

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN LOUIS ARMSTRONG, JR.,

Defendant-Appellant.

UNPUBLISHED

November 22, 2002

No. 233020

Calhoun Circuit Court

LC No. 00-003239-FH

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of third-degree fleeing and eluding a police officer, MCL 750.479a(3), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Officer Holso testified that he was on patrol when he saw two vehicles speeding on a residential street. He pursued the second vehicle, a red pickup truck, and eventually the driver of the truck exited the vehicle and ran from the scene. Holso radioed a description of the man to other units. Shortly thereafter other officers stopped an SUV carrying a passenger who fit Holso's description. Holso made contact with the SUV and identified one of the occupants (defendant) as the person who ran from the pickup truck.

Lavin Tyrone Brown, a defense witness, testified on direct examination that he had known defendant for approximately two years by the street name "Armstrong." Brown maintained that he, defendant, and a person named Matt spent the evening in question drinking and driving around the area, and that he was in defendant's presence continuously from the time he picked defendant up until the time the police stopped his SUV. Brown stated that an officer asked him if he knew Steven Armstrong, and that he answered in the affirmative. However, on cross-examination Brown testified that when Holso asked him if he knew "Steven Armstrong" he answered in the negative because he knew defendant only by the street name "Armstrong." Brown asserted that he did not recall telling Holso that he did not know the identity of the person in the back seat of his vehicle.

Defendant testified that Brown picked him up at his home, and that he, Brown, and a person named Matt spent the evening drinking and driving around the area. They continued that activity until they were stopped by the police. Holso testified on rebuttal that when he made

contact with the SUV he asked Brown if he knew defendant and that Brown replied in the negative. The jury found defendant guilty.

Rebuttal evidence is admissible to contradict, repel, explain, or disprove evidence produced by the other party and tending to weaken or impeach that evidence. Whether rebuttal evidence is proper depends on the proofs introduced by the defendant, and not merely to what he testified on cross-examination. If the evidence responds to evidence introduced by or to a theory developed by the defendant, it is proper rebuttal. *People v Pesquera*, 244 Mich App 305, 316; 625 NW2d 407 (2001). The admission of rebuttal evidence is within the discretion of the trial court. *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996).

Defendant argues the trial court abused its discretion by admitting rebuttal evidence in the form of Holso's testimony. We disagree and affirm defendant's conviction. Defendant did not object to the introduction of rebuttal evidence in the form of Holso's testimony. In the absence of an objection, any error is forfeited unless it was plain and resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant's theory was that he could not have been the driver of the pickup truck that Holso pursued because he was in the company of Tyrone Brown and Matt for the entire evening. Brown, a defense witness, testified on direct examination that he was in defendant's company the entire evening, and that he knew defendant only by the street name "Armstrong."

On cross-examination Brown denied telling Holso that he did not know defendant. Holso's rebuttal testimony that Brown told him that he did not know defendant directly contradicted Brown's testimony. The rebuttal evidence pertained to Brown's credibility, and thus did not concern a purely collateral issue. The credibility of a witness is a material issue. *People v Layher*, 238 Mich App 573, 580; 607 NW2d 91 (1999). Holso's rebuttal testimony responded to defendant's theory that he was in the company of Brown and Matt the entire evening. Defendant's initial introduction of this theory through Brown's direct testimony opened the door for rebuttal evidence to contradict this evidence. *Pesquera, supra*. No plain error occurred. *Carines, supra*.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski