

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 22, 2015

v

SEAN MICHAEL PHILLIPS,
Defendant-Appellant.

No. 326005
Mason Circuit Court
LC No. 14-000318-AR

Before: M. J. KELLY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

In June of 2011, four-month-old Katherine “Kate” Phillips disappeared in Ludington, Michigan, after she was last seen with defendant in his vehicle. Kate’s body was never found. Defendant was charged and convicted of unlawful imprisonment, MCL 750.349b, in connection with her disappearance. We affirmed that conviction in *People v Phillips*, unpublished opinion per curiam of the Court of Appeals, issued December 17, 2013 (Docket No. 311110), and our Supreme Court denied defendant’s application for leave to appeal. *People v Phillips*, 496 Mich 859; 847 NW2d 624 (2014). Defendant began corresponding with Kate’s mother, Ariel Courtland, while he was incarcerated. Courtland wrote defendant a letter asking questions about the circumstances surrounding Kate’s death. Defendant responded with a five-page letter that indicated Kate had died when he ripped her car seat from his vehicle, and she was “thrown from it.” He indicated in the letter that at the time he ripped the car seat from the vehicle, he thought that Courtland had Kate and that he did not know she had been in the car seat. He also stated in the letter that after it was “too late” to help Kate, he drove to an unknown location, exited his vehicle, walked for some distance, and set Kate in a “peaceful place” before returning home. After the letter was intercepted by law enforcement, the prosecution charged defendant with open murder, MCL 750.318. The district court, however, refused to bind defendant over on the charge of open murder because, in its view, the prosecution had failed to establish the *corpus delicti* for murder. The prosecution appealed to the circuit court, which reversed the district court’s order, concluding that, based on the controlling law, the prosecution was entitled to

pursue the open murder charge. Defendant appeals that decision by leave granted.¹ For the reasons set forth in this opinion, we affirm.

I. FACTS

Defendant and Courtland began a romantic relationship in high school, when Courtland was just 14 years old and defendant was 16 years old. Courtland gave birth to the couple's first child, HP, when she was 15 years old. Defendant was present for HP's birth and accepted paternity. From that point until June 2011, the couple had an "on and off again" relationship. In May 2010, Courtland discovered that she was pregnant with Kate. Courtland testified that defendant wanted her to get an abortion because he did not think they could afford two children, he was going to be deploying with his National Guard unit, and his parents, who disapproved of the couple's relationship, would kick him out of their house and "disown him" if they found out Kate was his. Courtland testified that she initially told defendant she did not believe in abortion and that they argued about it weekly. At one point, defendant told Courtland that she was trying to ruin his life. Courtland eventually allowed defendant to believe she would consider an abortion and she accepted money from him to help pay for the procedure. She then used the money to purchase items for the expected child.

After defendant discovered that Courtland did not get an abortion, the couple started discussing adoption. Courtland testified that although she considered it at one point, she decided she did not want to proceed with an adoption.

Kate was born on February 12, 2011. At that point, defendant and Courtland were still trying to work things out. Although they had a custody arrangement for HP, there was no such arrangement for Kate; defendant simply saw her whenever he came over to visit. Outside of his parent's presence, defendant treated Kate the same as he did HP. However, he denied paternity for Kate and stole birth announcements that listed him as Kate's father. The arguments over whether Kate would be placed for adoption continued between Kate's birth and June of 2011, when she disappeared.

At some point, the Department of Health and Human Services (DHHS) discovered that there was no father listed on Kate's birth certificate. DHHS forwarded that information to the Mason County Prosecutor's office to initiate paternity proceedings, which the prosecutor's office did. On April 21, 2011, Courtland signed a complaint for paternity at the prosecutor's office, alleging that defendant was Kate's father. Those documents were then served upon defendant on May 22, 2011. When he was served, defendant "became upset" and "didn't want to pay" child support. On June 10, 2011, defendant moved the circuit court for a paternity test and on June 15, 2011, the circuit court issued an order for DNA testing. Defendant and Courtland were notified of their scheduled times for DNA testing: defendant was scheduled for June 29, 2011 at 12:00 p.m., while Courtland was scheduled for 1:00 p.m. that same day. It appears that Kate was scheduled to have a DNA test at 1:00 p.m. that day.

¹ *People v Phillips*, unpublished order of the Court of Appeals, entered April 24, 2015 (Docket No. 326005).

