

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG LYNN LANG,

Defendant-Appellant.

---

UNPUBLISHED

October 11, 2002

No. 231513

Kalamazoo Circuit Court

LC No. 98-1510-FH

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of delivery of marijuana to a minor, MCL 333.7401(1), 333.7401(2)(c),<sup>1</sup> and one count of fourth-degree criminal sexual conduct, MCL 750.520e(1)(a). He was sentenced as an habitual offender, third offense, MCL 769.12, to concurrent prison terms of three to sixteen years for each controlled substance conviction and two to four years for the CSC conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arise from the delivery of marijuana to three minor girls and the digital penetration of one of the girls.

Defendant first argues that he was denied a fair trial when a witness testified about an uncharged act of delivery of marijuana that the trial court had previously held to be inadmissible. Specifically, defendant contends that error requiring reversal occurred during the following colloquy between the prosecutor and the witness when the prosecutor was questioning the witness about incidents of sexual abuse involving defendant:

Q. All right. What happened?

A. Ashley and I were sleeping when Frankie [defendant] came into the bedroom to ask us if we wanted to smoke some marijuana.

MS. INNES [defense counsel]: I'm going to object, your Honor, based on a prior objection that was sustained by the Court.

---

<sup>1</sup> There were three minor complainants with regard to the drug charges.

THE COURT: Mr. Russell [prosecutor]?

MR. RUSSELL: Your Honor, pursuant to the court's earlier order, I did as the Court directed.<sup>2</sup>

THE COURT: Members of the jury, you will disregard any reference to the smoking of marijuana or the comment that was made concerning smoking marijuana.

That is - - the objection is sustained and stricken from the record.

The trial court sustained the objection and instructed the jury to disregard the comment. Defense counsel did not request any further curative action, and in fact thanked the court. Under these circumstances, we cannot conclude that the witness' volunteered and unresponsive answer deprived defendant of a fair trial. *People v Kelsey*, 303 Mich 715, 717; 7 NW2d 120 (1942); *People v Williams*, 114 Mich App 186, 198-199; 318 NW2d 671 (1982).

Defendant next argues that the trial court abused its discretion by allowing the admission of evidence of defendant's sexual statements to the complainant, who resided in the same home with defendant. Defendant acknowledges that the evidence was generally admissible, see *People v DerMartex*, 390 Mich 410, 413-414; 213 NW2d 97 (1973), but contends that the untimely admission of the evidence unfairly prejudiced the defense. We disagree. The statements at issue preceded the charged conduct and were documented in the police reports and preliminary examination transcript of the case. Thus, the evidence should not have surprised defense counsel,<sup>3</sup> and we find that the probative value of the evidence outweighed any potential prejudice to defendant.

Last, defendant maintains he was denied the effective assistance of counsel by defense counsel's failure to lay a proper foundation for the admission of a prior inconsistent statement by one of the complainants through the testimony of another witness. Defendant acknowledges that prior inconsistent statements are admissible when offered for impeachment but not to prove the truth of the prior statements. See *People v Hallaway*, 389 Mich 265; 205 NW2d 451 (1973). Thus, even if the evidence were admitted, it would have been for the sole purpose of attacking the credibility of the complainant. The credibility of the complainant was attacked when the same witness was allowed to express her opinion about the complainant's truthfulness. Further, even absent the testimony of this complainant, overwhelming evidence was presented to support defendant's convictions. Under these circumstances, we cannot conclude that defendant's trial was rendered unreliable by his counsel's performance.

---

<sup>2</sup> The court advised the prosecutor to admonish the complainants not to testify about other uncharged incidents of delivery of marijuana by defendant.

<sup>3</sup> Defendant's claim that he would have handled voir dire in a different manner had he been aware of this evidence was not raised as an objection at trial to admission of the evidence.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Mark J. Cavanagh