# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>June 25, 2002 |
| v | No. 226958<br>Monroe Circuit Court |
| KENNETH MALORD LYONS,<br><br>Defendant-Appellant. | LC No. 98-029600-FH |

Before: Zahra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver 225 grams or more, but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii). He was sentenced to a prison term of 480 to 720 months.[1] We affirm.

I

Defendant first argues that the evidence was insufficient to support his conviction of possession with intent to deliver between 225 and 650 grams of cocaine. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id*. at 514.

To sustain a conviction for possession with intent to deliver between 225 and 650 grams of cocaine, the prosecution is required to show that (1) the recovered substance was cocaine, (2) the cocaine was in a mixture weighing between 225 and 650 grams, (3) the defendant was not authorized to possess the cocaine, and (4) the defendant knowingly possessed the cocaine with the intent to deliver it. *Id*. at 516-517; *People v Catanzarite*, 211 Mich App 573, 577; 536 NW2d 570 (1995). Defendant challenges the fourth element.

[1] Defendant's sentence was enhanced under MCL 333.7413(2), which authorizes increased penalties for repeat controlled substance offenders.

Possession may be either actual or constructive, and may be joint as well as exclusive. *Wolfe*, *supra* at 519-520. "The essential question is whether the defendant had dominion or control over the controlled substance." *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). "[A] person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession." *Wolfe*, *supra* at 520; *People v Ricky Vaughn*, 200 Mich App 32, 36; 504 NW2d 2 (1993). Rather, some additional connection between the defendant and the controlled substance must be shown. *Id*. Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Further, actual physical delivery of the controlled substance is not necessary to prove that a defendant intended to deliver the drugs. *Wolfe*, *supra* at 524; *Fetterley*, *supra* at 517-518. Rather, intent to deliver may be inferred from the quantity of narcotics in a defendant's possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest. *Id*.

Viewed in a light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant knowingly possessed the cocaine with intent to deliver. There was evidence that 599 grams of cocaine were confiscated from the trunk of a car that defendant was driving. The police stopped defendant because the car had an improper and expired license plate. After the officer ran a computer check, defendant was placed under arrest for a drug trafficking felony warrant, stemming from an arrest in Los Angeles, California, and for operating a vehicle without a valid driver's license. Defendant claimed that he was not the owner of the car, but had picked it up from an auction sale for someone else. Defendant could not produce a registration or any other pertinent documents relating to the purchase of the vehicle. In response to the officer's inquiry, defendant denied that there were any drugs in the car. When asked about the contents of the trunk, defendant stated that it contained "some clothes." Defendant did not have a trunk key and the trunk release button had been disconnected. After being advised that the car was being impounded, defendant claimed that his girlfriend, who had been seated in the front passenger seat, had the trunk key. Defendant told the officer that his girlfriend would deny having a key, and instructed the officer to tell her that defendant said it was okay to give the key to the officer. The woman denied having the key. Defendant was taken into custody, and the car was impounded.

Subsequently, the car was searched while at a towing garage, and officers discovered the cocaine in the trunk. The cocaine was hidden in the hollowed-out soles of several pairs of Original Rugged Outback boots and Fila shoes, which were inside of luggage. In each shoe sole, there was a plastic baggie containing between fifty and sixty grams of cocaine. There was evidence that defendant was previously arrested in California as a result of his possession of cocaine, which was also hidden in the hollowed-out portion of the heels of several pairs of Original Rugged Outback boots and Fila shoes that were inside a duffel bag. An airline ticket bearing defendant's name was also in the duffel bag, and defendant was carrying the matching ticket stub in his pocket.

We find that an inference reasonably may be drawn from this evidence that defendant knew that cocaine was in the trunk, and that defendant had the right to exercise control over it. Defendant's statement that "some clothes" were in the trunk, and his instruction to the officer to tell his girlfriend to furnish the trunk key, belie his claim that he was simply delivering the car and was completely unaware of the trunk's contents. We reject defendant's claim that the

evidence was insufficient to establish possession because the cocaine could have belonged to any one of the three passengers in the car. As previously indicated, possession may be joint, *Wolfe*, *supra* at 519-520, and, here, defendant was charged as a principal and as an aider and abettor.[2] In addition, the prosecution need not negate every reasonable theory of innocence, but must only prove its own theory beyond a reasonable doubt. *Fetterley*, *supra* at 517.

Moreover, a reasonable inference may be drawn from the evidence that defendant intended to deliver the cocaine. A Michigan State police detective-lieutenant, trained in narcotics investigation, testified that, given the quantity of cocaine and the method of packaging, the cocaine was likely being transported for delivery to a dealer to be divided into smaller portions and "sold on the streets." Accordingly, the evidence, when viewed in a light most favorable to the prosecution, was sufficient for a rational trier of fact to conclude that the elements of the crime, including possession and intent to deliver, were proved beyond a reasonable doubt.

II

Defendant claims that his conviction should be reversed because the evidence concerning his California arrest was inadmissible under MRE 404(b). We disagree.

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Under MRE 404(b), evidence of a defendant's other crimes, wrongs, or acts is admissible if it is (1) offered for a proper purpose, i.e., one other than to prove the defendant's character or propensity to commit the crime, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident, (2) relevant to an issue or fact of consequence at trial, and (3) sufficiently probative to outweigh the danger of unfair prejudice, pursuant to MRE 403. *People v Starr*, 457 Mich 490, 496-497; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 55, 63-64, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).

We find that the trial court did not err in admitting the challenged evidence under MRE 404(b). As previously indicated, in the instant case, the cocaine was hidden in the hollowed-out soles of several pairs of Original Rugged Outback boots and Fila shoes, which were packed inside of luggage. In the California incident, the cocaine was also hidden in the hollowed-out soles of eight pairs of Original Rugged Outback boots and Fila shoes, which were inside a duffel bag. This evidence was not simply offered to show defendant's bad character. Rather, it was probative of defendant's knowing possession of the drugs, particularly in light of defendant's

[2] "'[A]iding and abetting' describes all forms of assistance rendered to the perpetrator of the crime and comprehends all words or deeds which may support, encourage, or incite the commission of a crime." *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991), quoting *People v Vicuna*, 141 Mich App 486, 495-496; 367 NW2d 887 (1985).

defense that he was not the possessor of the drugs. Indeed, the distinctive method in which the cocaine was hidden inside shoe heels, and the fact that the same brand name of footwear was used in both incidents, makes it more likely that defendant was the person who packaged and placed the cocaine in the trunk of the car. Moreover, contrary to defendant's suggestion, evidence is not inadmissible simply because the very nature of the evidence is prejudicial, and defendant has not demonstrated that he was unfairly prejudiced by the evidence. See MRE 403. Accordingly, this issue does not warrant reversal.

Within this issue, defendant also asserts that the trial court abused its discretion in admitting evidence relating to an unrelated breaking and entering because it was irrelevant. We disagree.

Generally, all relevant evidence is admissible, and irrelevant evidence is not. *Starr*, *supra* at 497, quoting MRE 402. Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *Crawford*, *supra* at 388-389, quoting MRE 401. However, even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403.

At trial, evidence was admitted that, at approximately 2:00 a.m. on the day after defendant was arrested, Derrick Mitchell and two other individuals were arrested as they attempted to break into an impound lot. Earlier that day, someone telephoned both the towing company and the police, inquiring about the whereabouts of defendant's vehicle. When the assailants were arrested, Mitchell gave a false name. There was evidence that the car that defendant was driving at the time of his arrest was registered to Mitchell. There was also evidence that the car that Mitchell was driving during the attempted break-in had been registered to defendant. Upon searching the car used during the attempted break-in, the police discovered an electronic digital scale used to measure weight in grams, and a tow receipt in defendant's name, indicating that defendant had recently picked up the car from a storage lot.

We conclude that the trial court did not abuse its discretion in admitting this evidence. The evidence concerning the attempted break-in of the impounded car by defendant's associates, and defendant's connection to the perpetrators and to their car, was relevant to show a scheme or plan to traffic cocaine. See MRE 401. Moreover, even if this evidence was inadmissible, any error would have been harmless. In order to overcome the presumption that a preserved nonconstitutional error is harmless, a defendant must persuade the reviewing court that it is more probable than not that the error in question was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). An error is deemed to have been "outcome determinative" if it undermined the reliability of the verdict. See *People v Snyder*, 462 Mich 38, 45; 609 NW2d 831 (2000), citing *Lukity*, *supra*. Here, there was strong evidence of defendant's guilt. As previously discussed, defendant was driving the car in which the cocaine was found, defendant made statements from which it could be inferred that he was in control of the cocaine, and the cocaine was packaged in the same, distinctive manner that defendant had packaged cocaine previously. Accordingly, defendant has not established that it is more probable than not that the alleged error was outcome determinative, and, thus, reversal is not warranted on this basis. See *id*.

Defendant also claims that the trial court abused its discretion in allowing evidence of Mitchell's driving record which listed a different address from where Mitchell, a defense witness, claimed he resided. Contrary to defendant's claim, this evidence was relevant to Mitchell's credibility. Further, the trial court contemporaneously instructed the jury that it was to assess the significance of the document, and determine what weight, if any, it should be given. Accordingly, this claim does not warrant reversal.

III

Defendant claims that the trial court erred in allowing the prosecutor to introduce improper hearsay rebuttal evidence on a collateral matter. To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal. *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999), citing MRE 103(a)(1). Although defendant objected to the admission of the evidence, he did so on relevancy grounds only. Thus, any issue concerning the scope of rebuttal testimony was not properly preserved, and our review of this issue is limited to a plain error that affected defendant's substantial rights, i.e., that affected the outcome of the proceedings. See *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999). Also, reversal is warranted only when the plain, unpreserved error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity, or public reputation of judicial proceedings independent of the defendant's innocence. *Id*. at 763-764, 774.

At trial, the defense called Mitchell to testify. Mitchell denied involvement in any drug trafficking, and denied that he told the police that he was the intended recipient of the drugs. He also testified that a police officer told him that he could either work as a police informant, or give $30,000 to two prosecutors, one of whom was prosecuting defendant's case, for their election. Thereafter, the prosecutor called a police witness, who had previously testified, to rebut Mitchell's testimony. The police witness testified concerning his own credibility, and his interactions with Mitchell. The witness testified that Mitchell had used an alias, that Mitchell approached the police seeking consideration for defendant and later for himself, and that Mitchell had told him that he was the intended recipient of the confiscated drugs. The police witness denied that he asked Mitchell for $30,000.

Rebuttal testimony is admissible to explain, contradict, or otherwise disprove evidence presented by the opposing party, and if it tends to directly weaken or impeach the testimony. *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996). "[T]he test of whether rebuttal evidence was properly admitted is not whether the evidence could have been offered in the prosecutor's case in chief, but, rather, whether the evidence is properly responsive to evidence introduced or a theory developed by the defendant." *Id*. Extrinsic evidence on rebuttal cannot be introduced to impeach a witness on collateral matter. *People v Losey*, 413 Mich 346, 351-353; 320 NW2d 49 (1982).

Here, although extrinsic evidence cannot be introduced to impeach a witness on collateral matters, we do not view the rebuttal evidence presented here as pertaining to collateral matters. Given Mitchell's allegations of police impropriety, the rebuttal evidence was relevant and responsive to Mitchell's testimony. Further, the trial court instructed the jury that Mitchell was not on trial, and that it may use the evidence for the limited purpose of evaluating Mitchell's credibility. Moreover, even if the rebuttal testimony was improper, the error did not affect

defendant's substantial rights, considering the overwhelming evidence of defendant's guilt. Accordingly, defendant has failed to demonstrate an outcome-determinative plain error and, thus, reversal is not warranted on this basis.

IV

Defendant argues that he was denied a fair and impartial trial because of several instances of prosecutorial misconduct. We disagree.

This Court reviews preserved issues of prosecutorial misconduct case by case, examining the challenged remarks in context, to determine whether the defendant received a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Truong (After Remand)*, 218 Mich App 325, 336; 553 NW2d 692 (1996). When a defendant fails to object to misconduct by the prosecutor, the issue is reviewed for plain error affecting substantial rights. *Carines*, *supra* at 763; *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

Viewed as a whole and in context, none of the challenged conduct rises to the level of error requiring reversal. Defendant contends that the prosecutor engaged in misconduct by proffering evidence that defendant contends was irrelevant, prejudicial, and inadmissible. Contrary to defendant's suggestion, the prosecutor did not engage in misconduct by introducing evidence, which was admitted by the trial court, and subsequently relying on that evidence to argue defendant's guilt. Although a prosecutor may not argue the effect of testimony that was not entered into evidence at trial, he may argue reasonable inferences from the evidence that was admitted during trial. *People v Fisher*, 220 Mich App 133, 156; 559 NW2d 318 (1996).

We reject defendant's claim that the prosecutor denied him a fair trial by vouching for a witness. Defendant relies on the prosecutor's statement, made during closing argument, that a witness "didn't fabricate any of that. How could he have made up Original Outbacks and Fila shoes in a bag being transported in a car with airline receipts . . . ." Because defendant did not object to the remark, it is reviewed for plain error affecting substantial rights. See *Carines*, *supra*. A prosecutor may not vouch for the credibility of a witness by conveying that he has some special knowledge that the witness is testifying truthfully. *Bahoda*, *supra* at 276. However, reading the remark in context, the prosecutor was properly commenting on the evidence introduced at trial, and drawing reasonable inferences from that evidence. See *Fisher*, *supra*. The prosecutor need not state his argument in the blandest possible terms. *Ullah*, *supra* at 678.

We also reject defendant's claim that during closing and rebuttal arguments the prosecutor interjected his personal beliefs regarding the case. We have reviewed the transcript cites provided by defendant, and they do not demonstrate any prosecutorial impropriety. Further, apart from providing the transcript cites, defendant does not sufficiently explain what comments were improper. "A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim." *Griffin*, *supra* at 45. In any event, we note that a prosecutor need not state his argument in the blandest possible terms, *Ullah*, *supra*, and a prosecutor may argue that, based on the evidence, a witness is not worthy of belief, *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Moreover, the trial court's instructions that the jury should only consider the evidence and that the lawyers' statements and

arguments are not evidence were sufficient to cure any prejudice. See *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001), citing *Bahoda*, *supra*. Accordingly, this issue does not warrant reversal.

V

Defendant argues that he was denied a fair trial because of three instructional errors. Because defendant failed to object to the instructions, our review is limited to plain error that affected substantial rights. See *Carines*, *supra* at 763-764; *People v Snider*, 239 Mich App 393, 420; 608 NW2d 502 (2000).

Defendant claims that the trial court erred when it instructed the jury with regard to the California arrest, i.e., "the other act," in accordance with CJI2d 4.11. In specific, defendant asserts that the trial court made a finding on the possession element when it instructed the jury to consider "whether this evidence tends to show . . . that the defendant knew what the things found in his possession were . . . ." However, defendant has not established plain error with respect to this claim. In reviewing claims of error in jury instructions, we examine the instructions in their entirety. *People v Perez-DeLeon*, 224 Mich App 43, 53; 568 NW2d 324 (1997), quoting *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). Even if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Perez-DeLeon*, *supra*. Reading the instruction as a whole and in context, it requires that defendant knowingly possessed the cocaine. In addition, the jury was appropriately instructed that it was their decision whether to believe the "other acts" evidence. Further, the challenged instruction did not authorize the jury to convict defendant on the basis of the other acts evidence, but authorized the jury to consider whether that evidence, if believed, tended to support the conclusion that defendant committed the charged offense. Accordingly, because the instruction sufficiently protected defendant's substantial rights, defendant has failed to demonstrate plain error warranting reversal.

Defendant also argues that the trial court erred in failing to instruct the jury on specific intent, in accordance with CJI2d 3.9. As previously indicated, we review claims of error in jury instructions by examining the instructions in their entirety. *Id*. Here, during its instructions on the principal charge, the trial court indicated that the prosecutor must prove each element beyond a reasonable doubt, and listed intent to deliver as an element. The court also instructed the jury on the charge of aiding and abetting. In doing so, the trial court instructed the jury that either defendant or someone else had to have the requisite intent, and that if defendant himself did not directly commit the crime, he must have intended to help the other person do so. Viewed in their entirety, the instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. See *People v Freeman*, 149 Mich App 119, 125; 385 NW2d 617 (1985). Therefore, defendant has failed to demonstrate plain error that was outcome determinative.

Defendant's final instructional claim is that the trial court erred by failing to give an appropriate limiting instruction regarding the facts and circumstances of the attempted break-in of the impound lot, as the court had promised during trial. Defendant did not object to the absence of an instruction, failed to request any additional instructions when given the opportunity to do so, and indicated that he was satisfied with the instructions. A party is not permitted to assign as error on appeal to something which his or her own counsel deemed proper at trial, since to do so would permit the party to harbor error as an appellate parachute. *People v*

*Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). In any event, we are convinced that the trial court's instructions sufficiently protected defendant's substantial rights. Further, given the overwhelming evidence of defendant's guilt, defendant has failed to establish an outcome-determinative plain error. Accordingly, this issue does not warrant reversal.

VI

We reject defendant's claim that he is entitled to resentencing. We review sentencing decisions for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997); *People v Bennett*, 241 Mich App 511, 515; 616 NW2d 703 (2000).[3] Here, the statutory mandatory minimum sentence for defendant's conviction was twenty years' imprisonment, with a maximum of thirty years. MCL 333.7401(2)(a)(ii). Because defendant had a previous conviction under the Controlled Substances Act, however, his sentence was subject to doubling under the statute. MCL 333.7413(2). Defendant was sentenced to a prison term of forty to sixty years.

Defendant claims that resentencing is required because the trial court failed to consider the PSIR and all relevant sentencing factors, and failed to articulate reasons for the sentence imposed, which defendant maintains was not individualized and was disproportionate. We initially note that the court was provided with the PSIR and, apart from defendant's conjecture, there is no indication that the court failed to consider the report. Further, although a sentencing court must articulate on the record the criteria considered and the reasons supporting its sentencing decision, it need not expressly mention each goal of sentencing when imposing sentence. *People v Rice (On Remand)*, 235 Mich App 429, 445-446; 597 NW2d 843 (1999). Here, when imposing sentence, the trial court noted that defendant had two prior felonies, and that he was being sentenced as a repeat controlled substance offender. Although the articulation was admittedly minimal, the court addressed the offender, and stated that the sentence was consistent with the applicable statutes, which is sufficient to establish on review that the sentence was individualized. See *People v Nunez*, 242 Mich App 610, 618; 619 NW2d 550 (2000).

We also reject defendant's claim that his sentences violate the principle of proportionality. See *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). We note that, because defendant's sentence was enhanced under the subsequent offender provision of the Controlled Substances Act, the sentencing guidelines do not apply. *Edgett*, *supra*. In any event, in light of defendant's criminal history, exhibiting his unwillingness to conform his conduct to the law, and the circumstances of this case, we conclude that the trial court did not abuse its discretion when it imposed an enhanced sentence within the statutory limits. See *Hansford (After Remand)*, *supra* at 326.

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[3] Because the offense in this case occurred before January 1, 1999, the statutory sentencing guidelines do not apply. *People v Reynolds*, 240 Mich App 250, 254; 611 NW2d 316 (2000). Further, the former judicial sentencing guidelines do not apply in this case because the offense is subject to a mandatory minimum sentence, MCL 333.7401(2)(a)(ii), and because the sentence was enhanced under the subsequent-offender provisions of the Controlled Substances Act, MCL 333.7413(2). *People v Edgett*, 220 Mich App 686, 690-691; 560 NW2d 360 (1996).

Defendant next argues that he should be resentenced because the trial court doubled the authorized sentences for his crimes pursuant to MCL 333.7413(2). Defendant does not contest that the trial court was authorized to double the sentences but, rather, argues that the trial court erroneously believed that it was required to double the sentences and was unaware that enhancement was only discretionary, thus requiring sentencing. However, it is established that if there is "no clear evidence that the sentencing court believed that it lacked discretion, the presumption that a trial court knows the law must prevail." *People v Alexander*, 234 Mich App 665, 675; 599 NW2d 749 (1999), citing *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988). Here, there is no indication that the trial court believed that it lacked discretion. On the contrary, the court's comments reflect that it was aware that it had discretion. At the beginning of the sentencing hearing, the court noted that the original sentence for defendant's conviction was twenty to thirty years but that, as a second offense, "that doubles it. The *possible* maximum sentence is then *up to* 60 years." In addition, MCL 333.7413(2) is clear that the increasing or doubling of the authorized term of imprisonment for second or subsequent offenders is discretionary. Because there is no clear evidence that the trial court was unaware of its discretion, and because the trial court is presumed to know the law, resentencing is not required.

VII

We reject defendant's final argument that the cumulative effect of several errors deprived him of a fair trial. Because no cognizable errors were identified that deprived defendant of a fair trial, reversal under the cumulative effect theory is unwarranted. See *People v Sawyer*, 215 Mich App 183, 197; 545 NW2d 6 (1996).

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Helene N. White