[Cite as *State v. Gray*, 2011-Ohio-666.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-03-064
	:	O P I N I O N
- vs -		2/14/2011
	:	
KHRENDON GRAY,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2009-09-1586

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YOUNG, P.J.

{¶1} Defendant-appellant, Khrendon Gray, appeals his murder conviction following a jury trial in the Butler County Court of Common Pleas.

{¶2} In October 2009, appellant was indicted on one count of murder in violation of R.C. 2903.02(B). The state of Ohio alleged that on September 10, 2009,

appellant fatally stabbed 15-year-old Amber Robinson in the back. The events leading to the fatal stabbing were as follows:

{¶3} Amber lived at the North Pointe apartment complex (the apartment complex) on Mulhauser Road in West Chester, Ohio. So did Ascia Wilson (appellant's girlfriend) and her sister Koreen. On the evening of September 10, 2009, appellant and his friends, Josh Piper, Rashon Martin,[1] and Derek Gilliam were at the apartment complex when a fight broke out between Amber and Koreen. Their verbal altercation soon led to an argument between Amber's boyfriend and Josh (Koreen's boyfriend). According to Iraysa Linares, appellant then got involved and started arguing with Amber, calling her names, and telling her, "I'm going to kill your ass bitch." Raheem Davis, another witness to the altercation, testified hearing threats between people. However, he never heard threats from Amber. The altercation ended when the police arrived at the apartment complex at about 7:00 p.m. The police had received a call about a fight in progress involving several juveniles. The police stayed at the scene approximately 20 minutes.

{¶4} At 8:13 p.m., the police came back to the apartment complex after receiving another call. This time, over 50 people were involved in several pockets of fights, shoving and arguing. The situation was very volatile. Amber was lying down on the ground in the middle of a street, with blood coming from underneath her.

{¶5} After the first fight ended, Ascia's mother suggested that appellant and his friends go home. Appellant called his friend Chris Baker and asked him to come and pick up appellant and his friends. Chris arrived at the apartment complex shortly

1. Following the fatal stabbing, Rashon Martin was indicted on one count of complicity to murder for allegedly handing the murder weapon, a knife, to appellant. They were jointly tried. At the close of the state's case, the trial court granted Rashon's Crim.R. 29 motion for an acquittal.

before 8:00 p.m. and parked with the front of the car facing an apartment building. Chris never left his car. Rashon, Derek, and appellant got into the car. As they were waiting for Josh, who was saying goodbye to his girlfriend outside of the car, a big crowd approached the vehicle from behind. At that point, the doors of the car were closed. Chris testified that because of the way he was parked, he could not leave without potentially hurting someone in the crowd. As the crowd came near, appellant, Rashon, and Derek got out of the car, approached the crowd, and started arguing. Appellant looked angry. From the car, Chris heard a big argument. Soon after, Rashon came back to the car, reached into the back seat where he unzipped a backpack, got out of the car, and shut the door. Appellant came back to the car, talked to Rashon, and appeared to receive something from Rashon. The two then went back to the crowd.

{¶6} Ascia was talking to appellant who was in Chris' car when the crowd approached the car. Amber was in the crowd. Ascia observed Amber pointing out appellant and Josh. A man next to Amber started arguing with Josh before punching him. Josh fought back; several fights ensued. During the commotion, Ascia observed Josh, Rashon, and Derek "getting beat up." The last time she saw Amber, she (Amber) was walking away from the commotion.

{¶7} Raheem testified that shortly before the second fight, cars and a lot of people started showing up at the apartment complex. The fight broke out when "somebody got punched." The situation degenerated into a big brawl, with people yelling, arguing and making threats. The situation was chaotic; Amber was caught in the middle of the fight. According to Raheem, people were getting stomped, including Josh and Derek. LaMonte Williams, a resident at the apartment complex,

also testified the fight broke out after several cars arrived at the apartment complex. He, however, never saw any males on the ground. Neither Raheem nor LaMonte saw appellant being beat up or on the ground.

{¶8} Both Raheem and LaMonte saw appellant stab Amber. Raheem testified that an African-American, heavy set man with a blue shirt and a blue hat (later identified as appellant) stabbed Amber with a blade before getting into a car. Likewise, LaMonte testified that Amber was stabbed by a "fat black guy" wearing a blue shirt and looking like Ascia's boyfriend. LaMonte described how appellant walked up to Amber from behind, swung his left arm in a sideways, upward motion, and stabbed Amber in her left side back area before "he pulled it out." LaMonte then saw Amber fall and stumble to the ground.

