

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BYRON KENT SMEDLEY,

Defendant-Appellant.

UNPUBLISHED

December 21, 2001

No. 225788

Ingham Circuit Court

LC No. 99-074807-FH

Before: Meter, P.J., and Jansen and Gotham*, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction of two counts of third-degree criminal sexual conduct. MCL 750.520d(1)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied due process and a fair trial because the court allowed plaintiff to present evidence of the complainants' prior consistent statements regarding the sexual abuse. The admission of evidence is within the trial court's discretion. *People v Starr*, 457 Mich 490; 577 NW2d 673 (1998). The admission of a prior consistent statement through a third party is appropriate if the requirements of MRE 801(d)(1)(B) are satisfied. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000). MRE 801(d)(1)(B) provides that a prior statement of a witness is not hearsay if the declarant testifies at trial and is subject to cross-examination, and the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.

In *Jones*, this Court followed federal precedent under FRE 801(d)(1)(B) and found that the party offering the prior consistent statement must establish four elements:

(1) the declarant must testify at trial and be subject to cross-examination; (2) there must be an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony; (3) the proponent must offer a prior consistent statement that is consistent with the declarant's challenged in-court testimony; and (4) the prior consistent statement must be made prior to the time that the supposed motive to falsify arose. [*Id.*, 707, quoting *United States v Bao*,

* Circuit judge, sitting on the Court of Appeals by assignment.

189 F3d 860, 864 (CA 9, 1999), quoting *United States v Collicott*, 92 F3d 973, 979 (CA 9, 1996)].

The prosecutor concedes that the testimony presented did not meet the four elements. However, any error in the admission of this testimony was harmless beyond a reasonable doubt. The testimony supported defendant's argument that complainants fabricated their story after the fact. Complainants both admitted that they initially failed to report the sexual assault. Their statements about the abuse after the fact were of little probative value, were apparent to the factfinder as a necessary antecedent to the eventual filing of the charges, and did not affect the outcome of the case. *People v Lukity*, 460 Mich 484; 596 NW2d 607 (1999).

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham