

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL PATRICK PETERS,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 196168
Oakland Circuit Court
LC No. 95-136872 FH

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Following defendant's convictions by jury of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), and aggravated assault, MCL 750.81a; MSA 28.276(1), he was sentenced to terms of imprisonment of four to fifteen years and one year, respectively. Defendant appeals as of right. We affirm.

The trial court did not deny defendant a reasonable opportunity to test the credibility of the sexual assault victim and, therefore, did not impermissibly infringe upon defendant's right of confrontation where defendant failed to make an offer of proof demonstrating that the intended line of cross-examination would produce evidence probative of the victim's credibility. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993); *People v Ronald Green*, 74 Mich App 601, 605-606; 254 NW2d 788 (1977).

Defendant's objection below to the admission of the 911 recording on a ground other than the ground now raised on appeal renders defendant's instant evidentiary challenge unpreserved for appellate review. *People v Metzler*, 193 Mich App 541, 548; 484 NW2d 695 (1992). Accordingly, defendant's challenge is forfeited unless defendant establishes the existence of plain error that was outcome determinative. *People v Grant*, 445 Mich 535, 548-549, 552-553; 520 NW2d 123 (1994). The admission of the tape recording was not plain error. Under the circumstances of this case, the tape was admissible as either a present sense impression, MRE 803(1), or as an excited utterance, MRE 803(2). *City of Westland v Okopski*, 208 Mich App 66, 77; 527 NW2d 780 (1994); *People v Slaton*, 135 Mich App 328, 334-335; 354 NW2d 326 (1984).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad