STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 20, 2012
v MARY-LYN RAE DANIELAK, Defendant-Appellant,	No. 305491 Jackson Circuit Court LC No. 10-006208-FH
PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v ANNA MARIE RAND, Defendant-Appellant.	No. 305493 Jackson Circuit Court LC No. 10-006210-FH

Before: TALBOT, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, in Docket No. 305491, Mary-Lyn Rae Danielak appeals as of right her jury trial convictions of delivery of a controlled substance causing death,[1] common law obstruction of justice,[2] tampering with evidence,[3] and removing a body without medical examiner permission.[4] Danielak was sentenced to prison terms of ten to 20 years for delivery of a controlled substance causing death, three to five years for obstruction of justice, two to four

[1] MCL 750.317a.

[2] MCL 750.505.

[3] MCL 750.483a(6)(a).

[4] MCL 52.204.

years for tampering with evidence, and one year for removing a body without medical examiner permission. In Docket No. 305493, Anna Marie Rand appeals as of right her jury trial convictions of common law obstruction of justice,[5] tampering with evidence,[6] and removing a body without medical examiner permission.[7] Rand was sentenced as a second habitual offender[8] to prison terms of 28 to 90 months for obstruction of justice, 28 to 72 months for tampering with evidence, and one year for removing a body. We affirm.

Danielak and Rand's convictions stem from the death of Cherie Irving ("the victim"). In the early morning hours of October 3, 2010, the victim drove to Danielak's apartment in Jackson, Michigan. Danielak and the victim then went to the Abbey Villa Apartments to meet a drug dealer named "Chill." Sergeant Brian Russell testified that Danielak told him that she had purchased cocaine and heroin from Chill in the past, and that she was going to introduce the victim to Chill so the victim could purchase heroin in the future if needed. Danielak purchased three bindles[9] of heroin from Chill and the victim purchased four bindles. Danielak and the victim went back to Danielak's apartment and used a syringe to inject themselves with heroin.

Danielak woke up late in the afternoon of October 3, 2010, and found the victim dead on the bathroom floor. On discovering the victim's body, Danielak called her boyfriend, Randy Reeser.[10] According to Danielak, Reeser told her to go to his mother's house (Rand's house), get ready for work, and that he would take care of it. Danielak did as Reeser instructed and went to work at approximately 9:00 p.m.

Later that evening, Reeser went to Rand's house and informed her that there was a dead body in Danielak's apartment. Reeser and Rand drove to Danielak's apartment and placed the victim's body in the back seat of Rand's car. Later, Reeser and Rand moved the body to the trunk and drove to the Sandstone Creek Bridge. Rand parked on the side of the road and Reeser removed the victim's body from the trunk. Reeser placed the victim's body on the side of road, but it later slipped down an embankment and fell into the creek.

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[5] MCL 750.505.

[6] MCL 750.483a(6)(a).

[7] MCL 52.204.

[8] MCL 769.10.

[9] Sergeant Russell testified that a bindle is equivalent to approximately .1 grams.

[10] Reeser was also tried and convicted of various offenses for his involvement in the incident, but he is not a party to this appeal.

I. OBSTRUCTION OF JUSTICE

A. SUFFICIENCY OF THE EVIDENCE

Danielak argues that there was insufficient evidence to convict her of common law obstruction of justice.[11] We disagree.

> Sufficiency of evidence is a constitutional issue that is reviewed de novo by this Court.[12]
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> When reviewing a claim that the evidence presented was insufficient to support the 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.[13]

It is for the trier of fact rather than this Court "to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded to the inferences."[14] The determination that the requirements of aiding and abetting were met is a question of law subject to de novo review.[15]

Danielak was charged with obstruction of justice for the removal and concealment of the victim's body. It is undisputed that Danielak was not present at the time the victim's body was removed. At trial, the prosecution argued that Danielak was guilty under a theory of aiding and abetting. "A person who aids or abets the commission of a crime may be convicted as if he or she directly committed the crime."[16] The elements of aiding and abetting are:

> (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement.[17]

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[11] Docket No. 305491.

[12] *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

[13] *People v Kissner*, 292 Mich App 526, 533-534; 808 NW2d 522 (2011).

[14] *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

[15] *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

[16] *People v Jackson*, 292 Mich App 583, 589; 808 NW2d 541 (2011).

[17] *Robinson*, 475 Mich at 6 (citation and quotations omitted).

Although evidence that Danielak aided and abetted the removal and concealment of the victim's body was circumstantial, it was sufficient to convict her. On discovering that the victim was dead, Danielak did not call the authorities to report what happened. Rather, she called Reeser. Her decision to contact Reeser, as opposed to the authorities, supports that she intended to cover up the victim's death and was seeking help in doing so. Additionally, after speaking with Reeser, she did exactly as instructed—went to Rand's apartment and got ready for work. Thus, a rational jury could find beyond a reasonable doubt that Danielak gave encouragement to Reeser that assisted in the commission of the crime.

There was also sufficient evidence that Danielak intended the commission of the crime or had knowledge that Reeser intended the commission of the crime. A defendant's "[i]ntent is a question of fact to be inferred from the circumstances by the trier of fact."[18] "An aider and abetter's [sic] knowledge of the principal's intent can be inferred from the facts and circumstances surrounding an event."[19] "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient."[20]

Again, Danielak did not contact authorities to report the victim's death; rather, she contacted Reeser. A rational jury could thus conclude that she contacted Reeser because she intended to conceal the victim's body. Additionally, Danielak told Sergeant Russell that Reeser told her that he would "take care of it." Though Danielak argues that the phrase "take care of it" could mean any number of things, a reasonable jury could conclude that, under the circumstances, "take care of it" meant that Reeser would get rid of the victim's body. The evidence also shows that Danielak sent text messages to the victim after she died in an effort to conceal her knowledge of the victim's death. The victim died sometime in the early morning hours of October 3, 2010. A co-worker stated that Danielak came to work at approximately 9:00 p.m. that night and told her that she had sent text messages to the victim advising the victim that she had her car keys. These messages were a clear attempt to hide Danielak's knowledge of the victim's death and to help explain why the victim's vehicle was at Danielak's apartment. Moreover, it appears that the text messages were sent before Reeser and Rand removed the victim's body. That Danielak sent text messages to the victim before the victim's body was removed indicates that Danielak knew that Reeser intended to conceal the victim's body. Therefore, a rational jury could find beyond a reasonable doubt that Danielak either intended the commission of the crime or knew that Reeser intended the commission of the crime.

Rand argues that there is insufficient evidence to support her conviction for obstruction of justice because there is no evidence that she did anything indecent with the victim's body, or that her actions interfered with the administration of justice.[21] Rand's argument that she did

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[18] *People v Flowers*, 191 Mich App 169, 178; 477 NW2d 473 (1991).

[19] *People v Bennett*, 290 Mich App 465, 474; 802 NW2d 627 (2010).

[20] *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

[21] Docket No. 305493.

nothing indecent to the body misses the point. Rand was not charged with the indecent disposal of a human body. Therefore, her argument is irrelevant.

Rand's argument that her actions did not interfere with the administration of justice are also without merit. Rand argues that she did not obstruct justice because the medical examiner was able to perform an autopsy and successfully determine that the victim died of a drug overdose. The crime of "obstruction of justice is 'committed when the effort is made to thwart or impede the administration of justice.'"[22] Here, the victim's body was removed from Danielak's apartment in an effort to hide Danielak's involvement in the victim's death. Such conduct constitutes obstruction of justice, regardless of whether the victim's body was ultimately found and an autopsy was successfully performed.

B. COMMON LAW PRECEDENT

Danielak and Rand argue that their convictions for obstruction of justice cannot be sustained because the removal and concealment of a dead body is not a common law obstruction of justice.[23] Danielak and Rand were charged with common law obstruction of justice, the statute for which states: "Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony . . . ."[24] There is no dispute that obstruction of justice is an indictable common law offense.[25] Danielak and Rand argue, however, that the removal and concealment of a body is not a common law obstruction.

In *Thomas*, the Supreme Court explained that common law obstruction of justice is "not a single offense but a category of offenses that interfered with public justice."[26] Therefore, it is not enough that a defendant's conduct interfere with the orderly administration of justice.[27] "To warrant the charge of common-law obstruction of justice, [a] defendant's conduct must have been recognized as one of the offenses falling within the category 'obstruction of justice.'"[28] Stated another way, there is "no generic offense of obstruction of justice known to the common law. There were instead a large number of separate and specific offenses, some of which with the passage of time came to be collected under the rubric 'Offences Against Public Justice.'"[29]

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[22] *People v Thomas*, 438 Mich 448, 455; 475 NW2d 288 (1991), quoting *People v Coleman*, 350 Mich 268, 274; 86 NW2d 281 (1957).

[23] Docket Nos. 305491 and 305493.

[24] MCL 750.505.

[25] See *Thomas*, 438 Mich at 448.

[26] *Id*. at 456-457.

[27] *Id*. at 457.

[28] *Id*. at 457-458.

[29] *People v Davis*, 408 Mich 255, 286; 290 NW2d 366 (1980) (Levin, J., concurring).

"Thus, in order to sustain a charge of common-law obstruction of justice, common-law precedence for the specific offense charged as obstruction of justice must exist."[30]

In the case at bar, the specific offense charged was "obstruction of justice by removing and concealing the deceased body of a person who defendant[s] knew or should have known, died of a heroin overdose." A review of early common law writers provides insight. Wharton's Criminal Law (11th ed), § 1702, p 1870, stated:

> A person . . . is indictable who buries or otherwise disposes of any dead body on which an inquest ought to be taken, without giving notice to a coroner, or who, being under a legal duty to do so, fails to give notice to a coroner that a body on which an inquest ought to be held is lying unburied, before such body has putrefied.

Wharton references the case of *R v Stephenson*.[31] In *Stephenson*, the appellate court addressed the issue of whether it was "indictable at common law to prevent the holding of a corner's inquisition?" In affirming the defendants' convictions, Justice Grove stated in relevant part:

> It is most important to the public that a coroner who on reasonable grounds intends to hold an inquest should not be prevented from doing so. The consequences would otherwise be most formidable, especially in the case, I fear, of young children, for anyone might prevent the holding of an inquest by the destruction of a dead body with impunity, unless it could be proved that the death had been caused by violence. The only evidence might be the examination of the body itself. It might be that the only witness of the death was the murderer of the person found dead. To hold it no offense to prevent the administration of the law by preventing an inquest being held, unless proof could be given of the cause of death, and that it was a violent cause, would set at naught the protection which there is at present to the public.

Justice Stephen concurred in Justice Grove's opinion, stating: "It is an obstruction of an officer of justice; it prevents the doing of that which the statute authorizes him to do."

Stephenson[32] supports a common law charge for obstruction of justice under the circumstances of this case.[33] The substance of the offense charged in *Stephenson* was that the

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[30] *People v Jenkins*, 244 Mich App 1, 15; 624 NW2d 457 (2000).

[31] *R v Stephenson*, 13 Law Rep, Q B Div, 331.

[32] *Id.*

[33] Contrary to Danielak and Rand's argument, common law is not limited to Michigan precedent. "Common law" means "[t]he body of law derived from judicial decisions, rather than from statutes or constitutions." Black's Law Dictionary (9th ed). And our Supreme Court has repeatedly referenced precedent from other jurisdictions when discussing what the common law

defendants prevented the administration of law by disposing of a human body to prevent an inquest into the cause of death. In the case at bar, the victim died under circumstances that required an inquest into the cause and manner of death.[34] The object behind the crime was the same as it was in *Stephenson*, to prevent or, at minimum, delay an inquest into the cause of death. Thus, we reject Danielak and Rand's argument that common law precedent for the specific offense charged as an obstruction of justice does not exist.

Rand also argues that her conviction cannot be sustained because the conduct in this case is more properly charged under a different statute. Danielak and Rand were charged under MCL 750.505, but Rand argues that the conduct in this case is more properly charged under MCL 52.204, which provides in relevant part:

> It shall be unlawful for any funeral director, embalmer or other person to remove the body from the place where death occurred, or to prepare the body for burial or shipment, when such funeral director, embalmer or other person knows or upon reasonable investigation should know that death may have occurred in a manner as indicated in section 3,[35] without first notifying the county medical

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is. Indeed, in *People v Boyd*, 174 Mich 321, 325-326; 140 NW 475 (1913), our Supreme Court cited *State v Carpenter*, 20 Vt 9 (1847), and *Commonwealth v Berry*, 133 SW 212 (Ky App, 1911), when discussing the common law offense of obstruction of justice. Similarly, in *Davis*, 408 Mich at 255, Justice Levin, in his concurrence, relied on precedent from numerous jurisdictions to come to the conclusion that common law obstruction of justice was not a singular offense:

> An overview of the early American cases suggests that the courts initially recognized that many distinct offenses could be described as "offenses against public justice" or "obstruction of justice," but later began to disregard the distinctness of the various crimes and to employ the generic term "obstruction of justice" as if it described one offense rather than many. [*Id.* at 288 (Levin, J., concurring).]

[34] See MCL 52.202.

[35] MCL 52.203 provides in relevant part:

> (1) Except as otherwise provided in this section, a physician, an individual in charge of any hospital or institution, or any other individual who has first knowledge of any of the following shall immediately notify the county medical examiner or deputy county medical examiner of that fact:
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> (a) An individual who died suddenly, unexpectedly, accidentally, violently, or as the result of any suspicious circumstances.
>
> (b) An individual who died without medical attendance during the 48 hours prior to the hour of death unless the attending physician, if any, is able to determine accurately the cause of death.

> examiner or his deputy and receiving permission to remove, prepare for burial or ship such body.

MCL 52.204 is similar to the common law offense discussed in *Stephenson*.[36] *Stephenson* was based, in part, on the coroner's jurisdiction to hold an inquest. Justice Stephens noted that the coroner only has jurisdiction upon "a reasonable suspicion that there may have been something peculiar in the death, that it may have been due to other causes than common illness." Thus, concealing a body was not a crime in itself. Rather, it was only a crime when the coroner had jurisdiction, i.e., when there was something peculiar about the death.

Likewise, under MCL 52.204, the removal of a body is not in itself a crime. It is only a crime when the person knows that the death may have occurred "suddenly, unexpectedly, accidentally, violently . . . as the result of any suspicious circumstances" or "without medical attendance during the 48 hours prior to the hour of death unless the attending physician, if any, is able to determine accurately the cause of death."[37] The scope of MCL 52.204, however, is narrower than that of the common law offense. MCL 52.204 only makes it a crime to "remove the body from the place where death occurred, or to prepare the body for burial or shipment." The common law offense is broader and applies to any conduct that prevents an inquest. For example, under MCL 52.204 it likely would not be a crime to conceal a body after it has already been removed from the place where death occurred, which would be a crime under common law. Therefore, although the offenses address a similar subject matter, they are not the same. As such, the conduct in this case was properly charged under MCL 750.505.

II. TAMPERING WITH EVIDENCE

Danielak next argues[38] that there was insufficient evidence to convict her of tampering with evidence, the statute for which provides as follows:

> (5) A person shall not do any of the following:
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> (a) Knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding.[39]

The basis for Danielak's conviction for tampering with evidence is the same as that for her conviction of obstruction of justice—the removal and concealment of the victim's body. For the reasons discussed above, there was sufficient evidence to convict Danielak under an aiding and abetting theory.

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[36] *Stephenson*, 13 Law Rep, Q B Div, 331.

[37] MCL 52.203(1).

[38] Docket No. 305491.

[39] MCL 750.483a(5)(a).

Danielak and Rand also argue that their convictions of tampering with evidence were improper because there was no "present or future official proceeding."[40] Danielak and Rand focus on the existence of a future official proceeding, arguing that the future proceeding must actually occur. They argue that the future proceeding used to sustain their convictions was a hypothetical coroner's inquest, which was not necessary and never occurred, and so their convictions must be reversed.

Danielak and Rand's arguments are unpersuasive. Danielak and Rand focus on the lack of a coroner's inquest, but they completely fail to discuss the criminal trial that occurred. The relevant statute defines "[o]fficial proceeding" as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding."[41] A criminal trial falls with the definition of "official proceeding." Additionally, the victim's body was indirectly offered as evidence during the criminal trial. Therefore, relief is not warranted.

III. REMOVAL OF A BODY WITHOUT PERMISSION

Danielak next argues[42] that there was insufficient evidence to convict her of removing a body without medical examiner permission.[43] The basis for Danielak's conviction of removing a body without permission is the same as that for her convictions of obstruction of justice and tampering with evidence. For the reasons discussed above, there was sufficient evidence to convict Danielak under an aiding and abetting theory.

Danielak also argues that her conviction cannot be sustained by the facts of this case because the relevant statute[44] only applies to medical examiners, their agents, or their equivalents. This argument is without merit. By its plain language, MCL 52.204 applies to "any funeral director, embalmer or other person . . . ." "Other person" is extremely broad and obviously encompasses Danielak. A contrary interpretation would hinder the purpose of the act. The title of 1953 PA 181 provides in part: "AN ACT relative to investigations in certain instances of the causes of death within this state due to violence, negligence or other act or omission of a criminal nature . . . ." Interpreting "other person" narrowly, as Danielak suggests, would allow almost anyone to remove a body from the place where death occurred, thus hindering the investigation into the cause of death. This was clearly not the intent of the Legislature based on the words of the statute.[45] Therefore, Danielak is not entitled to reversal.

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[40] Docket Nos. 305491 and 305493.

[41] MCL 750.483a(11)(a).

[42] Docket No. 305491.

[43] MCL 52.204.

[44] *Id.*

[45] *People v Haynes*, 281 Mich App 27, 29; 760 NW2d 283 (2008).

IV. DELIVERY OF A CONTROLLED SUBSTANCE CAUSING DEATH

A. SUFFICIENCY OF THE EVIDENCE

Danielak argues[46] that there was insufficient evidence to sustain her conviction of delivery of a controlled substance causing death.[47] Sufficiency of the evidence is a constitutional issue that is reviewed de novo by this Court.[48]

> When reviewing a claim that the evidence presented was insufficient to support the 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.[49]

It is undisputed that Danielak did not sell or personally deliver heroin to the victim. At trial, the prosecution argued that Danielak was guilty under a theory of aiding and abetting. Aiding and abetting in this context was recently addressed by our Supreme Court in *People v Plunkett*.[50] In *Plunkett*, the defendant drove Tracy Corson from Ann Arbor to Detroit for the purpose of engaging in a drug transaction.[51] The defendant gave Corson money, and Corson completed the transaction with the drug dealer.[52] The defendant then drove back to Ann Arbor with Corson and partied with Corson and his ex-girlfriend.[53] Later that night, the victim came to the defendant's apartment seeking drugs.[54] The four smoked crack-cocaine together and then Corson and the victim went into the bathroom and injected themselves with heroin.[55] The victim died of heroin overdose.[56]

The issue in *Plunkett*, was whether there was sufficient evidence to bind the defendant over on a charge of delivery of a controlled substance causing death. Our Supreme Court

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[46] Docket No. 305491.

[47] MCL 750.317a.

[48] *Hawkins*, 245 Mich App at 457.

[49] *Kissner*, 292 Mich App at 533-534.

[50] *People v Plunkett*, 485 Mich 50; 780 NW2d 280 (2010).

[51] *Id*. at 63.

[52] *Id*. at 53.

[53] *Id*.

[54] *Id*.

[55] *Id*.

[56] *Id*. at 53-54.

concluded there was probable cause to support the bind-over on an aiding and abetting theory.[57] The Supreme Court stated that the appropriate inquiry is not whether the defendant aided and abetted the drug dealer in the transaction.[58] "Instead, the crux of the appropriate inquiry is whether [the] defendant aided and abetted the delivery itself by assisting any party to that transaction. Such assistance to any party to an illegal transaction necessarily 'encourage[s], support[s], or incite[s] the commission of that crime.'"[59]

Here, it is undisputed that the crime charged was committed by a subject identified as Chill, Danielak's drug dealer. Additionally, like the defendant in *Plunkett*, Danielak performed acts that assisted in the commission of the crime. The testimony at trial established that Danielak took the victim to the Abbey Villa Apartments so that they could purchase heroin. Danielak admitted to a police officer that she introduced the victim to Chill so that the victim could purchase heroin from him at a later date if necessary. By introducing the victim to Chill, Danielak assisted both the victim and Chill in the transaction. Had it not been for Danielak's introduction, the victim would have been unable to purchase heroin from Chill. Moreover, Danielak intended or had knowledge that Chill would deliver heroin to the victim. Therefore, sufficient evidence was presented to convict Danielak of delivery of a controlled substance causing death under an aiding and abetting theory.

Danielak also argues that the prosecution failed to prove that the victim's death was caused by a heroin overdose. At trial, the medical examiner testified that the victim had lethal amounts of both cocaine and heroin in her system; therefore, he could not say which drug killed her. Because the medical examiner could not say with absolute certainty which drug killed the victim, Danielak argues that the prosecution failed to establish causation. This argument is unpersuasive.

Viewed in the light most favorable to the prosecution, a rational jury could find beyond a reasonable doubt that the victim's cause of death was a heroin overdose. The medical examiner stated that the victim suffered a pulmonary edema. Though he was unable to say which drug killed the victim, the autopsy results indicate that her death was more consistent with a heroin overdose. The medical examiner testified that heroin is an opiate and its primary function is to depress the central nervous system. The examiner further stated that heroin can depress the central nervous system's drive to breathe, which is consistent with pulmonary edema. Cocaine, on the other hand, is a stimulant and disrupts the signals from the brain to the heart. The medical examiner stated that cocaine can cause the heart to stop beating, but he saw no evidence that the victim died from a heart attack. Based on this evidence, a rational jury could find beyond a reasonable doubt that the victim died from a heroin overdose.

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[57] *Id*. at 62-63.

[58] *Id*. at 65.

[59] *Id*.

B. STRICT LIABILITY

Danielak next argues that her conviction of delivery of a controlled substance causing death[60] violates her due process rights by imposing strict liability without requiring any showing of mens rea. MCL 750.317a is part of the "homicide" chapter in the Penal Code and provides:

> A person who delivers a schedule 1 or 2 controlled substance, other than marihuana, to another person in violation of section 7401 of the public health code, 1978 PA 368, MCL 333.7401, that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony punishable by imprisonment for life or any term of years.

In *Plunkett*, our Supreme Court concluded that delivery of a controlled substance causing death is a general intent crime.[61] The Supreme Court stated that the statute "does not require the intent that death occur from the controlled substance first delivered in violation of MCL 333.7401. Rather, the general intent required to violate MCL 750.317a is identical to the general intent required to violate MCL 333.7401(2)(a): the delivery of a schedule 1 or 2 controlled substance."[62] "[W]here a statute requires a criminal mind for some but not all of its elements, it is not one of strict liability[.]"[63] Therefore, contrary to Danielak's argument, delivery of a controlled substance causing death is not a strict liability offense.

Further, the relevant statute[64] does not require a showing of malice as to the element of death. In *People v Aaron*, our Supreme Court concluded that malice is an essential element to any murder, including felony-murder.[65] Danielak argues that *Aaron* is applicable and that MCL 750.317a also requires a showing malice. This argument is unpersuasive. The decision in *Aaron* was premised on the Legislature's use of the undefined term "murder" in MCL 750.316(1). The Supreme Court stated that "malice is an essential element of any murder, as that term is judicially defined, whether the murder occurs in the course of a felony or otherwise."[66] In contrast to the felony-murder statute, MCL 750.317a does not define a degree of murder. It imposes criminal liability regardless of whether the defendant had a culpable state of mind with respect to the resulting death.

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[60] MCL 750.317a.

[61] *Plunkett*, 485 Mich at 60.

[62] *Id*.

[63] *People v Quinn*, 440 Mich 178, 187; 487 NW2d 194 (1992).

[64] MCL 750.317a.

[65] *People v Aaron*, 409 Mich 672, 728; 299 NW2d 304 (1980).

[66] *Id*.

Danielak also argues that MCL 750.317a contravenes due process because it provides a penalty of life or any term of years without requiring a culpable state of mind as it relates to the resulting death. We disagree. The statute at issue "is social legislation enacted under the state's traditional police power to regulate public safety, public health, morality, and law and order[;]" therefore, rational basis review is appropriate.[67] Under rational basis review, courts "do not consider the effects of the statute or its consequences, only its purpose."[68] "[T]he legislation must be upheld unless the challenger can show that it is arbitrary, and wholly unrelated in a rational way to the objective of the statute."[69]

The purpose of MCL 750.317a is to protect the public from dangerous controlled substances. The statute is rationally related to this purpose because it seeks to further deter individuals from delivering controlled substances. Therefore, the statute is constitutional.[70]

V. RIGHT TO PRESENT A DEFENSE

Danielak's final argument is that she was denied her right to present a defense when the trial court excluded hearsay statements made by Darryl Irving, the victim's husband. In a separate record, Detective Brett Stiles stated that Irving indicated during an interview that the victim had a large cocaine habit. Irving said that the victim took all the money out of their bank account and used it for cocaine. Irving also stated that the victim would do whatever she needed to do to get her drugs. Danielak sought to introduce these statements through Detective Stiles, arguing that they were necessary to her defense. The trial court concluded that the statements were hearsay and were not necessary to Danielak's defense.

A trial court's decision to admit evidence is reviewed for an abuse of discretion.[71] A trial court abuses its discretion when its decision "falls outside the range of reasonable and principled

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[67] *People v Derror*, 475 Mich 316, 338; 715 NW2d 822 (2006), overruled in part on other grounds *People v Feezel*, 485 Mich 184; 783 NW2d 67 (2010).

[68] *Derror*, 475 Mich at 340.

[69] *Id*. at 338 (citations and quotation marks omitted). See also *State v Maldonado*, 137 NJ 536, 552; 645 A2d 1165 (1994) ("Society has targeted drug distribution that causes death for enhanced punishment to protect the safety of the public. This judgment is for the Legislature to make. All that is needed is a 'conceivable rational basis' for their conclusion that such added deterrent effect is warranted to protect society.")

[70] See *Maldonado*, 137 NJ at 536 (upholding the constitutionality of a statute authorizing a prison sentence of 20 years for distribution of drugs that results in death).

[71] *People v Benton*, 294 Mich App, 191, 195; 817 NW2d 599 (2011).

outcomes."[72] We review de novo whether a defendant was denied her constitutional right to present a defense as a question of law.[73]

"[A] criminal defendant has a state a federal constitutional right to present a defense."[74] "Few rights are more fundamental than that of an accused to present evidence in . . . her own defense."[75] "However, an accused's right to present evidence in [her] defense is not absolute."[76]

> The right to present a complete defense "may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process."[77] Michigan, like other states, "has a legitimate interest in promulgating and implementing its own rules concerning the conduct of trials."[78] And, our Supreme Court has "broad latitude under the Constitution to establish rules excluding evidence from criminal trials."[79] Thus, an "accused must still comply with 'established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.'"[80] Michigan's Rules of Evidence do not infringe a defendant's constitutional right to present a defense unless they are "'arbitrary' or 'disproportionate to the purposes they are designed to serve.'"[81]82

The trial court correctly concluded that the Irving's statements were hearsay. They were out-of-court statements offered "to prove the truth of the matter asserted."[83] Therefore, they were inadmissible.[84] Though Danielak argues that the evidentiary rule must bow to her right

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[72] *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

[73] *Id*. at 247.

[74] *Id*. at 249-250 (citation and quotations omitted).

[75] *Id*. at 249.

[76] *Id*. at 250.

[77] *Chambers v Mississippi*, 410 US 284, 295; 93 S Ct 1038; 35 L Ed 2d 297 (1973).

[78] *Unger*, 278 Mich App at 250.

[79] *US v Scheffer*, 523 US 303, 308; 118 S Ct 1261; 140 L Ed 2d 413 (1998).

[80] *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984), quoting *Chambers*, 410 US at 302.

[81] *Scheffer*, 523 US at 308, quoting *Rock v Arkansas*, 483 US 44, 56; 107 S Ct 2704; 97 L Ed 2d 37 (1987).

[82] *People v King*, __ Mich App __; __ NW2d __ (Docket No. 301793, issued July 31, 2012), slip op, p 4.

[83] MRE 801(c).

[84] MRE 802.

present a defense, she presents no argument that any particular evidentiary rule is "arbitrary" or "disproportionate to the purposes [it is] designed to serve."[85] "An appellant's failure to properly address the merits of [her] assertion of error constitutes abandonment of the issue."[86]

Moreover, the record reveals that Danielak was allowed to present a complete defense. Danielak argued that there was insufficient evidence that the victim died of a heroin overdose because she also had lethal amounts of cocaine in her system. Irving's statements regarding the victim's cocaine habit were not necessary to this defense. Indeed, they likely would have been harmful to the defense. The medical examiner testified that a "naïve" drug user is a first time or infrequent drug user, meaning "that their body is naïve to the . . . effects" of the drug. The medical examiner further stated that a naïve drug user would be more susceptible to a drug overdose. Evidence that the victim had a large cocaine habit would tend to indicate that she was not a naïve cocaine user, therefore making it more likely that the heroin, not the cocaine, killed her. Consequently, Danielak was not denied her constitutional right to present a defense.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly

[85] *Scheffer*, 523 US at 308.

[86] *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004).