

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ASHLEIGH CORTNEY SMITH,

Defendant-Appellant.

UNPUBLISHED

May 24, 2011

No. 297056

Van Buren Circuit Court

LC No. 09-016471-FC

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

PER CURIAM.

Defendant Ashleigh Cortney Smith appeals as of right her jury conviction of second-degree murder arising from the death of her newborn infant. MCL 750.317. The trial court sentenced Smith to serve 18 years to 50 years in prison for her conviction. On appeal, Smith argues that the lower courts erred at various points when they permitted the admission of her confession even though the prosecutor had not established the corpus delicti of murder. Specifically, she contends that there was no evidence—apart from her confession—to establish that the baby was born alive and died as a result of criminal agency. We conclude that the prosecutor established the corpus delicti for murder and, consequently, that the lower courts did not err when they refused to bar the admission of Smith’s confession under the corpus delicti rule. For this reason, we affirm.

I. BASIC FACTS

This case has its origins in the discovery of a dead baby in a bathroom in the basement under Smith’s apartment in May 2008.

In April 2007, Smith gave birth to a son, Julian. Smith testified that she concealed her pregnancy from her family because she was concerned that they would be disappointed. She even managed to conceal her pregnancy from her roommate, who remained ignorant of the pregnancy even as she drove Smith to the hospital to give birth. Smith stated that she wanted to give Julian up for adoption, but later changed her mind. The Department of Human Services became involved after Julian’s birth and he eventually ended up being placed with Smith’s

mother, Kimberly Newell.¹ Smith testified that, although she rented an apartment from her mother, she actually spent the majority of her time at her mother and step-father's house in order to care for Julian.

Kimberly Newell, testified that she owned several apartment buildings with her current husband. She rented the ground-floor unit of one building to Smith. Newell testified that on April 1, 2008, Smith was staying at her house while her husband was away in Florida for a funeral. After she returned from picking her husband up at the airport, she noticed a large black stain on the carpet in her bedroom, which is where Smith had slept the previous night. When she asked Smith about the stain, Smith suggested that perhaps one of the family's dogs had gotten sick at that spot.

Newell went to the building with Smith's apartment unit on May 5, 2008, in order to let a utility worker into the basement. She said that she used the basement at that building for storage and that it had her cleaning supplies. Newell said that the basement also had a bathroom with a shower stall, but that it was not "cleaned for use." When she went into the basement, Newell noticed a slight odor and that the bathroom door was locked. She also heard the bathroom's exhaust fan running. She picked the lock, opened the door and shut the fan off. She also noticed a large black garbage bag sitting in the shower's basin. She did not investigate the bag at that time.

The next day, Newell returned to the basement. She was preparing to clean some units in anticipation of the new rental season. Newell decided to check the garbage bag and opened it. She recognized a quilt from her house that had blood on it. She then nudged the bag a bit and a baby fell out. Newell said she turned and ran.

Newell testified that she and her husband confronted her daughter about her discovery and Smith seemed to "affirm" her suspicions that the baby was hers. Newell said that Smith did not express any interest in naming the baby or participating in her funeral. She testified that the family decided to name the baby Emma.

Daniel Diekema testified that he was a trooper with the Michigan State Police and had received training as a crime scene technician. He stated that he investigated the basement where the baby was found. Diekema said that there was an odor of decomposition when he entered the basement that became stronger as one approached the bathroom. When he opened the garbage bag, Diekema discovered another garbage bag, a quilt, sweatshirt, pajama pants, pillow case, wash cloth, socks, and a dead baby.

Amy Darling testified that she works for the Medical Examiner's office in Van Buren County. She responded to the basement under Smith's apartment and, along with a local funeral director, recovered the baby. She stated that the baby was wrapped in blankets and that the baby's umbilical cord was still attached, as was the placenta.

¹ The Department petitioned for Julian's removal after he tested positive for cocaine at birth.

Dr. Philip Croft testified that he was a forensic pathologist and that he performed an autopsy on the baby. Croft said that the baby was a female of 38 to 40 weeks' gestation. The baby girl's organs were fully developed and could sustain life. She also showed no signs of external or internal injuries. The baby also showed no evidence of any disease and an x-ray showed that she did not have any broken bones. There was also no evidence to suggest that there was a birthing emergency. Nevertheless, Croft could not state with certainty whether the baby was born alive.

Croft stated that the baby's lungs showed signs of having gas in them, but that the evidence was equivocal. He explained that the gas could have been there because the baby was born alive and began to breathe or could possibly be the result of post-mortem processes. Indeed, he noted that at least some of the observed signs suggested gas production from decomposition. He also stated that the baby's brain showed signs of oxygen deprivation, but that the evidence did not suggest one way or the other whether the baby was born alive. Although he could not state whether the baby was born alive, he noted that it was a rare event for a full term baby to be stillborn. He stated that the evidence was also consistent with the baby having been born alive and then suffocated—possibly a slow suffocation over a period of hours.

Smith testified that she was Emma's mother. She stated that she concealed her pregnancy from her family as she did with her earlier pregnancy because she was afraid of what they would think. She admitted that she was also concerned that she might lose any chance of regaining custody of her son because she would not be able to care for two small children.

Smith said that, in the early morning hours of April 1, 2008, she awoke with bad cramping. She stated that she had not felt Emma moving for a couple days prior. She went to the bathroom attached to her mother's bedroom and noticed a lot of blood. She tried to get back to the bed, but could not. She felt lightheaded and stayed on the floor. She then put her feet up and delivered the baby. She said that Emma wasn't moving, wasn't breathing, and made no sound. She said that the placenta came out soon thereafter. She sat there until she heard her step-brother's alarm. She then wrapped everything in a blanket and put it under her mother's bed. Smith said she then proceeded with her normal routine until everyone was gone from the house. At that point, she took everything and put it in a garbage bag, which she transported to her apartment. She took the bag to the basement bathroom, put it in the shower stall, and left. Smith said that she did not deliberately lock the door and that the vent was on because she must have forgotten to turn the light off when she left.

After Smith's mother discovered Emma's corpse, Smith gave several statements to the police about the circumstances surrounding her daughter's birth. Initially, she told the officers that Emma had been born dead. However, she later gave a statement suggesting that Emma was breathing when first delivered. She told an officer that Emma was alive at first, but that she could not do anything for her because she was in so much pain while delivering the placenta. She also admitted that she did not check to see if Emma was alive before wrapping her in blankets and putting her under her mother's bed. In a later statement, she said that Emma was moving and gurgling at first. The officer stated that she described the "movement as she [Emma] was on her side trying to get to her back, her arms and legs contracting as if they were going back into a fetal position and that she was cold." Smith told the officer that she did not

think she had time to get Emma to a hospital and—after she heard her step-brother’s alarm go off—she got scared and wrapped Emma in the blanket and suffocated her.

On the basis of Smith’s statements, the prosecution charged Smith with open murder.

At Smith’s trial, the prosecutor argued that the evidence showed that Emma was born alive and that Smith suffocated her. In contrast, Smith’s trial lawyer argued that the evidence showed that Emma died before birth and that her death was likely the result of a placental abruption. After the close of the prosecution’s proofs, the trial court concluded that there was no evidence that Smith had the requisite intent to prove first-degree murder. As such, it granted a directed verdict in Smith’s favor as to that count. However, it let the case go to the jury on the remaining possible murder charges.

The jury ultimately found Smith guilty of second-degree murder. This appeal followed.

II. CORPUS DELICTI

A. STANDARD OF REVIEW

Smith argues on appeal that the prosecution never established the corpus delicti of murder. As such, the lower courts erred—at both the preliminary examination and trial—when it permitted the admission of her confessions in contravention of the corpus delicti rule. This Court reviews a trial court’s decision to admit evidence for an abuse of discretion. *People v Roper*, 286 Mich App 77, 90; 777 NW2d 483 (2009). A trial court abuses its discretion when it selects an outcome that is outside the range of reasonable and principled outcomes. *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008). However, a trial court necessarily abuses its discretion when it admits evidence that is inadmissible as a matter of law. *Id.* This Court reviews de novo—as a matter of law—the proper scope and application of common law rules, such as the corpus delicti rule. *People v Petty*, 469 Mich 108, 113; 665 NW2d 443 (2003).

B. ANALYSIS

The corpus delicti rule is a common law rule governing the admission of inculpatory statements. See *People v McMahan*, 451 Mich 543, 547-548; 548 NW2d 199 (1996) (noting that Michigan has long recognized the common-law corpus delicti rule that governs the admission of confessions and declining to modify the rule). *People v Harden*, 474 Mich 862, 862 (2005) (reaffirming that a challenge under the corpus delicti rule is a challenge “to the admission of evidence, not to the sufficiency of the evidence.”). The purpose of the rule is to guard against the possibility that an accused may be convicted of a crime that did not occur. *McMahan*, 451 Mich at 548-549. To that end, before an accused’s inculpatory statements may be used against him or her at trial, the prosecution must show that a crime has occurred. The prosecutor must establish the ‘body of the offense or wrong’—the corpus delicti—with evidence independent of the accused’s confession. *People v Konrad*, 449 Mich 263, 269-270; 536 NW2d 517 (1995). For the crime of murder, the prosecutor must establish that someone died and that the decedent died as a result of criminal agency. *Id.*

The prosecutor does not, however, have to establish the existence of the corpus delicti beyond a reasonable doubt. *People v Modelski*, 164 Mich App 337, 341; 416 NW2d 708 (1987). Rather, the prosecutor need only establish the corpus delicti by a preponderance of direct or circumstantial evidence. *Id.* at 342. In some cases, the corpus delicti of murder can be established through evidence disclosed by the dead body alone. See *McMahan*, 451 Mich at 550. But when the remains cannot be found or where the remains do not suggest death by criminal means, the prosecutor must present additional evidence that establishes that the decedent died as a result of some criminal agency. *Id.* Nevertheless, the prosecutor does not have to establish the identity of the person whose criminal agency caused the injury, the prosecutor need only establish that someone's criminal agency caused the injury at issue. *Konrad*, 449 Mich at 270 (stating that proof of identity is not a part of the corpus delicti of a crime).

Here, Smith argues that there was no evidence that Emma was born alive and then died as a result of criminal agency. As such, she maintains, her confession that she suffocated Emma was not admissible at her preliminary examination or at trial.² In reaching this conclusion, Smith relies heavily on the fact that the medical examiner could not state—on the basis of medical evidence alone—that Emma was born alive and died as a result of some criminal agency.

As already explained, before Smith's inculpatory statements could be admitted against her at trial, the prosecutor had to establish that Emma died and that she died as a result of criminal agency. Further, because this case involved a newborn baby, in order to establish that Emma died as a result of some criminal agency, the prosecutor essentially had to also establish that Emma was born alive. Thus, under the unique facts of this case, the prosecutor had to present direct or circumstantial evidence that permitted a finding by a preponderance that Emma was born alive and then died as a result of some criminal agency.

Here, the prosecutor presented evidence that Emma's corpse was found decomposing in the well of a shower stall. And, although the medical examiner could not state whether she was born alive on the basis of the autopsy alone, his medical testimony was not equivocal in every regard. Croft testified that Emma was full term, had fully developed organs that were capable of supporting life, and showed no signs of external or internal injuries. Further, he stated that there was no evidence of disease and that an x-ray showed that she did not have any broken bones.

² In Michigan, an accused has a statutory right to a preliminary examination. *People v Hall*, 435 Mich 599, 603; 460 NW2d 520 (1990). However, because this right is statutory, in order to warrant a new trial premised on an error at the preliminary examination, a defendant must show that the error prejudiced his or her trial. See *Hall*, 435 Mich at 602-603. As such, if Smith received a fair trial with constitutionally sufficient and properly admitted evidence, she would not be entitled to any relief, even if the lower courts erred when they permitted the admission of her confessions at the preliminary examination. See *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). We shall accordingly limit our examination of this issue to whether the trial court abused its discretion when it refused to bar Smith's confessions under the corpus delicti rule at her trial.

Croft also testified that there was gas found in the baby’s lungs and that this evidence was—even though not *conclusive* proof of a live birth—was at least consistent with the baby having been born alive. There was also no evidence to suggest that there was a birthing emergency. Finally, although Croft could not exclude the possibility that Smith had had a placental abruption or that the baby was otherwise stillborn or died as a result of some complication during delivery, he stated that it was a “relatively rare event” to have a full term baby delivered stillborn. Even though Croft declined to offer an opinion, based on the medical evidence alone, as to whether Emma was born alive,³ we conclude that this evidence could support a finding that it was more likely than not—however slight the preponderance—that she was born alive. Further, when coupled with the evidence that she was found decomposing in the shower stall, the evidence supported a finding by a preponderance that that Emma was born alive and then died.

Moreover, even if we were to conclude that this evidence was by itself insufficient to establish by a preponderance that Emma was born alive, the trial court properly concluded that Smith’s statements about the baby’s birth were not confessions. As such, the trial court did not err when it relied on Smith’s statements when determining whether there was evidence that Emma was born alive.

It is well-settled that the corpus delicti rule applies to confessions of guilt and not to admissions of fact:

Defendant does not distinguish between confessions and admissions of fact. If the fact admitted necessarily amounts to a confession of guilt, it is a confession. If, however, the fact admitted does not of itself show guilt but needs proof of other facts, which are not admitted by the accused, in order to show guilt, it is not a confession but an admission and, therefore, is not within the range of cases cited. [*People v Porter*, 269 Mich 284, 290; 257 NW 705 (1934).]

In order to constitute a confession, a statement must have some distinctive feature in the fact acknowledged that shows guilt. *Id.* Thus, statements about conduct that suggests a guilty conscience, exculpatory statements, and statements about subordinate facts are not confessions. *Id.* And, because such statements need “other facts to give them convicting force,” they are admissible to establish the corpus delicti of a crime. *Id.* at 291; see also *People v Schumacher*, 276 Mich App 165, 180-181; 740 NW2d 534 (2007).

³ We note that Croft’s testimony suggests that he felt that there had to be conclusive or strong evidence that Emma was born alive before he could offer an opinion to that effect. Croft explained that he suspected homicide from the beginning, but was concerned that there needed to be strong evidence that Emma was born alive: “Yes, I had concerns from the beginning, but even more if we had strong information that the baby was clearly born alive, then obviously then what happened next that led to this child’s death.”

In this case, Smith made several statements that suggested that Emma was alive immediately after her birth. In one statement she said Emma was alive at first, but that she could not do anything for her because she was in so much pain while delivering the placenta. This statement was, in effect, exculpatory—Smith admitted the fact that Emma was born alive, but suggested that Emma died of natural causes before she could do anything to help her. Smith also admitted in a later statement that Emma was moving and gurgling. However, nothing in that statement suggested that Smith caused Emma’s death. Indeed, the fact that Emma was not crying suggested that there was something wrong with her that was beyond Smith’s ability to help. Because these statements each require proof of additional facts to establish guilt, they are not confessions. As such, the trial court could properly consider these statements in determining whether the prosecutor established the corpus delicti of murder. *Porter*, 269 Mich at 291. And, when these statements are considered along with the medical testimony, it is clear that the prosecutor established by a preponderance of the evidence that Emma was born alive.

Turning to the question of criminal agency, we agree with Smith’s contention that the medical testimony alone did not establish that Emma died as a result of some criminal agency. The medical testimony was equally consistent with Emma having died from some natural or accidental process or through some criminal act. However, courts may look to the totality of the circumstances when determining whether there is evidence that a death was the result of criminal agency. As such, courts may consider the existence of a motive to kill and may consider acts that occur after the decedent’s death that suggest that the decedent died as a result of criminal agency. See, e.g., *Modelski*, 164 Mich App at 344-345 (noting that the defendant had a motive to kill his wife and engaged in acts after his wife’s disappearance that suggested that his wife died as a result of some criminal agency); see also *McMahon*, 451 Mich at 551-552. Here, there was evidence that Emma was wrapped in a quilt and placed into a garbage bag along with a sweatshirt, pajama pants, socks, and a wash cloth. The evidence also showed that Emma and these items were placed in a shower stall in a bathroom that was locked from the inside with the exhaust fan running. This evidence permits an inference that the person who placed Emma in the garbage bag wanted to conceal her death and the other items found in the garbage bag from discovery. And, although a person might have an innocent reason for wanting to conceal a baby’s death, the circumstances surrounding the disposition of Emma’s remains strongly suggest that the person who placed her remains in the shower had a guilty conscience. This in turn permits an inference that the person who placed Emma’s remains in the shower stall caused her death through some criminal act. Moreover, Croft stated that one possible scenario involved Emma’s slow death from suffocation, which could have been caused by being wrapped in the blanket or placed into a sealed garbage bag. Accordingly, even though a reasonable fact-finder might conclude that the person who placed Emma in the garbage bag did so after she was already dead and disposed of her remains in this way out of innocent motives, the evidence was nevertheless sufficient to establish by a preponderance that she died as a result of some criminal agency. Therefore, this evidence was sufficient to establish the corpus delicti of murder.

The trial court did not err when it determined that the prosecutor had established the corpus delicti of murder in this case. Therefore, it did not abuse its discretion when it refused to exclude Smith's confessions under the corpus delicti rule.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray

/s/ Michael J. Kelly