

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTOINETTE MARIE McKINNEY,

Defendant-Appellant.

UNPUBLISHED

June 27, 1997

No. 175785

Macomb Circuit Court

LC No. 92-001461 FC

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Defendant appeals by right her jury convictions of second degree murder and felony firearm, and resulting consecutive sentences of 20 to 40 years and 2 years, respectively. Defendant claims the trial court erred in relying on information not of record -- a conversation with jurors after rendition of the verdict -- in imposing sentence, and that the trial court also erroneously scored offense variable 3 in calculating the sentence guideline range.

Defendant's sentence guideline scoring challenge is not cognizable absent egregious factual error, which is certainly not present here. *People v Mitchell*, 454 Mich 145; ___ NW2d ___ (1997). Intent to kill is effectively inherent in second degree murder. *Henderson v Morgan*, 426 US 637; 96 S Ct 2253; 49 L Ed 2d 108 (1976).

Although the court, in relying on a conversation with jurors, did reference information not of record, nothing in the record suggests that the trial court's summary of the conversation was in any way inaccurate. But inaccurate information is a prerequisite to appellate relief on this issue; defendant has cited no court rule or case law which precludes a trial court, at sentencing, from relying on information not included in the presentence report. Defendant's only right is to have the court base its sentence on accurate information, but in the absence of a showing of inaccuracy, factual error will not be presumed. Furthermore, the challenged information was one of only several otherwise valid reasons for rejecting defendant's challenge to the scoring of offense variable 3, and in light of *People v Mitchell*, this Court is not in the guideline scoring review business.

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple