

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDALL HOMER BANKS,

Defendant-Appellant.

UNPUBLISHED

December 26, 2000

No. 214947

Monroe Circuit Court

LC No. 96-027790-FC

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of involuntary manslaughter, MCL 750.321, MSA 28.553. He was sentenced to ten to fifteen years in prison. He appeals as of right and we affirm.

This case arises out of the death of defendant's twenty-nine-year-old girlfriend, Annetta Rhoton in August 1996. On August 12, 1996, defendant went to a store in the city of Monroe and asked the assistant manager and cashier Connie Kameron to telephone the police, stating that he had been poisoned by a ghost. Kameron knew both defendant and Rhoton and telephoned the police. Monroe police officers arrived shortly thereafter and defendant took them to his apartment and allowed the police officers to enter. The police officers smelled a strong odor of what they believed was decaying flesh and defendant, who was highly excited and emotional, told the officers that there was a ghost and dead body in the apartment. The officers found Rhoton's body, which was nude but wrapped in a blanket, inside a vinyl plastic bag in a closet. The medical examiner believed that Rhoton had been dead for about six days when her body was found.

There were no visible or obvious signs of injury to the body; however, defendant made several inculpatory statements to the police and indicated that he suffocated the victim by placing his hand over her mouth and nose. Defendant's explanation was that the death was accidental and occurred during "sexual asphyxiation", which defendant and Rhoton had engaged in six or seven times in the past. The medical examiner stated that the autopsy was "completely negative." The medical examiner found no evidence of smothering, suffocation, or strangulation. He admitted that had he evaluated the cause of death based solely on the condition of the body, he would have concluded that death occurred by undetermined means. However, based on what

the police informed him, the medical examiner listed the cause of death as suffocation and the manner of death as homicide.

On appeal, defendant first argues that the prosecution failed to prove the corpus delicti of the crime, precluding the admission of his inculpatory statements into evidence. Without these statements, defendant claims, there was insufficient evidence to convict him of involuntary manslaughter. We disagree and find that the trial court properly concluded that the prosecution first proved the corpus delicti of the crime before admitting defendant's inculpatory statements.

"In Michigan, the corpus delicti of murder requires proof both of a death and of some criminal agency that caused that death." *People v McMahan*, 451 Mich 543, 549; 548 NW2d 199 (1996). Evidence of the corpus delicti of the crime must consist of direct or circumstantial evidence that is independent of the defendant's confessions. *Id.* "Once the corpus delicti of the crime is established, appropriate extrajudicial confessions of the accused are admissible." *Id.*

In the present case, evidence preceding the admission of defendant's statements showed that Rhoton's decomposing body was discovered by police officers on August 12, 1996, in their apartment closet. The nude body was wrapped in a blanket and inside of a plastic bag with her purse and a teddy bear. Further, the police officers testified that they immediately smelled a strong odor of decaying flesh upon entering the apartment. Based on this evidence, the trial court found that the prosecution had satisfied the corpus delicti requirement for murder. We agree that evidence that a decomposing, bad-smelling dead body intentionally concealed in a blanket and plastic bag in a closet is sufficient to establish that the individual was killed by criminal means. Thus, the prosecution proved both a death and that some criminal agency caused the death before defendant's inculpatory statements were admitted.

Consequently, we find that the corpus delicti of the crime was shown before defendant's inculpatory statements were admitted. Because defendant's inculpatory statements were properly admitted, there was sufficient evidence to find defendant guilty of involuntary manslaughter beyond a reasonable doubt. *People v Datema*, 448 Mich 585, 594-596; 533 NW2d 272 (1995); *People v Petrella*, 424 Mich 221, 268-269; 380 NW2d 11 (1985).

Defendant next argues that the trial court abused its discretion by departing from the recommended sentencing guidelines' range of one to five years. The trial court's minimum sentence of ten years represents the maximum statutory term, and the maximum sentence for a given offense is proportionate where the circumstances of the offense place it in the most serious class with respect to the particular crime. *People v Houston*, 448 Mich 312, 319; 532 NW2d 508 (1995). Sentencing courts are not required to adhere to the guidelines range, especially in the absence of factors legitimately considered at sentencing and not adequately considered by the guidelines. *Id.*, p 320.

At sentencing, the trial court stated that it believed that the sentencing guidelines were "Totally inadequate." The trial court noted the following reasons for departure: this was not a typical manslaughter case; defendant created a very high risk of death and eventually had control of the situation, but allowed the sexual activity to go too far; defendant stated that the victim remained alive for a length of time after the suffocation, yet defendant did nothing to help her; the victim must have suffered needlessly during the time she remained alive until she ultimately

died; the guidelines did not account for the impact of the victim's death on her family; this case involved crime against a person and not property; and to deter others from engaging in the dangerous practice of "sexual asphyxiation." Thus, the trial court pointed to circumstances that place defendant's actions in a most severe class of involuntary manslaughter by noting factors it legitimately considered that are not accounted for by the guidelines. Accordingly, we cannot conclude that the trial court abused its discretion in sentencing defendant as the sentence is proportionate to the circumstances surrounding the offense. *Id.*, p 321.

Lastly, defendant argues that he was denied the effective assistance of counsel at sentencing when trial counsel failed to object to the contents of the presentence report.

Defendant argues that the presentence report describes his crime more severely than the trial court, because it does not mention the accidental aspect of Rhoton's death. Although the presentence report does not conflict with the evidence at trial, defendant contends that he may be prejudiced within the Department of Corrections by the "Agent's Description of the Offense," which omits defendant's account of the events. Defendant's twelve-page "Description of the Offense" is attached to the presentence report. However, he does not directly explain his version of the events that led to Rhoton's death. Seven pages into his rambling "description," he refers vaguely to sexual asphyxia, and writes that he believes the act caused a fatal asthma attack, causing Rhoton to die more than twenty-four hours later. He does not clearly state that Rhoton's death was the accidental result of a consensual sex act.

Inaccuracies in presentence reports should be corrected to prevent false information from being passed on to the Department of Corrections. MCR 6.425(D); MCL 771.14; MSA 28.1144; *People v Taylor*, 146 Mich App 203, 205; 380 NW2d 47 (1985). In this case, however, the presentence report did not contain any false information. In light of the fact that defendant was convicted of involuntary manslaughter, a charge reflected in the presentence report itself, defendant's argument that the Department of Corrections may conclude from the report that he committed premeditated murder is without merit. Furthermore, defense counsel did object to a statement in the report and indicated that he had reviewed the report with defendant. This Court has held that trial counsel is not ineffective for failing to object to alleged inaccuracies in a presentence report where the record indicated that counsel reviewed the report with the defendant and objected to other inaccuracies. *People v Bailey (On Remand)*, 218 Mich App 645, 647-648; 554 NW2d 391 (1996). Accordingly, defendant was not denied the effective assistance of counsel at sentencing.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ William C. Whitbeck