

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

LYNDA CAROL BAKER,

Defendant-Appellant.

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UNPUBLISHED

June 23, 2005

No. 252032

Wayne Circuit Court

LC No. 03-004202-1

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Defendant was convicted of involuntary manslaughter, MCL 750.321, and was sentenced to fifty-seven months' to fifteen years' imprisonment. She appeals, claiming that the sentencing court erred in calculating Offense Variables (OV) 5, 7, and 10. We affirm.

“A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). The sentencing court did not err in assessing fifteen points under OV 5 because “[s]erious psychological injury requiring professional treatment occurred to a victim’s family [member] . . . .” MCL 777.35(1)(a). The victim was a four-year-old child, who was living in foster care with his two-year-old brother. Defendant was the boys’ foster-care mother. The victim died at defendant’s hands from blunt force trauma to the head and a lack of immediate medical care. It was not unreasonable for the sentencing court to conclude that the victim’s brother would likely need therapy to deal with his loss, especially in light of the fact that he was in an unstable foster care environment.

Additionally, the sentencing court did not err in assessing fifty points under OV 7 because the “victim was treated with . . . excessive brutality . . . .” MCL 777.37(1)(a). The victim’s eyes were swollen shut when he arrived at the emergency room. There were at least seven bruises to his head, and he also had a cut in his mouth. Defendant admitted to “losing it” with the victim, striking him about the face and head with her fists. Such violence was excessively brutal, especially in light of the fact that the victim was merely four years old.

Finally, the sentencing court did not err in assessing ten points under OV 10 because defendant “exploited [the] victim’s . . . youth or agedness, [and] a domestic relationship, [and] [defendant] abused . . . her authority status . . . .” MCL 777.40(1)(b). The victim was vulnerable in several ways. His young age and small size made him especially susceptible to a beating at

the hands of an adult. The victim was also vulnerable because the attack came from the main authority figure and caregiver in his household. Defendant's exploitation of the victim was further evidenced by her admission that she did not seek medical treatment for the victim because she was afraid of losing the foster children.

Affirmed.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Patrick M. Meter