

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARED JAMES CHANCE,

Defendant-Appellant.

UNPUBLISHED

January 14, 2021

No. 351400

Kent Circuit Court

LC Nos. 19-000455-FC; 19-
000456-FH

Before: REDFORD, P.J., and MARKEY and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of second-degree murder, MCL 750.317; three counts of tampering with evidence, MCL 750.483a(6)(b); disinterment and mutilation, MCL 750.160; and concealing the death of an individual, MCL 333.2841(3). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to concurrent prison terms of 100 to 200 years for the second-degree murder conviction, 10 to 100 years for each of the tampering with evidence convictions, 10 to 100 years for the disinterment and mutilation conviction, and 6 to 100 years for the concealing the death of an individual conviction. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case arises out of the murder and subsequent mutilation of Ashley Young (Ashley), in Grand Rapids, Michigan. On November 29, 2018, Ashley's mother, Kristine Young (Kristine), was supposed to meet Ashley to cosign a lease for an apartment, but Ashley never arrived. For several days thereafter, Kristine attempted, unsuccessfully, to contact Ashley. Kristine knew that Ashley had recently met with defendant, and Kristine therefore obtained defendant's contact information from Ashley's friends and contacted defendant by phone, text message, and Facebook Messenger.

According to Kristine, defendant told her that he and Ashley had been at the Hookah Lounge and Mulligan's Pub in Grand Rapids on the night of Wednesday, November 28 and into the early morning hours of Thursday, November 29, and that they had returned to those same places on the night of the 29th. Defendant told Kristine that Ashley had lost her phone at the Hookah lounge and that she returned there to pick it up on November 30 before traveling to

Kalamazoo to work on the “third shift.” This description puzzled Kristine because it did not match what she knew of Ashley’s work schedule. Defendant also told Kristine that Demetris Taylor (Taylor) had seen Ashley, and defendant gave Kristine several nonworking phone numbers that he said belonged to Taylor. Kristine was eventually able to contact Taylor, who denied knowing Ashley or having seen her. Defendant had no explanation for why Taylor did not seem to know Ashley, and he stopped responding to Kristine’s calls or messages, which prompted Kristine to contact the police.

The same day that Kristine contacted the police, defendant’s neighbor, Mario Nelson (Nelson), who lived in the apartment below defendant’s apartment, also called the police after he went to the basement of the apartment building to investigate a sewage-like smell and discovered a tarp with a “stream of blood out of it.” Sergeant Greg Alcala of the Grand Rapids Police Department responded to the 911 call, entered the basement, and noticed what he described at trial as a “distinct odor” of “death and decay.”

Inside the tarp was a female torso with the arms, legs, and head removed. There were also 439 unfired .22 caliber cartridges and two fired casings located inside the furnace duct that led from the basement furnace to defendant’s apartment. A saw blade was also recovered from the basement. There was a black trash can and a mop located on the back porch of defendant’s apartment. The trash can contained two additional saw blades, a boot, a bathtub drain cover, additional trash bags, a plastic bottle of ammonia, latex gloves, a pair of navy blue pants bearing defendant’s name, and a roll of plastic wrap. Three shower curtain rings that matched shower curtain rings from defendant’s apartment were also recovered from the apartment building’s backyard. Several items from the trash can tested positive for human blood. On the landing of the stairwell leading up to defendant’s apartment was a pair of women’s black boots, a fan box, a purple tote, and a cardboard box. The cardboard box bore defendant’s name and address. Inside the cardboard box was a plastic bag containing two human female legs without feet, and two human female arms without hands. Inside the purple tote was a pair of shoes, a prescription medication bottle, and some additional plastic shower curtain rings. Inside the fan box was duct tape and a black plastic trash bag containing stained bedding and women’s clothing. The clothing tested positive for Ashley’s DNA as well as the DNA of two unknown individuals. Several blood-stained items, including a saw blade and tile from defendant’s apartment, also tested positive for Ashley’s DNA.

Inside defendant’s apartment, police found a kitchen tile that was stained a darkened red color, a utility knife inside the trap of the toilet in defendant’s bathroom, a “[w]hite hand towel with reddish brown stain,” and a pair of blue jeans “sized 30 with a brownish colored stain on the left upper front.” The trap of defendant’s kitchen sink tested positive for human blood and contained a small piece of what looked like human tissue. The washing machine inside defendant’s apartment also tested positive for human blood. A black hoodie and a bathmat also both tested positive for human blood.

The investigation led police to Holland, where defendant’s parents lived. When police searched defendant’s parent’s house, they discovered a shower curtain in the garage; there was no shower curtain present at defendant’s apartment. Police also found a “black and red Skilsaw” underneath the couch in the living room, and a washcloth in the basement that tested positive for human blood. In the trunk of the parent’s Honda CR-V, police found an empty bottle of ammonia

bearing a label from Miss Tracy's Party Store and an empty box of blue latex gloves. Miss Tracy's Party Store was located near defendant's apartment in Grand Rapids. Video surveillance from Miss Tracy's showed defendant making several purchases from the store, including ammonia and trash bags, between November 29 and December 1; it also showed him depositing an orange or red bag into the trash can in front of the store.

Police discovered Ashley's car parked on a street near defendant's apartment. Additionally, police searched the dumpsters located at Miss Tracy's Party Store and recovered an orange bag containing additional clothing, prescription medicine bottles bearing Ashley's name, and a purse containing Ashley's driver's license and school identification. There was a stain on the pair of jeans that tested positive for human blood.

A forensic pathologist, Dr. David Start, conducted a partial autopsy, inspecting Ashley's torso, arms, and legs; her hands, feet, head, and neck were never recovered. Dr. Start testified that no cause of death was identifiable from the remains that were available for him to examine. However, he opined, by process of elimination, that the cause of death would be related to the unrecovered head and neck. Dr. Start stated that a reciprocating saw or something similar could have been used to cut through the bone and create the sharp edges on the body parts that he was able to inspect. He further stated that a utility knife could be used to cut through skin, tissue, and fat. Because of the blood found on Ashley's clothing, Dr. Start opined that Ashley could have died from blunt force trauma or a gunshot wound to the head. However, Dr. Start could not render an opinion regarding a specific cause of death because Ashley's head and neck were unavailable for him to examine.

An employee of Mulligan's Pub testified at trial to seeing Ashley and another man at the pub on the night of November 28, although he could not identify defendant as that man. He did not recall seeing Ashley on the night of November 29. Taylor testified that defendant told him to tell Kristine that Ashley had come by his house to use his phone and had then left. Taylor further testified that after defendant learned that Taylor had told Kristine that he did not know Ashley, he sent Taylor several text messages, including "You're [expletive] stupid, bro" and "You just [expletive] me. Bro, delete all these messages."

Nelson also testified at trial. He stated that he had known defendant to be in possession of a revolver, and that defendant had spun the gun around on the table during a visit, which made Nelson uncomfortable. He also testified that defendant had bragged on a previous occasion that he knew how to get rid of a body because "his dad used to be in the Irish mob." Nelson recalled seeing Ashley at defendant's apartment around the time she went missing, when he visited defendant's apartment to smoke marijuana, but did not recall the exact date. Shortly thereafter, defendant asked Nelson to help him unlock Ashley's car, claiming that Ashley had locked her keys in the car, a Ford Focus. Nelson's girlfriend at the time, Yashieka Christian, testified that she saw defendant driving a Ford Focus on November 30.

Defendant's brother testified to a previous incident at defendant's apartment. According to the brother, defendant went to another room to get a gun, came back, pointed the gun at his brother's head, and pulled the trigger more than once without first checking to see if the gun was loaded.

After the close of proofs, defense counsel requested that the jury be instructed on voluntary and involuntary manslaughter. The trial court declined to give either instruction.¹ The jury convicted defendant as described. This appeal followed.

