

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN PATRICK WELLS,

Defendant-Appellant.

UNPUBLISHED

June 30, 2000

No. 218068

Lapeer Circuit Court

LC No. 97-006187-FH

Before: Jansen, P.J., and Hood and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction by a jury of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court abused its discretion in excluding defense witnesses Jesse Solsa and Peggy Wells from testifying regarding prior statements that defendant allegedly made that were consistent with the defense theory that he possessed the marijuana with the intent to destroy it. Defendant argues that the exception to the hearsay rule for prior consistent statements, MRE 801(d)(1)(B), was applicable. We disagree.

As to witness Solsa, we note that he did in fact testify more than once regarding defendant's statements to him that he intended to destroy the marijuana. Thus, there was no exclusion of this testimony. As to witness Peggy Wells, she testified that defendant was not aware of their son's alleged drug problem until after the raid of his home. Under MRE 801(d)(1)(B), a prior consistent statement is admissible to rebut an express or implied charge against the declarant of recent fabrication. Thus, any statements made by defendant to Peggy Wells after the raid would not serve to rebut the prosecutor's allegation that defendant had fabricated the story about finding and destroying the marijuana to cut-off the supply to his son. Accordingly, the hearsay exception did not apply. See *People v Darden*, 230 Mich App 597, 605, n 11; 585 NW2d 27 (1998); *People v Lewis*, 160 Mich App 20, 29; 408 NW2d 94 (1987).

Defendant next argues that he was denied a fair trial because the trial court refused to instruct the jury that possession of marijuana with the intent to destroy it is not unlawful. We find no error. Defendant's proposed instruction is not an accurate statement of the law. A person cannot possess marijuana for any purpose, even to destroy it. In any event, we find that defendant was not denied a fair trial inasmuch as he was allowed to present his theory of the case to the jury.

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad