

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
August 19, 2014

v

JAMMIE ALAN HENDRIX,  
  
Defendant-Appellant.

No. 315873  
Hillsdale Circuit Court  
LC No. 12-362874-FH

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Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Defendant Jammie Alan Hendrix appeals by right his jury conviction of possession with intent to deliver a controlled substance less than 50 grams, second offense. MCL 333.7401(2)(a)(iv). The trial court sentenced Hendrix to serve 22 months to 480 months in prison for his conviction. Because we conclude there were no errors warranting relief, we affirm.

Hendrix's conviction arises from a controlled drug purchase. Deputy Kevin Bradley testified that Mellisa Cross contacted him in April 2012 and told him that she and her boyfriend, Justin Parsons,<sup>1</sup> could purchase morphine pills from Hendrix. Bradley arranged to meet Cross and Parsons at the Sheriff's Department. Other officers searched Cross and Parsons and their car to ensure that they did not have any money or contraband. After the search, an officer gave Parsons \$50 in "pre-recorded buy funds" and Parsons drove to Hendrix's residence with Cross sitting in the front passenger's seat.

Bradley stated that he and another deputy followed Cross and Parsons to Hendrix's mother's residence. They drove past the residence as Cross and Parsons turned into the driveway. Bradley saw Hendrix standing at the driver's side window of the car, but did not see Hendrix exchange anything with Parsons. Parsons testified that he gave Hendrix the \$50 and Hendrix gave him five morphine pills. Cross also testified that she saw Parsons give Hendrix the \$50.

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<sup>1</sup> By the time of trial, Cross had married Parsons.

After Parsons pulled out of Hendrix's driveway, Bradley followed Parsons directly back to the Sheriff's Department. He noted that Parsons did not stop or make any contacts on the way back to the department. At the department, Parsons turned over 5 morphine pills and officers again searched Parsons and Cross and their car. The officers did not find any additional contraband or money. Officers arrested Hendrix several months later, but did not recover the buy money.

Hendrix testified on his own behalf and denied selling drugs to Parsons on the day at issue; in fact, he stated, he has never sold drugs. At trial, Hendrix's lawyer argued that Parsons and Cross framed Hendrix. The jury, however, rejected that theory and found Hendrix guilty.

On appeal, Hendrix first argues that the trial court improperly excluded evidence that Parsons disliked Hendrix and, on that basis, had a motive to frame him. Hendrix maintains that this error denied him his constitutional right to present a defense. This Court reviews a trial court's decision to exclude evidence is reviewed for an abuse of discretion. *People v King*, 297 Mich App 465, 472; 824 NW2d 258 (2012). An abuse of discretion occurs when the trial court's decision falls "outside the range of principled outcomes." *Id.* (citation omitted). However, this Court reviews de novo whether the trial court's decision denied the defendant his or her constitutional right to present a defense. *Id.*

Relevant evidence is generally admissible, but evidence which is not relevant is not admissible. MRE 402. Relevant evidence is any evidence that has a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. MRE 401. "The relationship of the elements of the charge, the theories of admissibility, and the defenses asserted governs what is relevant and material." *People v Yost*, 278 Mich App 341, 403; 749 NW2d 753 (2008), quoting *People v VanderVliet*, 444 Mich 52, 75; 508 NW2d 114 (1993).

At trial, Hendrix's lawyer tried to establish that Parsons disliked Hendrix because Hendrix had dated Cross for a few weeks in 2010. As a result, he maintained, Parsons wanted revenge and conspired with Cross to frame Hendrix in April 2012. Although the trial court allowed Hendrix's lawyer some leeway in making this argument, it prevented Hendrix's lawyer from eliciting testimony concerning alleged encounters between Hendrix and Parsons after April 2012, because that evidence did not establish that Parsons had a motive to frame Hendrix before the purchase.

On cross-examination, Parsons stated that he had not had any confrontations with Hendrix prior to the controlled buy. He had had encounters with Hendrix since Hendrix's arrest because Hendrix was threatening him. He also stated that his wife's prior relationship with Hendrix did not "matter at this point" and, in any event, his wife told him that she did not really date Hendrix—she just "used him for money to get out of jail." There was also testimony that Parsons and Cross approached the officers because they were hoping to get the officers' help with Parson's own criminal charges and they mentioned Hendrix because he was the only person that Parsons knew who had drugs to sell.

