

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERESE KEGLER,

Defendant-Appellant.

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FOR PUBLICATION  
September 15, 2005  
9:00 a.m.

No. 255637  
Wayne Circuit Court  
LC No. 04-000886-02

Official Reported Version

Before: Cooper, P.J., and Bandstra and Kelly, JJ.

BANDSTRA, J.

Defendant Terese Kegler appeals as of right her conviction of second-degree murder<sup>1</sup> arising from the death of Gary Wayne Wilson. Defendant was sentenced to 15 to 25 years in prison. We affirm.

**I. Factual Background**

On the night of December 31, 2003, defendant and Wilson smoked crack cocaine together for several hours at defendant's home. Defendant's boyfriend, Gregory Brantley,<sup>2</sup> returned home. Subsequently, he left with Wilson to purchase \$100 of crack cocaine and marijuana with money supplied by defendant. Brantley suspected that Wilson stole \$60 during this transaction. An argument ensued and defendant punched Wilson.<sup>3</sup> Brantley intervened to protect defendant, and the two men began to fight. At one point, Wilson pulled a screwdriver from his pocket. Defendant then threatened Wilson with a butcher knife.<sup>4</sup> Brantley squeezed Wilson's neck and continued to punch Wilson while defendant checked his pockets for the

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<sup>1</sup> MCL 750.317.

<sup>2</sup> Brantley was also charged, and he pleaded guilty of second-degree murder before trial.

<sup>3</sup> Brantley testified that Wilson was attempting to leave and that defendant punched him as he pushed past her. Defendant denies that Wilson was attempting to leave.

<sup>4</sup> Brantley testified that defendant actually poked Wilson in the leg with the knife, but not hard enough to puncture the skin.

missing money. When Wilson lost consciousness, defendant removed his clothing and eventually found drugs and money in his pants.

Believing Wilson to be alive, defendant and Brantley carried an unclothed Wilson outside. Defendant later told police that they intended to humiliate Wilson. Defendant rethought this plan and placed Wilson's clothes on top of his body. Brantley moved Wilson's body to the back of the yard, but as the sun began to rise, defendant became afraid that the neighbors would see Wilson's body. Still believing Wilson to be alive, Brantley moved Wilson's body into the trunk of defendant's car.<sup>5</sup> Defendant and Brantley continued to use drugs throughout the day of January 1. On the advice of her brother, defendant turned herself into the police the next day. Wilson's body was recovered that afternoon. The medical examiner testified that Wilson died of asphyxia by manual strangulation. Wilson likely lost consciousness within ninety seconds and died within three to five minutes. However, the medical examiner could not exclude hypothermia as a contributing factor to Wilson's death.

## II. OV 7

Defendant's only argument on appeal is that the trial court improperly scored offense variable (OV) 7, aggravated physical abuse, and, therefore, her sentence was an improper upward departure from the minimum sentencing guidelines range. We must affirm a sentence falling within the appropriate sentencing guidelines range "unless the trial court erred in scoring the guidelines or relied on inaccurate information in determining the defendant's sentence."<sup>6</sup> "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score."<sup>7</sup> A scoring decision will be upheld if there is any evidence to support it.<sup>8</sup> However, we review de novo any legal questions involving the interpretation or application of the statutory sentencing guidelines.<sup>9</sup>

Second-degree murder is a crime against a person<sup>10</sup> for which OV 7 is to be scored.<sup>11</sup> OV 7 may be scored fifty points if "[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the

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<sup>5</sup> Defendant testified that she did not help place Wilson's body in the trunk; however, Brantley testified that defendant helped him push Wilson's feet into the trunk. Defendant was also impeached when she testified that it was Brantley's idea to place Wilson's body in the trunk. Her statement to the police indicated that it was her idea.

<sup>6</sup> *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003), citing MCL 769.34(10).

<sup>7</sup> *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

<sup>8</sup> *Id.*

<sup>9</sup> *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004).

<sup>10</sup> MCL 777.16p.

<sup>11</sup> MCL 777.22(1).

offense."<sup>12</sup> "Sadism" is defined as "conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification."<sup>13</sup>

Defendant first contends that the trial court improperly assigned fifty points for OV 7, as Brantley was the individual who actually strangled Wilson, carried his naked body outside, and placed the body in the trunk. However, defendant did remove Wilson's clothing and admitted to the police that she wanted to humiliate him by leaving him naked outside. There is also record evidence that the placing of Wilson in her trunk was also defendant's idea and that she assisted in completing this act.

Defendant also argues that OV 7 applies only when a victim actually experiences aggravated physical abuse and, therefore, that points may not be assessed because Wilson was unconscious or dead throughout the ordeal. We disagree, first, because the record contains evidence that Wilson may not have died or lost consciousness before the aggravated physical abuse occurred. Defendant admitted that she thought she felt a pulse after Wilson had been placed outside for some time, naked and in the cold, and that she heard grunting noises later, when he was being transferred into the trunk. Thus, there was sufficient evidence to support the scoring.

Second, we disagree with the premise of defendant's argument. The focus of OV 7 is defendant's conduct and purpose with respect to aggravated physical abuse. Points are assessed where "a victim *was treated with* . . . torture, or excessive brutality or conduct designed to increase" a victim's fear and anxiety.<sup>14</sup> The statute does not require, for instance, that "a victim *experienced* . . . torture, or excessive brutality or conduct designed to increase" fear and anxiety. Even if Wilson was not, in fact, aware of what was being done to him, there was evidence that defendant at least thought he might have some consciousness and intentionally tortured him with excessive brutality that was meant to increase his fear and anxiety. It would be contrary to the plain meaning of OV 7 to conclude that there is less culpability for aggravated physical abuse simply because the victim lost consciousness earlier in the course of events than defendant presumed.

We affirm.

Kelly, J., concurred.

/s/ Richard A. Bandstra

/s/ Kirsten Frank Kelly

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<sup>12</sup> MCL 777.37(1)(a).

<sup>13</sup> MCL 777.37(3).

<sup>14</sup> MCL 777.37(1)(a) (emphasis added). We recognize that points can also be assessed for sadism, defined as conduct that "subjects a victim" to pain or humiliation. MCL 777.37(1)(a), (3). While this might suggest that the victim's experience as well as the defendant's conduct must be considered in cases where a scoring is based only on sadism, that is not the case here.