

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID J. BERNARD,

Defendant-Appellant.

UNPUBLISHED

April 3, 1998

No. 198877

Oakland Circuit Court

LC Nos. 95-138939 FH; 95-
138940 FH; 95-138941 FH

Before: Cavanagh, P.J., and White and Young, Jr., JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of forgery, MCL 750.248(1); MSA 28.445(1). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12(a); MSA 28.445(1), to seven to twenty years' imprisonment and ordered him to pay restitution in the amount of \$26,607. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred by failing to exclude a statement he made to a probation officer as rebuttal evidence. Before testifying in his own defense, defendant moved to bar admission of his conversation with the probation officer on the basis that it was privileged. As was proper, the trial court refused to rule on whether the evidence constituted permissible rebuttal evidence until the defense had presented its case. See *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996). Defendant then made it unnecessary for the trial court to rule on the issue by testifying himself regarding the statement on direct examination. Because the trial court never addressed whether the probation officer's testimony constituted proper rebuttal evidence, the issue is not preserved for appellate review. See *People v Malone*, 193 Mich App 366, 371; 483 NW2d 470 (1992), aff'd 445 Mich 369; 518 NW2d 418 (1994).

Defendant also asserts that the evidence of his statement to his probation officer was admitted in violation of MRE 410. However, MRE 410 is inapplicable because it applies to evidence offered *against* a defendant. In the present case, defendant introduced the evidence himself. In addition, MRE

410 is not applicable because defendant did not make the statement during plea negotiations, but rather after he pleaded guilty.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Robert P. Young, Jr.