The trial court plainly allowed the defense to present evidence that Cross and Parsons had a motive to frame Hendrix. There was testimony that Cross had had problems with drugs, that Parsons had had problems with the law, that Cross had had a romantic relationship with Hendrix and had used him in the past and was apparently setting him up for arrest in order to help Parsons with his own criminal trouble, and that Parsons had actually received some consideration for his aid in the officers' drug investigation. Accordingly, the jury was well aware that Cross and Parsons were not the most credible witnesses. The court only limited Hendrix's lawyer when he tried to elicit testimony that Hendrix had had confrontations with Parsons *after* the controlled drug purchase in an effort to prove that Parsons specifically wanted revenge against Hendrix *prior* to the controlled drug purchase. Because evidence of acrimonious encounters after the purchase—and indeed after Hendrix's arrest—had little to no relevance to Parson's state of mind or motives prior to the drug purchase, we cannot conclude that the trial court abused its discretion when it precluded the admission of the testimony for that purpose. See *Yost*, 278 Mich App at 403 (noting that relevance and materiality may depend on the theories at issue); see also *People v Sabin*, 463 Mich 43, 69; 614 NW2d 888 (2000) (holding that the trial court properly excluded evidence of a sexual assault victim's perception of the incident because the "defendant's theory of defense was not that the complainant mistakenly perceived [the defendant]'s actions, but that the entire incident did not take place").

Further, because the trial court did not abuse its discretion when it precluded Hendrix's lawyer from eliciting testimony about encounters between Parsons and Hendrix that occurred after the drug buy, Hendrix cannot establish that the trial court's decision deprived him of his right to present a defense without showing that the rule of evidence at issue is "arbitrary or disproportionate to the purposes it was designed to serve, either in general or as applied to the facts of this case." *King*, 297 Mich App at 474. Because Hendrix has not developed that argument on appeal, he has abandoned it. *Id.*

Next, Hendrix argues that on direct examination of a rebuttal witness, the prosecution improperly elicited testimony regarding his sale and use of drugs at the home of the rebuttal witness. Because Hendrix's lawyer did not object to this line of questioning at trial, we shall review it for plain error affecting Hendrix's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

MRE 608(b) "generally prohibits impeachment of a witness by extrinsic evidence regarding collateral, irrelevant, or immaterial matters." *People v Spanke*, 254 Mich App 642, 644; 658 NW2d 504 (2003). However, rebuttal evidence is admissible if it contradicts, refutes, explains, disproves, or weakens evidence introduced, or a theory developed by the other party, and "[t]he question whether rebuttal is proper depends on what proofs the defendant introduced and not on merely what the defendant testified about on cross-examination." *People v Figures*, 451 Mich 390, 399; 547 NW2d 673 (1996). In addition, the prosecution's "good-faith effort to admit evidence does not constitute misconduct." *People v Dobek*, 274 Mich App 58, 70; 732 NW2d 546 (2007).

At trial, Hendrix testified that he had been sentenced to boot camp as a result of his prior involvement with drugs and “learned about honesty, integrity, [and] responsibility” while there. And he stated that he “always took responsibility for all my actions.” After describing how he was now reformed and took responsibility for his actions, Hendrix emphatically denied that he ever sold drugs to Parsons: “No, sir, I did not, never, not one time.” Indeed, he contradicted Parsons, Cross, and Bradley by testifying that he was not even at his mother’s residence on the day at issue. He then denied that he ever sold morphine to anyone: “No sir, I did not. Never. I’ve never sold (sic) drugs.”

In response to Hendrix’s testimony, the prosecution called a rebuttal witness to establish that Hendrix was still involved with drugs. And the prosecution could properly call a rebuttal witness to refute Hendrix’s testimony. See *Spanke*, 254 Mich App at 644-645; see also *People v Roper*, 286 Mich App 77, 91-93; 777 NW2d 483 (2009) (discussing the limits on other acts evidence and character evidence). The prosecution’s question to the witness regarding Hendrix’s use of drugs also contradicted and weakened a theory developed by Hendrix’s lawyer on direct examination of Hendrix; specifically that he was no longer involved with drugs and was reformed after his previous involvement with illegal drugs. *Figures*, 451 Mich at 399-400. Therefore, the prosecutor cannot be faulted for eliciting this testimony. *Dobek*, 274 Mich App at 70.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly  
/s/ David H. Sawyer  
/s/ Joel P. Hoekstra