

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK WILLIAM BYERS, III,

Defendant-Appellant.

UNPUBLISHED
December 21, 2010

No. 294035
St. Joseph Circuit Court
LC No. 08-015484-FH

Before: MURPHY, C.J., and METER and GLEICHER, JJ.

PER CURIAM.

Defendant was convicted by a jury of possessing chemicals or laboratory equipment that were methamphetamine precursors, MCL 333.7401c(2)(f), and was sentenced to 30 months to 20 years in prison. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On December 13, 2008, defendant and a friend went to the Rite Aid pharmacy in Three Rivers where defendant purchased a box of Sudafed,¹ a cold medicine containing pseudoephedrine. Shortly after that purchase, defendant's friend also requested a box of Sudafed. The pharmacist asked defendant's friend if he and defendant were together, and the pharmacist informed the friend that he had phoned the police. Defendant's friend quickly left the store without purchasing any Sudafed.

Defendant and his friend drove away but were soon stopped by the police based on the pharmacist's call alerting them to suspicious activity regarding the purchase of Sudafed, which can be used in the production of methamphetamine.

Defendant consented to a search of his vehicle and, in executing the search, police discovered a new box of Sudafed, a Rite Aid receipt, a coffee grinder that tested positive for

¹ The medicine was actually named Sufedrine, Rite Aid's store brand equivalent of the national brand Sudafed. To avoid confusion in this opinion and to be consistent with the testimony of various witnesses, the medicine will be referred to as Sudafed.

ground-up pseudoephedrine, blue paper towels, an empty Sudafed blister pack, a plastic bag, and a bottle cap with a hole in it. An expert testified that these materials, found in combination, suggested that methamphetamine was being manufactured.

Defendant was charged with owning or possessing a chemical or laboratory equipment that he knew or had reason to know was to be used for the purpose of manufacturing a controlled substance (methamphetamine), MCL 333.7401c(1)(b) and (2)(f).

At trial, defendant testified that he only purchased the Sudafed because he had a cold. He claimed that his cold had lasted a couple of days and he took the last of his cold medicine that morning so he needed more. He also testified that he did not purchase cold medicine during his earlier stop that day at Walmart because it does not carry Sudafed. According to defendant, Walmart only carries Claritin-D, and he had never taken that type of medicine.

Following defendant's testimony at trial, a police officer went to Walgreens and Meijer in Three Rivers and gathered information from their pseudoephedrine purchase logs. Those logs showed that defendant had purchased Claritin-D one time from Meijer and that he had made a total of thirteen purchases of pseudoephedrine from multiple Walgreens pharmacies. All of these purchases were made over a seven-month period and were made at a variety of locations, including purchases from Walgreens stores located in Florida and Indiana. Over defendant's objection, the trial court admitted the purchase logs into evidence as rebuttal evidence.

On appeal, defendant argues that the trial court erred in admitting into evidence the pseudoephedrine purchase logs and the accompanying police testimony because the evidence was inadmissible under MRE 404(b). Defendant contends that the danger of unfair prejudice far outweighed any probative value relative to the admission of the evidence.

Admission of rebuttal evidence will not be disturbed on appeal unless there has been an abuse of discretion. *People v Humphreys*, 221 Mich App 443, 446; 561 NW2d 868 (1997). "Rebuttal evidence is admissible to 'contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same.'" *People v Figures*, 451 Mich 390, 399; 547 NW2d 673 (1996) (citations omitted). Rebuttal evidence may only be introduced if it relates to a substantive rather than a collateral matter. *Humphreys*, 221 Mich App at 446. Rebuttal evidence is admissible to contradict answers elicited from a witness regarding germane matters if the rebuttal evidence is narrowly focused on refuting the witness's testimony. *People v Spanke*, 254 Mich App 642, 644-645; 658 NW2d 504 (2003). In *Figures*, 451 Mich at 399-400, the Court applied the rules governing rebuttal evidence, stating:

Once defendant testified on direct examination that he and the complainant were "reconciling," in an attempt to create the impression with the jury that he would not have assaulted the complainant because the two had been living together and getting along well in the months before the illegal entry, "he opened the door to the presentation of further evidence bearing on the actual state of their relationship" The evidence introduced by the prosecutor responded to evidence and impressions raised by defendant during direct examination. Admission of the rebuttal evidence was within the trial court's discretion, and that discretion was not abused. [Omission in original.]

The basic facts of the present case are not in dispute. Defendant testified that he purchased Sudafed. Further, he did not challenge the officers' discovery of the items found in his car. After the prosecution had rested its case, defendant testified that he bought the Sudafed because he had been suffering from a cold for a couple of days. Defendant also testified that he had never used Claritin-D.

The pseudoephedrine purchase logs of Walgreens and Meijer were not investigated or introduced into evidence until after defendant testified on the first day of the trial. The trial court concluded that the pseudoephedrine purchase logs would allow the jury to weigh defendant's credibility in light of his claim that his cold had only lasted a couple of days and that he had never taken Claritin-D. We find that the purchase logs contradicted defendant's testimony about Claritin-D and tended to refute the testimony that he only purchased Sudafed due to having a recent cold.

The charged crime required a showing that defendant owned or possessed chemical or laboratory equipment that he knew or had reason to know was to be used for the purpose of manufacturing methamphetamine. MCL 333.7401c(1)(b). The purpose of defendant's purchase on December 13, 2008, was thus a substantive matter in this case, as knowledge of whether the Sudafed was to be used for manufacturing methamphetamine is an element of the crime in question. And defendant claimed that he made the purchase in order to treat a recent cold. Therefore, the purchase logs and accompanying testimony were responsive to evidence presented by the defense, narrowly focusing on refuting defendant's testimony. The evidence was admitted for a proper purpose, i.e., rebuttal, and not to show propensity, MRE 404(b), the evidence was relevant, MRE 401-402, and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, MRE 403. *People v VanderVliet*, 444 Mich 52, 72-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). The trial court also provided a limiting instruction, directing the jurors to use the evidence only to gauge defendant's credibility and not for purposes of propensity. *Id.* at 75. We would also note that, with respect to MRE 404(b), the evidence at issue here would have been admissible to show intent and knowledge, which are specifically listed as proper purposes for admitting other-acts evidence.

The trial court did not abuse its discretion in admitting the rebuttal evidence, and defendant was not denied a fair trial.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher