

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
November 27, 2012

v

LINDSAY ALICE TREANOR,  
Defendant-Appellant.

No. 304931  
Livingston Circuit Court  
LC No. 11-019643-FH

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Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Defendant, Lindsay Alice Treanor, appeals as of right from her conviction following a jury trial of furnishing alcohol to a minor causing death, MCL 436.1701(2). We affirm because defendant’s trial counsel was not ineffective, there was sufficient evidence to support defendant’s conviction, and defendant was not deprived of a fair trial.

This case arises out of the death of Bryce Earl Dickinson. On Sunday, November 7, 2010, the 18-year-old victim consumed a large quantity of alcohol. Sometime that evening, the victim was placed in the back seat of defendant’s vehicle and left alone. Later, the victim was found unresponsive. Defendant drove the victim to the hospital, where he was pronounced dead on arrival. The cause of death was determined as “acute . . . alcohol intoxication associated with exposure to a cold environment.”

I. EFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that she was denied effective assistance of trial counsel. Because this Court denied defendant’s motion to remand her case for a *Ginther* hearing,<sup>1</sup> our review is confined “to errors apparent on the record.” *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001). To prove a claim of ineffective assistance of counsel, a defendant must establish that counsel’s performance fell below objective standards of reasonableness and that, but for counsel’s error, there is a reasonable probability that the result of the proceedings would

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<sup>1</sup> *People v Treanor*, unpublished order of the Court of Appeals, entered April 11, 2012 (Docket no. 304931).

have been different.” *People v Swain*, 288 Mich App 609, 643; 794 NW2d 92 (2010). “Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise.” *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004).

#### A. JURY INSTRUCTIONS

Defendant first argues that counsel was ineffective for failing to object to the jury instructions regarding the elements of the offense. When instructing the jury on the elements of furnishing alcohol to a minor causing death, the trial court stated in relevant part as follows: “The defendant is charged with furnishing alcohol to a minor causing death. In order to prove the Defendant committed this crime, the prosecution must prove each of the following elements beyond a reasonable doubt. First, that the Defendant furnished beverages containing alcohol to [the victim]. Furnished means to provide.” Defendant argues that counsel should have objected to the instruction because MCL 436.1701(1) criminalizes the act of *knowingly* selling or furnishing alcohol. Defendant argues that the trial court instructed the jury as if the offense was a strict liability crime.

Defendant’s argument is unpersuasive. MCL 436.1701(1) states that “a person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the person is a minor, is guilty of a misdemeanor.” It is undisputed that defendant knew that whiskey contains alcohol and that the victim was a minor. The terms selling and furnishing inherently require knowledge. It would not be selling or furnishing alcohol if the victim took the alcohol without defendant’s knowledge or consent—i.e. by theft or accident. See *Longstreth v Fitzgibbon*, 125 Mich App 261, 267; 335 NW2d 677 (1983). Therefore, the jury instructions did not suggest that this was in any way a strict liability crime, and counsel was not ineffective for approving the instructions. See *People v Horn*, 279 Mich App 31, 39-40; 755 NW2d 212 (2008).

Moreover, there is no reasonable probability that a different instruction would have made any difference in the outcome of the case. Defendant admitted to buying alcohol and even made statements that she shared it with the victim. She also stated that when, on previous occasions, the victim chose not to drink, it was the victim’s decision to abstain and not her decision to withhold alcohol from him. Thus it is unlikely that a different instruction would have led to the jury finding that defendant did not knowingly sell or furnish alcohol to the victim.

Defendant also argues that counsel was ineffective because he failed to request an instruction on the lesser included offense of furnishing alcohol to minor, MCL 436.1701(1). We disagree. The differentiating element between furnishing alcohol to a minor and furnishing alcohol to a minor causing death is the “subsequent consumption of the alcoholic liquor by the minor is a direct and substantial cause of that person’s death.” MCL 436.1701(2). There is no dispute that the victim died, nor is there a dispute that the consumption of alcohol was a direct and substantial cause of the victim’s death. Therefore, because the element differentiating the two offenses was not in dispute, defendant was not entitled to an instruction on the lesser included offense. See *People v Reese*, 466 Mich 440, 441; 647 NW2d 498 (2002).

## B. MRE 404(B) EVIDENCE

During cross-examination, the prosecutor questioned defendant about prior instances where defendant provided the victim with alcohol. Similar statements were contained in statements defendant made to the police. On appeal, defendant argues this evidence was inadmissible because the prosecutor failed to give notice under MRE 404(b)(2).<sup>2</sup> Therefore, defendant argues, trial counsel should have objected to the prosecutor's questions and moved to redact parts of her statements.

Defendant's argument is unpersuasive. MRE 404(b)(2) provides as follows:

The prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial and the rationale . . . for admitting the evidence. If necessary to a determination of the admissibility of the evidence under this rule, the defendant shall be required to state the theory or theories of defense, limited only by the defendant's privilege against self-incrimination.

This requirement does not apply to evidence introduced to rebut evidence offered by a defendant. *People v McRunels*, 237 Mich App 168, 183; 603 NW2d 95 (1999). Defendant's direct-examination testimony opened the door to cross-examination regarding defendant's prior acts of providing alcohol to the victim. On direct, defendant stated that she frequently purchased alcohol on weekends that the victim stayed with her. But, defendant stated, the victim did not always consume the alcohol she purchased. Additionally, defendant stated that the victim typically did not drink on Sundays. Having raised the issue on direct, the prosecutor was free to cross-examine defendant on the subject. See *McRunels*, 237 Mich App at 183 ("The prosecution is entitled to cross-examine defense witnesses and introduce rebuttal testimony.").

Defendant also argues that counsel was ineffective for failing to object to the jury instruction regarding the use of prior bad act evidence. The trial court instructed the jury as follows:

Evidence of other offenses. You have heard evidence that was introduced to show that the Defendant committed improper acts for which she is not on trial. If you believe this evidence you must be very careful only to consider it for certain purposes. You may only think about whether this evidence tends to show whether it is realistic that Bryce Dickinson would not partake in whiskey provided by the Defendant during the days of November 4 to November 7, 2010 . . . when

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<sup>2</sup> We will not address the whether the prior act evidence in this case was admissible for a proper purpose under MRE 404(b)(1). Though defendant argues that trial counsel was ineffective because he did not object to the prior acts evidence, the basis for defendant's argument is lack of notice, not that the evidence was offered for an improper purpose.

he has consumed whiskey provided by the Defendant in the past. You must not consider this evidence for any other purpose.

Defendant argues that the instruction erroneously focused on the victim, not on how to analyze the evidence in terms of defendant's prior acts.

“[E]vidence of prior acts under MRE 404(b) is not limited only to prior acts of a defendant, but may include those of the victim as well.” *People v Rockwell*, 188 Mich App 405, 409-410; 470 NW2d 673 (1991). Here, evidence was introduced that the victim had previously consumed alcohol provided by defendant while the victim was underage. However, defendant stated that the victim typically did not drink on Sundays, and the charged incident occurred on a Sunday. Thus, the focus on the victim was not improper. Further, the jury was specifically instructed that it could not convict defendant because it believed that she was guilty of other misconduct, and “jurors are presumed to follow their instructions.” *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008).

### C. *MIRANDA* WAIVER

Defendant next argues that trial counsel was ineffective because counsel failed to challenge defendant's *Miranda*<sup>3</sup> waiver and the voluntariness of defendant's statements. Defendant gave two statements to the police. The first was at the hospital, and the second was at the sheriff's department. In regard to the first statement, defendant was not informed of her *Miranda* rights prior to being questioned. However, the record reveals that defendant was not under arrest or in custody when she was questioned at the hospital. The purpose of defendant being questioned at the hospital was not custodial interrogation. *People v Ish*, 252 Mich App 115, 118; 652 NW2d 257 (2002). Indeed, “[a]t this point it was not apparent that any crime at all had been committed.” *People v Coppernol*, 59 Mich App 745, 750; 229 NW2d 913 (1975). Police questioned defendant along with others present to determine who the victim was, how old the victim was, what happened to the victim, and where and when it happened. The questioning was consistent with a “[g]eneral on-the-scene questioning of citizens in the fact-finding process.” *Id.* Therefore, *Miranda* warnings were not necessary.

In regard to the second statement, defendant challenges both the voluntariness of the statement and the voluntariness of her waiver of her *Miranda* rights. The test for voluntariness of a waiver and the test for voluntariness of a statement to police are essentially the same. *People v Ryan*, 295 Mich App 388, 396-397; 819 NW2d 55 (2012). Both inquiries depend on the absence of police coercion. *Id.* A *Miranda* waiver is voluntary if “it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *People v Daoud*, 462 Mich 621, 635; 614 NW2d 152 (2000) (citations omitted). “The test for voluntariness should be whether, considering the totality of all the surrounding circumstances, the confession is ‘the product of an essentially free and unconstrained choice by its maker’ or whether the accused’s ‘will has been overborne and his capacity for self determination critically impaired.’” *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988) (citation omitted).

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<sup>3</sup> *Miranda v Arizona*, 384 US 436, 466; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

The totality of the circumstances establishes that defendant's statement and waiver were voluntary and not the result of police coercion. Defendant argument is predicated entirely on her assertion that she could not have voluntarily waived her rights because she was intoxicated at the time. While it is undisputed that defendant consumed alcohol earlier in the night, defendant showed little if any signs of intoxication during her interview at the police station. Defendant appeared coherent, articulate, and aware of her surroundings. Defendant indicated that she understood her rights, and when asked if she wished to talk to the police, defendant responded, "Yeah. You said I can stop at any time." Counsel was not ineffective for failing to move to suppress the statement made at the police station. See *Horn*, 279 Mich App at 39-40.

## II. SUFFICIENCY OF THE EVIDENCE

Defendant argues that she was convicted on the basis of legally insufficient evidence. We disagree. Sufficiency of evidence is a constitutional issue that we review de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

When reviewing a claim that the evidence presented was insufficient to support defendant's conviction, this Court must view the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the prosecution established the essential elements of the crime. [*People v Kissner*, 292 Mich App 526, 533-534; 808 NW2d 522 (2011).]

This Court "will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

MCL 436.1701 proscribes the sale of alcohol to minors and provides in relevant part:

(1) [A] person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the person is a minor, is guilty of a misdemeanor.

(2) A person who is not a retail licensee or the retail licensee's clerk, agent, or employee and who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both, if the subsequent consumption of the alcoholic liquor by the minor is a direct and substantial cause of that person's death or an accidental injury that causes that person's death.

At trial, defendant acknowledged knowing that the victim was a minor. And the forensic pathologist testified that the victim's cause of death was "acute ethanol or ethyl alcohol or drinking alcohol intoxication associated with exposure to a cold environment." Thus, the only issue was whether defendant "furnished" alcoholic liquor to the victim.

Defendant testified that she purchased two half-gallons of whiskey on November 7, 2010, and that the victim did not drink from first half-gallon. She testified that the victim took the second half-gallon from her car and drank it without her knowledge or permission. However,

defendant's testimony stands in stark contrast to the statements she made on the night of the incident. Toward the end of the police interview at the hospital, defendant can be heard saying: "Oh, my God. I . . . gave him a fifth tonight." At the police station, defendant stated: "If [the victim] did anything other than drinking he did it without my knowledge," implying that the victim drank with her knowledge. Indeed, when asked, "So, three of you split a half gallon of whiskey?" defendant responded, "Yeah." One of the three people referenced in the question is the victim. Resolving these conflicting statements in favor of the prosecution and deferring to the credibility determinations of the jury, *Kanaan*, 278 Mich App at 619, a reasonable jury could find beyond a reasonable doubt that defendant was guilty of furnishing alcohol to a minor causing death.

### III. PROSECUTORIAL MISCONDUCT

Defendant next argues that she was denied her right to a fair trial by several instances of prosecutorial misconduct. Additionally, defendant argues that counsel was ineffective for failing to object to the alleged misconduct. "Prosecutorial-misconduct issues are decided case by case, and the reviewing court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context." *People v Abraham*, 256 Mich App 256, 272-273; 662 NW2d 836 (2003). We will not reverse if the alleged prejudicial effect of the prosecutor's conduct could have been cured by a timely curative instruction. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

We have reviewed defendant's allegations of prosecutorial misconduct and conclude that the majority of them are without merit. The prosecutor did make some statements to the jury that were unsupported by the evidence, and he injected his own personal knowledge during cross-examination and closing argument. However, these errors were not so egregious that a prompt curative instruction could not have forestalled any prejudicial effect. *Id.* Moreover, there is nothing in the record to draw into doubt that the jury understood and followed the court's admonition that "[t]he lawyers' statements, arguments are not evidence." See *Unger*, 278 Mich App 235. Accordingly, the record does not evidence "a reasonable probability that the result of the proceedings would have been different" had trial counsel acted differently. *Swain*, 288 Mich App at 643.

### IV. TITLE-OBJECT CLAUSE

Defendant next argues that MCL 436.1701 is unconstitutional under the Title-Object Clause of the Michigan Constitution, Const 1963, art 4, § 24, and that counsel was ineffective for failing to challenge the statute's constitutionality. The constitutionality of a statute is a question of law that is reviewed de novo on appeal. *People v Roberts*, 292 Mich App 492, 496; 808 NW2d 290 (2011). "In determining the constitutionality of a statute, all possible presumptions in favor of constitutionality should be granted." *Boulton v Fenton Twp*, 272 Mich App 456, 464; 726 NW2d 733 (2006)

The Title-Object Clause of the Michigan Constitution provides as follow: "No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title." "[T]hree kinds of challenges may be brought

against statutes on the basis of Const 1963, art 4, § 24: (1) a “title-body” challenge, (2) a multiple-object challenge, and (3) a change of purpose challenge.” *People v Cynar*, 252 Mich App 82, 84; 651 NW2d 136 (2002) (citation omitted). Defendant raises a title-body challenge, arguing that the title of the Liquor Control Code, MCL 436.1101 *et seq.*, does not adequately describe the content of the law.

In regard to a title-body challenge, this Court has noted that “[t]he title of an act must express the general purpose or object of the act.” *Cynar*, 252 Mich App at 84 (internal quotation marks and citations omitted; alteration by *Cynar*).

However, . . . “the title of an act need not be an index to all the provisions of the act.” [*HJ Tucker & Associates, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 559; 595 NW2d 176 (1999)]. Instead, the test is merely “whether the title gives fair notice to the legislators and the public of the challenged provision.” *Id.* It is only “where the subjects are so diverse in nature that they have no necessary connection,” that we will find the fair notice aspect has been violated. *Id.*, quoting *Mooahesh v Dep’t of Treasury*, 195 Mich App 551, 569; 492 NW2d 246 (1992). [*Cynar*, 252 Mich App at 84-85.]

Here, the title to the LCC, 1998 PA 58, provides in relevant part as follows:

AN ACT to . . . provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; . . . to provide for the enforcement and to prescribe penalties for violations of this act . . . .

Defendant argues that the stated goals go only to controlling the commercial distribution of alcohol. Defendant’s interpretation is too narrow. Prohibiting the sale or furnishing or alcoholic liquor to minors falls within “control of the alcoholic liquor traffic within this state” by attempting to keep such traffic from reaching minors. Therefore, the statute under which defendant was convicted is constitutional.

## V. CUMULATIVE ERROR

Defendant’s final argument is that the totality of all of the errors in this case denied her of her constitutional right to a fair trial. We review a cumulative error claim to determine if the combination of alleged errors denied defendant a fair trial. *Knapp*, 244 Mich App at 387. “[T]o reverse on the grounds of cumulative error, the errors at issue must be of consequence. In other words, the effect of the errors must have been seriously prejudicial in order to warrant a finding that defendant was denied a fair trial.” *Id.* (citation omitted). “Thus, actual errors must combine to cause substantial prejudice to the aggrieved party so that failing to reverse would deny the party substantial justice.” *Lewis v LeGrow*, 258 Mich App 175, 201; 670 NW2d 675 (2003).

In this case, the combined effect of the actual errors did not amount to “serious prejudice” that denied defendant his right to a fair trial or substantial justice. Though defendant raises numerous allegations of error in her brief, very few errors actually occurred. And the errors that did occur were not so egregious as to warrant finding that defendant was denied a fair trial.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Joel P. Hoekstra  
/s/ Douglas B. Shapiro