

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

CAROL AL-KASSAB,

Defendant-Appellee/Cross-  
Appellant.

---

UNPUBLISHED  
December 23, 2003

No. 239512  
Wayne Circuit Court  
LC No. 01-006044-01

ON REMAND

Before: Meter, P.J., and Jansen and Talbot, JJ.

TALBOT, J., (*concurring in part and dissenting in part*).

I concur with the majority in adopting our previous opinion in this matter affirming defendant's convictions. However, I continue to respectfully dissent from my colleagues' conclusion that the sentencing court's departure from the sentencing guidelines was supported by substantial and compelling reasons.

Some of the reasons the court articulated for the departure were not objective and verifiable and none of the reasons articulated were substantial and compelling. *People v Babcock*, 469 Mich 247, 272-273; 666 NW2d 231 (2003).

The sentencing court stated several reasons for the departure, as follows:

[1] The defendant was a 36 year old fully employed female with no criminal record.

[2] The defendant has no history or evidence of a drug or alcohol problem or any other social/physiological difficulties.

[3] The defendant is a lifelong resident [of] . . . Michigan.

[4] The defendant and the victim had a long-term romantic relationship leading up to the incident . . . . The two lovers worked in the same location. The relationship deteriorated and evidentially ended a few months prior to the incident date.

[5] The defendant has finally acknowledged her behavior toward the victim . . . was inappropriate and for that brief period in her life she was letting her emotions control her life, the lack of financial or material gain, and the motivation for the criminal act being a temporary loss of emotional control (which was contrary to a lifetime of controlled behavior).

In the first and third paragraphs, the court articulated defendant's age, employment, and duration of residency in a particular city as part of its reasons for the departure. These are objective and verifiable but not substantial or compelling reasons for the departure in this case. The court improperly considered defendant's lack of a prior criminal record as a basis for departure because this factor is already taken into consideration in scoring the prior record variables of the sentencing guidelines. The court did not make a finding that this factor had "been given inadequate or disproportionate weight," pursuant to MCL 769.34(3)(b).

With respect to the fourth paragraph, the existence of a romantic relationship between defendant and the victim, although objective and verifiable, was not an appropriate consideration for departure in this case. The court erroneously believed that the relationship had ended only "a few months prior to the incident date" when the record shows that the relationship had ended for more than a year. This error is not insignificant particularly when, in the second and fifth paragraphs, the trial court articulated as part of its reasons for the departure its ruling that the offense was committed as a result of a temporary loss of emotional control that was contrary to a lifetime of controlled behavior, and the absence of evidence of any drug, alcohol, social or physiological problems.

The evidence established that defendant stalked her former boyfriend for more than a year. Defendant harassed him at his workplace and repeatedly called his house in the early morning hours between 5:00 a.m. and 6:00 a.m., every night for about a year. The victim stated that this terrified his elderly grandmother with whom he lived and who passed away two months after the offense was committed. Importantly, the victim stated that the offense was not the first defendant committed against him. Defendant had damaged his vehicle in a separate incident before the underlying crime was committed.

It is unclear how the court reached the conclusion that the romantic relationship had ended only a few months before the instant offense, that the offense was committed under a temporary loss of self-control, and that there was no evidence of any alcohol or psychological problems in this case.<sup>1</sup> On this record, the trial court did not articulate any substantial or

---

<sup>1</sup> It would appear that the trial court had made its determination to depart from the sentencing guidelines even before the trial commenced. In a hearing for defendant's pretrial motion to quash the Molotov cocktail charge, the court stated that it concluded from its review of the transcripts before it that the offense was committed as an isolated offense that was "probational." The court indicated that it would consider favorably any type of probation, the question being only "how much," and that defendant would be required to complete some type of anger management counseling. The court encouraged the parties to discuss the matter and to look into any plea offers. The prosecutor does not point to this portion of the record on appeal.

compelling reasons to justify the downward departure. I would remand for resentencing in light of *Babcock, supra*.

/s/ Michael J. Talbot