Defendant submitted to a DNA test at Memorial Medical Center in Ludington at 11:45 a.m. on June 29, 2011.² He left Memorial Medical Center at 12:04 p.m. and went to Courtland's apartment. When he arrived, he was wearing black "Seedless" shoes. According to Courtland, defendant was "fine" when he first arrived, but he became upset after learning that Courtland was still planning to take Kate for DNA testing. She stated that they argued before eventually leaving her apartment around 12:50 p.m. Courtland explained that defendant was driving and Kate was strapped in a car seat behind him. Although Courtland believed they were going to the hospital to conduct the DNA test, defendant drove to the DHHS office next to the hospital instead. When they arrived, Courtland refused to go inside and instead said she would walk to her appointment. She stated that she got out of defendant's vehicle, walked around to Kate's door, unbuckled her, and picked her up to take her out. Courtland testified that defendant then said "something" that prompted her to buckle Kate back in her car seat and get back into the car. She said that they then returned to her apartment, passing the hospital in the process.

When they arrived back at the apartment, Courtland told defendant that they had to go back to the hospital because they were already late for the appointment. Again, Courtland got out of the vehicle, walked around to Kate's door, unbuckled her, and picked her up. She stated that she then placed Kate back down in her car seat, without buckling her, and asked defendant if he would watch her while she went to get a stroller. Courtland added that she was gone for about a minute and that when she returned with the stroller, defendant's vehicle was gone.

Courtland thought defendant may have gone to get food. Because her cell phone was in his vehicle, she called defendant from a friend's apartment. Defendant did not answer that call. Nor did he answer numerous additional phone calls Courtland made. When Courtland was unable to reach defendant, she called 911. After telling the police what happened and how they could reach defendant and defendant's parents, Courtland unsuccessfully tried to find defendant before eventually going to her mother's home to make additional phone calls regarding Kate and to wait for the police to contact her. In the meantime, the responding officer continued looking for defendant.

According to cellular telephone tower records, there was a two-hour gap from 1:17 p.m. until 3:18 p.m. on June 29, 2011, during which defendant's cellular telephone was apparently turned off and not transmitting. Defendant eventually returned home between 3:00 and 3:15 p.m. His mother met him outside. Kate was not with him. When his mother asked where she was, defendant told her that she was with Courtland. Around 3:35 p.m., defendant called the police department and spoke to the responding officer, who asked defendant if he had Kate. Defendant stated that Kate was with Courtland. When he was asked about his whereabouts during the day, defendant stated that he had gone to the hospital for a DNA test before picking up Courtland and Kate and driving to DHHS. Defendant indicated that he and Courtland argued

² A subsequent comparison of defendant's DNA with DNA samples taken from some of Kate's personal effects (e.g., a pacifier and bottle nipple) "revealed shared common alleles consistent with inheritance by full offspring." It was determined that defendant was 2.7 million times more likely to be Kate's father than a randomly selected individual in the Caucasian population.

on the way to the DHHS office about putting Kate up for adoption. He then indicated that he dropped Kate and Courtland off and went home. The officer told defendant to stay where he was and that an officer would be out to speak with him further.

Around 3:54 p.m., two officers arrived at defendant's house. Defendant was pacing back and forth in the driveway wearing tennis shoes. Upon later review of the video footage from the hospital from that day, investigators learned that the shoes defendant was wearing when they made contact with him were different than the ones he had been wearing at the hospital.

When they arrived, the officers did not see a car seat inside defendant's vehicle. They introduced themselves and told defendant that they were looking for Kate. Defendant told the officers that "it" was with Courtland. Defendant stated two more times that "it" was with Courtland, after which one officer told him he was lying. Defendant apparently then acknowledged that he was not telling "the whole truth."

The officers decided to transport defendant to the police station for further questioning. Before transport, they conducted a pat-down search of defendant. Defendant had a noticeable bulge in the right cargo pocket of his shorts. When the officers asked defendant what was in his pocket, defendant responded "her clothes." A officer then reached in and pulled out an infant's outfit: a white tank top with flower print and a pair of pink bottoms. The clothing was "wadded up in a ball and turned inside out." Courtland identified the clothes as the same clothes Kate was wearing when she disappeared. The officers then thoroughly searched defendant's vehicle. They found an infant car seat and a diaper bag in the trunk. The officers then searched defendant's parents' house, but found no sign of Kate. Investigators subsequently conducted more thorough searches of defendant's parents' house and defendant's vehicle. In the house they located a pair of dark "Seedless" brand shoes consistent with the ones defendant had been wearing in the hospital surveillance footage. The shoes were wet, and there was dirt and plant material embedded into the suede and soles. In the vehicle under the front passenger seat, the officers discovered a soiled diaper, matching the ones found in the diaper bag. Courtland testified that she had not left any used diapers in the car.

Defendant was questioned at the Ludington Police Department. When asked what the nature of his relationship with Courtland was, defendant responded that they "dated briefly years ago." Defendant further indicated that they had a child in common and that Courtland "intentionally got pregnant" with another child, but that "it" was not his. As to Kate's disappearance, defendant indicated that after leaving Courtland's apartment that day, he went to Wendy's and then went home.

Defendant was initially charged with unlawful imprisonment in connection with Kate's disappearance. On July 11, 2011, while defendant was in the county jail awaiting trial for unlawful imprisonment, a corrections officer recovered a piece of paper in the shirt pocket of defendant's clothing. On that paper was a statement from defendant wherein he indicated that he gave Kate away for adoption and provided information for a website in which the adoptive family's information could be obtained. After reading the note, the corrections officer gave it to an investigator in the case. In response to the contents of the note, investigators searched defendant's and Courtland's computers. The searches revealed that defendant had gone to ParentProfiles.com, a website for adoptions. Investigators contacted everyone whose profile on

that website had been accessed by defendant. None of them had Kate. And none of them had any contact with defendant or Courtland. Investigators found no evidence that the child was ever adopted out or given to anyone.

While incarcerated, defendant and Courtland began writing letters to each other. Because the investigation of Kate's disappearance was still considered ongoing, defendant's mail was monitored by prison officials. Of particular note to investigators was a letter written to defendant by Courtland, in which Courtland asked defendant several questions about the circumstances surrounding Kate's disappearance.

Sometime around August 7, 2012, defendant responded to the above letter with his own five-page, handwritten letter.³ In the letter, defendant indicates that he ripped the car seat out of his car, without realizing Kate was in it, and that she was thrown some distance. He writes that he picked her up and held her, but without trying to help her, until it was "too late" to call 911. He then describes driving for an unknown period of time to an unknown place, where he placed Kate's body in a "peaceful place" before returning home.

At defendant's preliminary examination, the prosecution elicited testimony from Dan Ruba, who lived with Courtland's mother, regarding certain statements that defendant made to him. Specifically, Ruba recalled an occasion after Kate was born when defendant told him that he "really didn't think that Kate was his kid because . . . he didn't love her." Ruba also recalled an occasion approximately two months before Kate disappeared when he was drinking beer with defendant and defendant said that he hated Courtland and "was willing to do anything to make her go away." Ruba testified that defendant also said that, because of his military training, he could kill someone and hide the body and no one would find it.

Finally, the prosecution elicited testimony from Rushaun Burton, who was housed in the Carson City Correctional Facility with defendant between March and October 2013. Burton testified that he first met defendant in the prison cafeteria and spent time with him in various places outside their cells. He recalled that in July of 2013, he was talking with defendant about Kobe Bryant, Tiger Woods, and women who divorce their husbands and get all of their money. He said that defendant stated that he had a "similar situation, the girl has a baby that's not his and she's not gonna get a dime from him." He said that defendant told him that he "picked the baby up and got rid of the baby." When Burton asked him what he meant, defendant "kind of got closed up from the conversation" and said "well I can't be charged because they won't find it—won't find the baby." Defendant did not say anything else during the conversation and he never mentioned the child to Burton again.

The district court ultimately refused to bind defendant over on the charge of open murder based upon its conclusion that the prosecution had failed to establish the *corpus delicti* of murder; specifically, that Kate's death was caused by some criminal agency. In so doing, the district court relied upon defendant's prison letter and concluded that the letter provided the

³ Biological material extracted from the envelope matched defendant's DNA and expert handwriting analysis indicated that the letter was in fact written by defendant.

“only facts” regarding Kate’s death; i.e., that her death was accidental because defendant did not know that Kate was in car seat when he ripped it from the vehicle. On appeal, the circuit court reversed the district court’s order, concluding that the totality of the circumstantial evidence, and not just defendant’s letter, could be viewed in determining whether there was sufficient proof of criminal agency. The circuit court ultimately concluded that based on controlling law, the prosecution was entitled to pursue the open murder charge. This appeal follows.

II. *CORPUS DELICTI* RULE

Defendant argues that the district court did not abuse its discretion when it refused to bind defendant over on the open murder charge. He asserts that, based on the evidence presented, the district court judge correctly concluded that there was no proof that Kate had died from a criminal agency, i.e., that there was insufficient proof to establish the *corpus delicti* of murder.⁴ We disagree.

The *corpus delicti* of a crime must be established by evidence independent of a defendant’s confession. *People v McMahan*, 451 Mich 543, 549; 548 NW2d 199 (1996). “The corpus delicti rule is designed to prevent the use of a defendant’s confession to convict him of a crime that did not occur.” *People v Konrad*, 449 Mich 263, 269; 536 NW2d 517 (1995). The rule provides that a defendant’s *confession* may not be admitted unless there is direct or circumstantial evidence independent of the confession establishing the occurrence of the specific injury and some criminal agency as the source of the injury. *McMahan*, 451 Mich at 549, citing *Konrad*, 449 Mich at 269-270. The *corpus delicti* may be established by direct evidence, circumstantial evidence, and reasonable inferences from such evidence. *People v Modelski*, 164 Mich App 337, 341-342; 416 NW2d 708 (1987). Further, the *corpus delicti* need only be proved by a preponderance of the evidence. *Id.* at 342; *People v Brasic*, 171 Mich App 222, 227; 429 NW2d 860 (1988).

The *corpus delicti* of murder consists of two elements: “the death of the victim and some criminal agency as the cause.” *People v Williams*, 422 Mich 381, 392; 373 NW2d 567 (1985). In cases where, as here, the victim is alleged to have been murdered, but the body is not found, the criminal-agency component of the *corpus delicti* is particularly important. “Absent some showing of criminal agency, there are any number of possible explanations for an individual’s disappearance, including death by accidental means.” *McMahan*, 451 Mich at 550. See also *Modelski*, 164 Mich App 337 (holding that the criminal-agency prong of the *corpus delicti* rule had been met by showing that the victim disappeared suddenly and was never heard from, the defendant had a motive to kill her in light of his deteriorating marriage and his allegation of

⁴ We review the district court’s bindover decision de novo to determine whether the district court abused its discretion. *People v Henderson*, 282 Mich App 307, 313; 765 NW2d 619 (2009). “An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes.” *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). We review a lower court’s decision regarding *corpus delicti* for an abuse of discretion. *People v King*, 271 Mich App 235, 239; 721 NW2d 271 (2006).

infidelity against his wife, and the defendant's actions that suggested he had murdered the victim); but see *People v Fisher*, 193 Mich App 284; 483 NW2d 452 (1992) (holding that the *corpus delicti* of murder had not been shown, despite circumstantial evidence of motive and opportunity, where the victim's body was not found and where there was no direct admission, no physical evidence, and no witness to the killing).

Significantly, the *corpus delicti* rule applies only to confessions of guilt, not to exculpatory statements by the defendant, guilty conduct of the defendant, or admissions of fact that do not amount to a confession of guilt. In *People v Porter*, 269 Mich 284, 290; 257 NW 705 (1934), our Supreme Court took note of the distinction between confessions and admissions, citing the following from 2 Wharton's Criminal Evidence (10th ed), § 622b:

A confession, although differently phrased by different courts, being an acknowledgment, in express terms, by a party in a criminal case, of the truth of the crime charged, by the very force of the definition logically excludes: *first, acts of guilty conduct; second, exculpatory statements; third, admission of subordinate facts that do not constitute guilt.* Much of the confusion that exists in the case law would be readily avoided if courts carefully measured every confession by the rule of direct acknowledgment of guilt, as entirely distinguished from acts, exculpatory statements, and admissions. [emphasis added.]

See also *People v Rockwell*, 188 Mich App 405, 407; 470 NW2d 673 (1991). Further, "an admission of one, but not of all, the essential elements of the crime is not a confession." *Porter*, 269 Mich at 291 (internal quotation omitted). Thus, "the *corpus delicti* rule does not bar admissions of fact that do not amount to a confession of guilt." *People v Schumacher*, 276 Mich App 165, 180-181; 740 NW2d 534 (2007).

Here, in the letter, defendant makes admissions of "subordinate facts" which circumstantially establish Kate's death, but which do not, by themselves, establish guilt to homicide. See *Porter*, 269 Mich at 290-291. Specifically, defendant indicates that he ripped the car seat out of his car, without realizing Kate was in it, and that he thereafter held her, without trying to help her, until it was "too late" to call 911. He then describes driving for an unknown period of time to an unknown place, where he placed Kate's body in a "peaceful place" before returning home. At no point in the letter does defendant indicate that he intended to harm or kill Kate. Accordingly, because the facts admitted do not, by themselves, establish guilt, but necessarily depend upon other evidence in order to establish murder, the statements are admissions, not confessions, *Id.* at 291, and are not barred by the *corpus delicti* rule, *Schumacher*, 276 Mich App at 180-181.

The same conclusion pertains to the other statements made by defendant. First, defendant's statements to Ruba, indicating that he did not love Kate and that he could hide a body without anyone finding it, certainly do not amount to confessions of guilt, inasmuch as they were made before Kate disappeared and do not acknowledge any guilt. See *Porter*, 269 Mich at 290-291. Likewise, defendant's statements to Burton, indicating that he "got rid of the baby" and that "they won't find it," are similar in nature to the statements contained in defendant's letter to Courtland and amount to nothing more than the admission of "subordinate facts" which do not, by themselves, establish defendant's guilt to murder. *Id.* As such, these statements were

admissible in support of defendant's open murder charge without regard to whether there was independent evidence establishing the *corpus delicti*. *Schumacher*, 276 Mich App at 180-181.

Based on defendant's admissions of subordinate fact in his letter and statement to Burton, there is evidence to conclude that Kate is, in fact, dead. Thus, the question becomes whether her death was the result of some "criminal agency."

In this case, Kate disappeared on June 29, 2011—over four years ago—when she was just four months old and she has not been seen since. Viewing the evidence presented at the preliminary examination, there was sufficient evidence to establish by a preponderance of the evidence that Kate's death was caused by a criminal agency. See *Brasic*, 171 Mich App at 227. Again, the *corpus delicti* rule does not bar the use of (1) acts of guilty conduct, (2) exculpatory statements, or (3) admissions of subordinate fact. *Porter*, 269 Mich App at 290.

Here, defendant made several exculpatory statements after Kate's disappearance. First, when he was initially asked about Kate's whereabouts, he repeatedly told the police that Courtland had her. Second, defendant later indicated that he had given Kate away for adoption.

Next, there are also numerous acts of contemporaneous guilty conduct in the record. Kate was last seen alive with defendant, whose whereabouts in the two hours after he drove away with her are unknown. During that time, defendant's cell phone was turned off. When he returned, he waited about 20 minutes to call the police. Again, when the police questioned him, he repeatedly stated that Courtland had Kate. A police search of the vehicle showed that Kate's car seat and diaper bag were in the trunk. Further, there was a soiled diaper under the front seat, even though Courtland stated that she had not left any soiled diapers in the vehicle. Additionally, the police located the outfit that Kate had been wearing before her disappearance inside defendant's pants pocket. The outfit was balled up and inside out. Moreover, the evidence at the preliminary examination showed that defendant changed his socks and shoes between when he was at the hospital and when the police spoke to him. Further, the black "Seedless" shoes he had been wearing when Kate disappeared were wet and had plant materials and dirt on them.

Finally, besides the five-page letter that defendant sent to Courtland, there were additional admissions of subordinate fact. Specifically, Burton testified that defendant told him that he picked up the baby, got rid of it, and that he could not be charged because there was no body.

Accordingly, taking those facts together, a jury could reasonably infer that defendant wanted to hide his involvement in Kate's death because she had died as the result of criminal agency. See *Modelski*, 164 Mich App at 341-342. Thus, in this case, there is sufficient evidence to establish by a preponderance of the evidence that Kate died as a result of criminal agency. See *Brasic*, 171 Mich App at 227. As such, the district court abused its discretion by refusing to

bind defendant over on the charge of open murder. See *People v Duncan*, 494 Mich 713, 722-723; 835 NW2d 399 (2013) (“A trial court necessarily abuses its discretion when it makes an error of law.”). The circuit court properly reversed the district court and reinstated the charge against defendant.

Affirmed.

/s/ Michael J. Kelly

/s/ Christopher M. Murray

/s/ Douglas B. Shapiro