but rather, explained why his investigation did not include interviews with other witnesses and the failure to attempt to obtain fingerprints from the stolen vehicle. Accordingly, defendant's contention is without merit.

Lastly, defendant's argument that cumulative error deprived him of a fair trial is without merit. No errors were found with regard to the issues raised by defendant, and therefore, it is impossible to find cumulative error. *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Jessica R. Cooper

(...continued)

until defendant's relatives testified that he never had braided hair. When Detective Jones interviewed defendant's relatives, they were evasive and failed to provide an alibi for defendant. There was no offer of proof regarding their testimony, despite the prosecutor's request. In fact, contrary to the prosecution's motion for discovery requesting all documentary evidence from the defense, defendant's time sheets were not provided to the prosecution prior to trial. Furthermore, we note that the direct examination of Detective Jones on rebuttal was devoted to the disparity between Jones' conversation with defendant's relatives and their testimony at trial. The prosecutor only asked one question regarding defendant's braided hair on direct examination. Rather, the defense used the failure to produce any photograph as a means of attacking the credibility of Detective Jones and extensively questioned the detective during cross-examination on rebuttal.