{¶9} Following the stabbing, appellant returned to Chris' car, "mad, angry," and "panicking," rushing Chris to leave. Chris complied and the two left the apartment complex. During the drive to appellant's house, Chris asked why they were in a hurry and why they were leaving without Rashon, Josh, and Derek. Appellant told Chris that a fight had broken out because "people were talking stuff," and that he had stabbed a girl because "she was talking stuff." Appellant told Chris not to tell anyone.

{¶10} After leaving the apartment complex, appellant called Ascia and told her Amber "wanted him dead and *** she ate those words." However, no one heard Amber threaten appellant that evening. Appellant later texted Ascia and Koreen telling them not to tell anyone. A yellow razor blade was recovered at the scene; however, this was not the murder weapon. No other knives were recovered. During trial, appellant was observed writing with his left hand. Photographs of Rashon,

Derek, and Josh showed that all three suffered some scratches and scrapes on their body. By contrast, Detective James Thomas testified that when he met appellant in the early morning hours of September 11, appellant had no injuries to his face or body.

{¶11} James Swinehart, M.D., conducted Amber's autopsy. He testified Amber was stabbed in the back twice. The fatal wound was a wound five to six inches deep, which entered Amber's back at an upward angle, and which penetrated the rib cage, the left lung, and finally the heart. Amber did not have any defensive wounds.

{¶12} Appellant testified on his own behalf. According to appellant, he spent the day on September 10, 2009 at the apartment complex with Josh, Rashon, and Derek. Around 7:00 p.m., an argument broke out between Amber and Koreen; the two were calling one another names and started bumping into each other. Josh and Amber's boyfriend then became involved in the argument. Appellant stepped in. The argument ended when they realized the police were coming. However, as the parties separated, words were exchanged between the protagonists. Further, Amber threatened to have her brother and his friends "get [appellant]." To which appellant replied, "they know where I'm at," before walking away to Ascia's house.

{¶13} Appellant called Chris to pick up him and his friends. Once Chris arrived, appellant and his friends left Ascia's residence and went outside. As they were walking to Chris' car, they noticed a group of people walking toward them. By the time that group reached Ascia's residence, appellant, Derek, and Rashon were all in the car with Chris. Next, another and larger group started walking toward the car. Someone in the crowd engaged Josh, words were exchanged, and Josh was

punched and knocked to the ground. Everybody paused for three to five seconds, until Rashon punched Josh's assailant. Rashon was knocked to the ground, and appellant and Derek "ran to the group" and "started throwing punches." Before they knew it, the crowd was swarming the four of them and appellant and Derek were knocked to the ground.

{¶14} As they were knocked down, Josh's backpack opened and three knives fell out of the bag, including the yellow box cutter. Appellant grabbed a kitchen knife and started swinging at the crowd "for [his] life because there was too many of them." He then "felt something, a brush up on the knife." Upon realizing the knife had blood, appellant ran to Chris' car and hopped in. Appellant testified he initially thought he had stabbed Derek. He later found out from Ascia that he had stabbed Amber. Appellant also testified that upon seeing blood on the knife, he "grabbed [Derek] but he couldn't get up as fast, so I hurried up and ran to the car and hopped in the car."

{¶15} On cross-examination, appellant admitted he did not tell Detective Thomas that he was assaulted and that he had picked up a knife and held it during the incident with the crowd. Appellant admitted this was the first time he was telling this story but claimed the detective "never asked for no story" and "never gave [him] a chance." Appellant also admitted that although he believed he had stabbed Derek, he left him fend for himself against an angry crowd and never called the police for help because he panicked. Appellant denied telling Chris he had stabbed a girl.

{¶16} In response to appellant's testimony on cross-examination, the state presented the rebuttal testimony of Detective Lori Beiser and Detective Thomas.

{¶17} At the close of the evidence, appellant requested instructions on negligent homicide, reckless homicide, voluntary manslaughter, and defense of

others. The trial court denied those requests. On March 11, 2010, a jury found appellant guilty as charged. Appellant was sentenced to 15 years to life in prison.

{¶18} Appellant appeals, raising four assignments of error.

{¶19} Assignment of Error No. 1:

{¶20} "THE COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT IN REFUSING TO INSTRUCT THE JURY ON THE LESSER INCLUDED OFFENSES OF RECKLESS HOMICIDE, NEGLIGENT HOMICIDE, OR MANSLAUGHTER."

{¶21} Appellant was charged with and convicted of murder in violation of R.C. 2903.02(B). Appellant argues the trial court abused its discretion by denying his request for jury instructions on the lesser included offenses of negligent homicide, reckless homicide, and voluntary manslaughter.

{¶22} In determining whether an instruction on a lesser included offense is warranted, a trial court must first determine whether the offense in the requested instruction is a lesser included offense of the charged offense. If so, the trial court must then determine whether the evidence at trial would reasonably support both an acquittal on the crime charged and a conviction on the lesser included offense. *State v. Smith*, 89 Ohio St.3d 323, 330-331, 2000-Ohio-166, certiorari denied (2001), 531 U.S. 1167, 121 S.Ct. 1131; *State v. McCullough*, Fayette App. Nos. CA2003-11-012 and CA2007-04-014, 2008-Ohio-6384, ¶61.

{¶23} An instruction is not warranted simply because the defendant offers "some evidence" going to the lesser included offense. *State v. Shane* (1992), 63 Ohio St.3d 630, 632-633. There must be "sufficient evidence" to "allow a jury to *reasonably* reject the greater offense and find the defendant guilty on a lesser

included (or inferior-degree) offense." Id. (Emphasis sic.) We review the trial court's decision on requested jury instructions for an abuse of discretion. *State v. Wolons* (1989), 44 Ohio St.3d 64, 68.

Negligent Homicide

{¶24} "A person commits negligent homicide by negligently causing the death of another by means of a deadly weapon or dangerous ordnance. See R.C. 2903.05[A]. A person can murder another; that is, *** cause the death of another, by means other than by a deadly weapon or dangerous ordnance. See *State v. Koss* (1990), 49 Ohio St.3d 213, 219. Consequently, negligent homicide is not a lesser included offense of murder. Id. at paragraph four of the syllabus." *State v. Mathis*, Cuyahoga App. No. 91830, 2009-Ohio-3289, ¶14. It follows the trial court did not abuse its discretion in refusing to instruct the jury on negligent homicide.[2] Id.; *State v. Horton*, Stark App. No. 2007-CA-00085, 2007-Ohio-6469, ¶81-82.

Reckless Homicide

{¶25} R.C. 2903.041, Ohio's reckless homicide statute, states: "No person shall recklessly cause the death of another[.]" A person acts recklessly "when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature." R.C. 2901.22(C). Reckless homicide is a lesser included offense of murder. See *State v. Braylock*, Lucas App. No. L-08-1433, 2010-Ohio-4722.

{¶26} The trial court refused to instruct the jury on reckless homicide on the

2. The trial court found that negligent homicide was a "possible lesser included offens[e]" to murder. It nevertheless refused to instruct the jury on negligent homicide based upon the evidence presented at trial. It is well-established that an appellate court will not reverse a judgment that is based on erroneous reasoning if that judgment is otherwise correct. See *State v. Payton* (1997), 124 Ohio App.3d 552; *State ex rel. Dehler v. Kelly*, 127 Ohio St.3d 309, 2010-Ohio-5724.

ground the two stabbing wounds were puncture wounds rather than "slash type wounds. [Thus], *** the jury *** could not reasonably conclude that that type of wound was inflicted by virtue of a defensive slashing motion [as testified to by appellant]." The trial court based its ruling on *State v. Carlisle*, Montgomery App. No. 22970, 2009-Ohio-6004.

{¶27} Carlisle was convicted of murder in violation of R.C. 2903.02(B) for fatally stabbing the victim during a heated argument. At trial, Carlisle testified he was swinging the knife in a reckless, haphazard manner (while covering his face with his free arm) when he stabbed the victim three times in the neck and shoulder area. The coroner testified, "because they are stab wounds, [the wounds] imply precise infliction not a slashing type manner across the skin, which again would create an incised wounds [sic], a cut on the skin surface." On appeal, Carlisle challenged the trial court's refusal to instruct the jury on reckless homicide. The Second Appellate District upheld the trial court's decision as follows:

{¶28} "The trial court, however, found that Carlisle's testimony was totally inconsistent with that of the coroner who performed the autopsy on [the victim] ***. *** We also note that Carlisle stabbed [the victim] three times, one of which was a wound three and one/half inches deep which severed the subclavian artery in [the victim's] neck and, ultimately caused his death. That, and the fact that the wounds suffered by [the victim] were all precisely inflicted stab wounds, establish that Carlisle acted knowingly when he attacked the victim, rather than merely acting in a reckless manner. Thus, the trial court did not err when it held that an instruction on the lesser included offense of reckless homicide was not warranted because the evidence adduced at trial did not support such a charge being given." *Carlisle*, 2009-Ohio-

6004 at ¶60, 63.

{¶29} Upon reviewing the evidence, we find that the trial court did not abuse its discretion in refusing to instruct the jury on reckless homicide. Appellant stabbed Amber twice in the back. The fatal wound was a wound five to six inches deep, which entered Amber's back at an upward angle, and which penetrated the rib cage, the left lung, and finally the heart. Amber did not have any defensive wounds. Further, the state presented the testimony from two bystanders who witnessed appellant stab Amber in the back. One of the bystanders testified that appellant walked up to Amber from behind, swung his arm in an upward motion, and stabbed Amber before "pulling it out."

{¶30} There was further evidence that during the first fight, appellant threatened to kill Amber. Following the stabbing, appellant got into Chris' car, rushing him to leave, and told him he had stabbed a girl because "she was talking stuff." Appellant told his girlfriend that Amber "had said she wanted him dead and she ate those words." Appellant told his girlfriend, Chris, and Koreen not to tell anyone what he had done.

{¶31} The only evidence arguably supporting the theory that appellant acted recklessly in killing Amber was his testimony he was swinging the knife at the crowd because there were too many of them. Then, he felt a brush up on the knife. However, "even where the defendant offers some evidence through his own testimony supporting a lesser-included offense, he is still not entitled to an instruction on that offense if the totality of the evidence does not reasonably support an acquittal on the greater offense and a conviction on the lesser offense." *State v. Anderson*, Butler App. No. CA2005-06-156, 2006-Ohio-2714, ¶13, quoting *State v. Neely*, 161

Ohio App.3d 99, 2005-Ohio-2342, ¶46.

{¶32} Given the totality of the evidence, we cannot say the jury could have reasonably acquitted appellant of the murder charge and found him guilty of the lesser-included offense of reckless homicide. Consequently, we agree with the trial court that the evidence did not warrant an instruction on reckless homicide. See *Carlisle*, 2009-Ohio-6004; *State v. Walker*, Hamilton App. No. C-030252, 2004-Ohio-4364.

Voluntary Manslaughter

{¶33} Voluntary manslaughter is not a lesser included offense of murder, but an inferior degree of murder. *Shane*, 63 Ohio St.3d at 632; *State v. Harrop*, Fayette App. No. CA2005-1-036, 2006-Ohio-6080, ¶11. Nevertheless, "a defendant charged with murder is entitled to an instruction on voluntary manslaughter when the evidence presented at trial would reasonably support both an acquittal on the charged crime of murder and a conviction for voluntary manslaughter." *Shane* at id.

{¶34} R.C. 2903.03(A), Ohio's voluntary manslaughter statute, states: "No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another[.]"

{¶35} An instruction on voluntary manslaughter is warranted only when there is "evidence of reasonably sufficient provocation occasioned by the victim[.]" *Shane* at paragraph one of the syllabus. For provocation to be reasonably sufficient, it must be sufficient to arouse the passions of an ordinary person beyond the power of his or her control. Id. at 635. "If insufficient evidence of provocation is presented, so that

no reasonable jury would decide that an actor was reasonably provoked by the victim, the trial judge must, as a matter of law, refuse to give a voluntary manslaughter instruction." Id. at 634.

{¶36} There is no evidence in the case at bar of any such provocation by Amber. Appellant testified that as he was trying to end an argument during the first fight, Amber threatened to have her brother and his friends "get [him]." To which appellant replied, "they know where I'm at," before walking away to Ascia's house. Following the stabbing, appellant told Chris he had stabbed a girl because "she was talking stuff." Appellant also told Ascia that Amber wanted him dead and "she ate those words."

{¶37} It is well-established that "words alone will not constitute reasonable sufficient provocation to incite the use of deadly force in most situations." Id. at 637. We find that the alleged provocation by Amber was not reasonably sufficient provocation under R.C. 2903.03. The trial court, therefore, did not abuse its discretion in refusing to instruct the jury on voluntary manslaughter.

{¶38} Appellant's first assignment of error is overruled.

{¶39} Assignment of Error No. 2:

{¶40} "THE TRIAL COURT'S FAILURE TO INSTRUCT ON THE AFFIRMATIVE DEFENSE OF SELF-DEFENSE WAS PLAIN ERROR."

{¶41} Because appellant did not request the trial court to instruct the jury on self-defense, he has waived all but plain error. As we stated in *State v. Sias*, Madison App. Nos. CA2010-01-001 and CA2010-02-003, 2010-Ohio-3566, "[p]lain error does not exist unless 'but for the error, the outcome of the trial clearly would have been otherwise.' Notice of plain error is to be taken 'under exceptional

circumstances and only to prevent a manifest miscarriage of justice.'" Id. at ¶23. (Internal citations omitted.)

{¶42} Self-defense is an affirmative defense; the burden of going forward with evidence of self-defense and the burden of proving self-defense by a preponderance of the evidence is upon the accused. R.C. 2901.05(A); *State v. Palmer*, 80 Ohio St.3d 543, 563, 1997-Ohio-312.

{¶43} To establish self-defense in a case where a defendant used deadly force, the defendant must prove: (1) he was not at fault in creating the situation giving rise to the affray; (2) he had a bona fide belief he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was the use of deadly force; and (3) he did not violate any duty to retreat or avoid the danger. *State v. Robbins* (1979), 58 Ohio St.2d 74, paragraph two of the syllabus; *Braylock*, 2010-Ohio-4722 at ¶24. If a defendant fails to prove any one of these elements, he has failed to demonstrate he acted in self-defense. *State v. Voss*, Warren App. No. CA2006-11-132, 2008-Ohio-3889, ¶54.

{¶44} Upon reviewing the evidence, we find that a jury instruction on self-defense was not warranted. Chris testified that appellant was in the car, with all doors closed, when the crowd approached. Instead of staying in the car, appellant, looking angry, got out of the car, approached the crowd, and started arguing. Appellant later returned to the car but went back to the crowd. During the first fight, appellant was heard threatening Amber he would kill her; by contrast, no one heard Amber threaten appellant. While claiming he was knocked down on the ground and generally assaulted by the crowd, appellant had no injuries on his face and body. Further, while bystanders saw Josh, Rashon, and Derek on the ground, no one saw

appellant on the ground or being beat up. Amber was walking away from the commotion when appellant stabbed her twice in the back. No one else was using or holding a knife. Neither appellant nor any of the witnesses testified that Amber was fighting when or before she was stabbed. Stabbing Amber was not appellant's only means of escape.

{¶45} By his own testimony, appellant was in the car when the crowd approached. Appellant got out of the car. After Rashon was knocked down for punching Josh's assailant, appellant "ran to the group" and "started throwing punches." In other words, appellant willingly left the safety of the car to confront the crowd and voluntarily ran into the crowd where he started fighting.

{¶46} Given this evidence, the trial court did not err, let alone commit plain error, by failing to instruct the jury on self-defense. Appellant's second assignment of error is overruled.

{¶47} Assignment of Error No. 3:

{¶48} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT BY REFUSING TO INSTRUCT THE JURY ON THE AFFIRMATIVE DEFENSE OF OTHERS."

{¶49} Appellant argues the trial court erred by refusing to instruct the jury on defense of others. The trial court declined to instruct the jury on the ground that "even if [the defendant] is defending [Derek], they were in the car, they left the car, they left the safety of the car to take on this crowd. [T]he facts and the evidence do not support that they respected the duty to retreat. Even if the defendant was defending others, there is *** no evidence that Amber Robinson was threatening the defendant or [Derek]." We agree.

{¶50} "Under certain circumstances, one may employ appropriate force to defend another individual against an assault. However, 'one who intervenes to help [another] stands in the shoes of the person whom he is aiding, and if the person aided is the one at fault, then the intervenor is not justified in his use of force and is guilty of an assault.'" *State v. Moss*, Franklin App. No. 05AP-610, 2006-Ohio-1647, ¶13, quoting *State v. Wenger* (1979), 58 Ohio St.2d 336, 340. Further, a person is not entitled to claim defense of another in regard to a physical altercation if the person being defended voluntarily entered the physical altercation. See *State v. Smith*, Washington App. No. 02CA75, 2003-Ohio-1712; *State v. D.H.*, 169 Ohio App.3d 798, 2006-Ohio-6953. Defense of another is a variation of self-defense and requires proof of the same elements. *Moss* at ¶13-14.

{¶51} We find that the trial court properly refused to instruct the jury on defense of others. With the exception of Josh, appellant, Rashon, and Derek were all in the car when the crowd approached the vehicle. Josh could have climbed into the car; appellant, Rashon, and Derek could have stayed in the car; they could have tried to leave the apartment complex. Instead, Josh got involved in an argument with someone in the crowd; appellant, Derek, and Rashon got out of the car; and after Rashon punched someone, appellant and Derek ran to the crowd and started throwing punches. Hence, appellant and his friends voluntarily entered the altercation. Chris' testimony shows that appellant left the fight to come back to the car but then went back to the fight. Thus, while retreat before the stabbing was possible, appellant chose not to do so.

{¶52} Appellant claims he was defending his friends against the crowd. Yet, although he believed he had stabbed Derek, he left him (and his two other friends) to

fend for themselves against an angry crowd and never called the police for help. Amber was walking away from the commotion when appellant stabbed her twice in the back. No one else was using or holding a knife. Neither appellant nor any of the witnesses testified that Amber was fighting when or before she was stabbed. Stabbing Amber was not appellant's only means of escape.

{¶53} Given this evidence, the trial court did not abuse its discretion in refusing to instruct the jury on defense of others. Appellant's third assignment of error is overruled.

{¶54} Assignment of Error No. 4:

{¶55} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT IN ALLOWING IMPROPER REBUTTAL TESTIMONY."

{¶56} As stated earlier, in response to appellant's testimony on cross-examination, the state presented the rebuttal testimony of Detectives Beiser and Thomas. On appeal, appellant does not challenge the rebuttal testimony of Detective Beiser and only challenges the rebuttal testimony of Detective Thomas. We note that appellant failed to object to Detective Thomas' rebuttal testimony. He has thus waived all but plain error. See *Sias*, 2010-Ohio-3566.

{¶57} Rebuttal evidence is that given to explain, refute, or disprove new facts introduced by the adverse party, and its scope is limited by such evidence. *State v. Smith*, Butler App. No. CA2004-02-039, 2005-Ohio-63, ¶11, citing *State v. McNeill*, 83 Ohio St.3d 438, 1998-Ohio-293. The determination as to what evidence is properly admissible evidence rests within the trial court's discretion and will not be reversed absent an abuse of discretion. *McNeill* at 446.

{¶58} On rebuttal, Detective Thomas testified that although he gave appellant

the opportunity to tell his side of the story, appellant never said anything about being knocked down to the ground, about the backpack opening and three knives falling out of it, or about grabbing one of the knives and using it for defense. Nor did appellant say anything about accidentally stabbing someone, or believing he had stabbed Derek. Appellant did tell the detective what his recollection of the evening was, which included the fact a group of people swarmed him and his friends. The detective also testified that after he asked appellant what kind of knife he had used and where he had found it, appellant did not reply.

{¶59} We find no abuse of discretion in the trial court's admission of Detective Thomas' rebuttal testimony. It is undeniable that the detective's rebuttal testimony regarding what appellant did not tell him was consistent with appellant's testimony on cross-examination. However, on cross-examination, appellant did not simply testify he did not inform the detective about the knives or stabbing someone. He also claimed the detective "never asked for no story" and "never gave [him] a chance." The detective's rebuttal testimony was therefore proper to refute appellant's foregoing claim on cross-examination. See *McNeill*. In addition, appellant cannot show that but for the detective's rebuttal testimony, the outcome of the trial clearly would have been otherwise. See *Sias*, 2010-Ohio-356.

{¶60} The trial court, therefore, did not err, let alone commit plain error, by allowing Detective Thomas' rebuttal testimony. Appellant's fourth assignment of error is overruled.

{¶61} Judgment affirmed.

BRESSLER and RINGLAND, JJ., concur.