II. INVOLUNTARY MANSLAUGHTER INSTRUCTION

Defendant argues that the trial court erred when it refused to instruct the jury regarding involuntary manslaughter. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

Defendant maintains that the trial court should have instructed the jury regarding both statutory and common-law manslaughter. Defendant requested, and was denied, an instruction on involuntary manslaughter predicated on Model Criminal Jury Instruction 16.11, which sets forth the elements of statutory involuntary manslaughter, thereby preserving that claim of error. *People v Danto*, 294 Mich App 596, 605; 822 NW2d 600 (2011). But defendant did not request an instruction on common-law involuntary manslaughter; accordingly, that issue is unpreserved. *Id.*

With regard to defendant's preserved claim concerning statutory involuntary manslaughter, we review de novo questions of law involving jury instructions, but review for an abuse of discretion the trial court's determination whether a jury instruction is applicable to the facts of the case. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Bergman*, 312 Mich App 471, 483; 879 NW2d 278 (2015) (quotation marks and citation omitted). "[I]f an applicable instruction was not given, the defendant bears the burden of establishing that the trial court's failure to give the requested instruction resulted in a miscarriage of justice." *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002), citing MCL 769.26. A trial court's failure to instruct on an applicable lesser-included offense is grounds for reversal "if, after reviewing the entire cause, the reviewing court is satisfied that the evidence presented at trial 'clearly' supported the lesser included instruction." *People v Silver*, 466 Mich 386, 388; 646 NW2d 150 (2002).

We review defendant's unpreserved claim of error regarding a common-law involuntary manslaughter instruction for plain error affecting defendant's substantial rights. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Plain error affects substantial rights when it alters the outcome of the trial court proceedings. See *Carines*, 460 Mich at 763-764. Reversal is appropriate when an error is so serious it results in the conviction of an innocent defendant or when it "affects the fairness, integrity, or public reputation of judicial proceedings, independent of the defendant's innocence." *Id.* (quotation marks, citation, and alteration omitted).

We review de novo whether a defendant was denied his constitutional right to present a defense. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

¹ Defendant does not challenge on appeal the trial court's decision not to give a voluntary manslaughter instruction.

“A criminal defendant is entitled to have a properly instructed jury consider the evidence against him.” *Riddle*, 467 Mich at 124. “The jury instructions must include all elements of the crime charged, and must not exclude from jury consideration material issues, defenses or theories if there is evidence to support them.” *People v Armstrong*, 305 Mich App 230, 240; 851 NW2d 856 (2014) (quotation marks and citation omitted). “When a defendant requests a jury instruction on a theory or defense that is supported by the evidence, the trial court must give the instruction.” *People v Thorne*, 322 Mich App 340, 348; 912 NW2d 560 (2017) (quotation marks and citation omitted). Stated differently, “[a] trial court is required to give a requested instruction, except where the theory is not supported by evidence.” *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995). “[A] lesser offense instruction is appropriate only if the lesser offense is necessarily included in the greater offense.” *People v Nickens*, 470 Mich 622, 626; 685 NW2d 657 (2004). “[A] requested instruction on a necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it.” *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). “An appellate court must therefore review all of the evidence irrespective of who produced it to determine whether it provides a rational view to support an instruction on the lesser charge.” *People v McMullan*, 488 Mich 922, 922 (2010).

B. ELEMENTS OF MURDER AND MANSLAUGHTER

“The elements of second-degree murder are (1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death.” *Bergman*, 312 Mich App at 487 (quotation marks and citations omitted). Malice is “the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Id.*

At common law, “involuntary manslaughter is a catch-all crime that encompasses all homicides that do not constitute murder, voluntary manslaughter, or a justified or excused homicide.” *People v Head*, 323 Mich App 526, 532; 917 NW2d 752 (2018). Common-law “involuntary manslaughter is the unintentional killing of another, without malice, during the commission of an unlawful act not amounting to a felony and not naturally tending to cause great bodily harm; or during the commission of some lawful act, negligently performed; or in the negligent omission to perform a legal duty.” *People v Mendoza*, 468 Mich 527, 536; 664 NW2d 685 (2003). “The kind of negligence required for manslaughter is something more than ordinary or simple negligence, however, and is often described as ‘criminal negligence’ or ‘gross negligence[.]’” *People v Herron*, 464 Mich 593, 605; 628 NW2d 528 (2001). Involuntary manslaughter “is established if the defendant acts in a grossly negligent, wanton, or reckless manner, causing the death of another.” *People v Moseler*, 202 Mich App 296, 298; 508 NW2d 192 (1993), overruled on other grounds *People v Reichard*, 505 Mich 81 (2020).

Statutory involuntary manslaughter essentially involves the accidental discharge of a firearm that has been deliberately aimed. The elements of statutory involuntary manslaughter are as follows: “(1) a death, (2) the death was caused by an act of the defendant, (3) the death resulted from the discharge of a firearm, (4) at the time of the discharge, the defendant was intentionally pointing the firearm at the victim, and (5) the defendant did not have lawful justification or excuse for causing the death.” *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007); MCL 750.329.

C. COMMON-LAW INVOLUNTARY MANSLAUGHTER

At common law, involuntary manslaughter is a lesser-included offense of murder “because involuntary manslaughter’s mens rea is included in murder’s greater mens rea.” *Mendoza*, 468 Mich at 536. Therefore, “when a defendant is charged with murder, an instruction for . . . involuntary manslaughter must be given if supported by a rational view of the evidence.” *Id.* A conviction for common-law involuntary manslaughter requires that the prosecution establish

(1) defendant’s knowledge of a situation requiring the use of ordinary care and diligence to avert injury to another, (2) her ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand, and (3) her failure to use care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another. [*People v Albers*, 258 Mich App 578, 582; 672 NW2d 336 (2003).]

Accordingly, defendant was entitled to a jury instruction on common-law involuntary manslaughter only if a rational view of the evidence would have supported a finding that the victim’s death was caused by an act of gross negligence and not malice. See *Gillis*, 474 Mich at 138.

In this case, a rational view of the evidence does not support a finding that a jury instruction for common-law involuntary manslaughter was appropriate. Defendant argues that the evidence demonstrates that he was playing with the gun in a grossly negligent manner, which then caused the gun to discharge and kill Ashley. We disagree. Defendant’s entire argument related to this evidence focuses on the testimony of Nelson and defendant’s brother concerning previous incidents in which defendant had handled a firearm in a reckless or dangerous manner. Nelson testified to an occasion in which defendant spun his revolver on the kitchen table in a way that made Nelson uncomfortable. Additionally, defendant’s brother testified about an occasion in which defendant pointed a gun at him and pulled the trigger more than once. Defendant was arguably negligent in his handling of a firearm around Nelson; however, it is difficult to conclude from his brief testimony that defendant was grossly or criminally negligent. The incident with defendant’s brother, on the other hand, seemingly went beyond gross negligence, assuming that defendant did not in fact know whether or not the gun was unloaded.

In any event, these previous incidents involving defendant’s handling of a firearm around visitors do not, when examined in the context of all of the evidence introduced at trial, establish a basis for giving a jury instruction regarding common-law involuntary manslaughter. Indeed, because Ashley’s head was never recovered, it was not even established that Ashley died of a gunshot wound. Dr. Start could only opine that Ashley may have suffered a gunshot wound to the head because of the surrounding circumstances, i.e., testimonies about defendant owning a gun, the several bullet casings and two spent casings found in the basement of defendant’s apartment building, the blood stain on Ashley’s clothing, and the lack of injury to the body parts that were recovered. However, Dr. Start testified that Ashley could have been killed by other injuries to the head or neck. More importantly, there was absolutely no evidence presented that defendant was negligently handling a firearm around Ashley on the night that she died. We cannot conclude that brief testimony concerning defendant’s previous handling of firearms constitutes “substantial

evidence” in support of a jury instruction on common-law involuntary manslaughter. See *McMullan*, 499 Mich at 922.

Further, there was an abundance of circumstantial evidence presented to suggest that defendant had acted with malice. *Bergman*, 312 Mich App at 487 (quotation marks and citation omitted). “This Court has consistently observed that because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” See *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010) (quotation marks, citation, and alteration omitted). To begin, Dr. Start opined that, given the circumstances of this case, he believed that Ashley had been killed by a severe head injury with a firearm or other weapon, although he could not specify the exact cause of death; Dr. Start also noted that Ashley was not injured on any part of her body that was recovered. Dr. Start’s opinion supports the inference of an intentional killing as opposed to a grossly negligent killing. See *id.* (“Defendant’s intent could be inferred from any facts in evidence, including the nature, extent, and location of these wounds.”).

Additionally, while a gun was not found in defendant’s apartment or otherwise recovered, he was known to own a gun, and hundreds of .22 caliber cartridges, as well as two fired casings, were found inside the duct that led to the furnace from defendant’s apartment. A reasonable juror could conclude that defendant attempted to hide or destroy his gun and bullets because they were linked to Ashley’s death; further, the two fired casings supported the inference that defendant’s gun had been fired twice. Although there was no direct evidence that the bullets fired from the spent casings were what killed Ashley, the jury was allowed to draw reasonable inferences from such circumstantial evidence. “In determining the facts the jury may draw reasonable inferences from the facts established by either direct or circumstantial evidence.” *People v Palmer*, 392 Mich 370, 395; 220 NW2d 393 (1974). “[C]ircumstantial evidence and all reasonable inferences drawn therefrom can constitute satisfactory proof of the crime.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The evidence also showed that defendant bragged to Nelson about knowing how to essentially get away with murder, including how to clean up blood, how to remove his fingerprints, and how to dispose of a body. Considering that the evidence established that defendant dismembered Ashley, purchased ammonia and cleaning supplies to clean Ashley’s blood, used latex gloves to prevent his fingerprints from showing on any surfaces, and successfully hid or destroyed her head, hands and feet, the jury could readily conclude that defendant had acted with malice. “[M]alice is implied when the circumstances attending the killing demonstrate an abandoned and malignant heart” *People v McMullan*, 284 Mich App 149, 153; 771 NW2d 810 (2009) (quotation marks and citations omitted; alteration and ellipsis in original).

Moreover, there was evidence that defendant repeatedly lied to Kristine’s mother after Ashley’s death, attempting to make Kristine believe that her daughter was still alive. Defendant even attempted to enlist Taylor in perpetuating this lie on his behalf. “A jury may infer consciousness of guilt from evidence of lying or deception.” *People v Unger*, 278 Mich App 210, 227; 749 NW2d 272 (2008). Defendant’s lies support the inference that he acted with malice, as do defendant’s extensive efforts to hide the evidence of his crime. Defendant dismembered Ashley’s body and either destroyed her head, hands, and feet or hid them so well they were never found. Defendant placed her limbs and torso in separate containers and left them outside his apartment. Defendant attempted to dispose of hundreds of rounds of ammunition, and, despite

defendant having recently been seen in possession of a gun, no gun was found in defendant's apartment. There was testimony from which the jury could infer that defendant moved Ashley's car from its parking spot near his residence after her murder. All in all, defendant painstakingly took a number of steps to conceal Ashley's death. None of the evidence of defendant's post-offense conduct suggests that Ashley's death was accidental, and again, there was simply no evidence to suggest that her death was caused by defendant discharging a firearm in a grossly negligent manner. A rational view of the evidence does not support that Ashley's death was caused by an act of gross negligence without malice; rather, the evidence supports that defendant acted with malice. See *Gillis*, 474 Mich at 138. The trial court did not plainly err by not instructing the jury on common-law involuntary manslaughter. *Mendoza*, 468 Mich at 536; *Carines*, 460 Mich at 763-764.

D. STATUTORY INVOLUNTARY MANSLAUGHTER

Defendant also was not entitled to an instruction on statutory involuntary manslaughter, and the trial court did not err by declining to give it. Importantly, our Supreme Court has held that statutory involuntary manslaughter is "not a necessarily included lesser offense of second-degree murder because it is not an 'inferior' offense under MCL 768.32(1)." *Id.* at 71. Specifically, statutory involuntary manslaughter requires proof of elements (i.e., that the death resulted from the discharge of a firearm and that the defendant intentionally pointed a firearm at the victim) that are not necessary to prove second-degree murder. See *id.* Consequently, defendant was not entitled to an instruction on statutory involuntary manslaughter, as he was not charged with that offense and it was not a lesser included offense of any offense of which he was charged. *Id.* at 73-74. In any event, a rational view of the evidence would not have supported the instruction even if it was a lesser included offense, for the same reasons we have already discussed. *McMullan*, 488 Mich at 922.

Because we find no merit to defendant's claims of instructional error, and defendant presents no additional argument on this point, we also find that defendant was not denied his constitutional right to present a defense. See *People v Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006).

III. OUT-OF-GUIDELINES SENTENCE

Defendant also argues that the trial court erred by sentencing him outside of his calculated minimum sentencing guidelines range. We disagree. "[T]he standard of review to be applied by appellate courts reviewing a sentence for reasonableness on appeal is abuse of discretion." *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). This "requires review of whether the trial court abused its discretion by violating the principle of proportionality," *id.* at 477, which looks to the "seriousness of the circumstances surrounding the offense and the offender," *id.* at 474 (quotation marks omitted), quoting *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes," *People v Waterstone*, 296 Mich App 121, 131-132; 818 NW2d 432 (2012), or "impose[s] [an out-of-guidelines] sentence without articulating whether the guidelines adequately took into account the conduct alleged to support the particular departure imposed," *People v Steanhouse (On Remand)*, 322 Mich App 233, 240; 911 NW2d 253 (2017). Factual findings related to an out-of-guidelines sentence must be supported by a preponderance of the

evidence and are reviewed for clear error. *People v Lawhorn*, 320 Mich App 194, 205; 907 NW2d 432 (2012).

The sentencing guidelines are advisory. *People v Lockridge*, 498 Mich 358, 365, 392; 870 NW2d 502 (2015). Nevertheless, trial courts are still required to calculate a defendant's recommended minimum sentence range and must take that range into account when determining an appropriate sentence. See *id.* at 392. The key test, however, "is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines' recommended range." *Steanhouse*, 500 Mich at 475 (quotation marks and citation omitted). If the trial court chooses to deviate from the sentencing guidelines, it must justify the deviation on the record by explaining "why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *People v Dixon-Bey*, 321 Mich App 490, 525; 909 NW2d 458 (2017). Relevant factors for determining whether an out-of-guidelines sentence is more proportionate than a sentence within the guidelines include "(1) whether the guidelines accurately reflect the seriousness of the crime, (2) factors not considered by the guidelines, and (3) factors considered by the guidelines but given inadequate weight." See *id.*

Defendant argues that the trial court erroneously made subjective findings in support of its sentence. Specifically, defendant cites the trial court's statements with regard to Offense Variables (OVs) 1 and 2. We disagree. At sentencing, the trial court indicated that this case presented an extremely disturbing set of facts, and noted that defendant had bragged before the killing about knowing how to get away with murder. The trial court also stated that defendant had a propensity to point his gun at other individuals. Before imposing sentence, the trial court found that the guidelines did not appropriately consider all the circumstances of this case. Regarding OV 1, the trial court stated:

First of all, we do not specifically know exactly how Ashley was killed. And the Guidelines under Offense Variable One, vary whether someone is killed with a firearm or stabbed. The pathologist testified in this matter, since Ashley's head was never found, that it was a homicide by unspecified means. We do not know whether that was a pistol, a knife, a hammer, a bat, or any other instrument.

We do know there was a sweatshirt with a hood that had a large amount of blood in it. But simply because you decapitated her and concealed her head, I do not believe that you should be—it is fundamentally unfair to allow you to benefit from these actions in the scoring of the Guidelines. I think that is one thing that clearly the Guidelines do not take into effect.

OV 1 concerns the aggravated use of a weapon. MCL 777.31. Twenty-five points must be assessed if the victim was shot at with a firearm or cut or stabbed with a knife or similar weapon. MCL 777.31(a). By contrast, 10 points may be assessed if "[t]he victim was touched by any other type of weapon." MCL 777.31(d). Here, although the prosecution sought a score of 25 points under OV 1, the trial court ultimately assessed 10 points, as it could not be determined what type of weapon was used to murder Ashley because defendant had removed her head and it was never located. We conclude that the trial court properly considered the fact that Ashley's head was removed and hidden so as to keep her specific cause of death unknown. Contrary to defendant's

assertion, the trial court did not make a subjective finding whether defendant used a gun or knife; rather, the trial court simply stated that the fact that the specific cause of death was unknown because of defendant's decision to decapitate Ashley's head was something that the guidelines did not consider. Stated differently, the trial court appropriately scored OV 1 at 10 points because it was not entirely clear how Ashley was killed, but the trial court also appropriately took this fact into consideration when imposing its out-of-guidelines sentence so as not to essentially reward defendant with a lower OV 1 score by virtue of his successful efforts at hiding his method of killing from investigators. *Dixon-Bey*, 321 Mich App at 525.

Defendant also takes issue with the trial court's statements that this was the worst case the trial court had ever seen and that defendant was "a very evil individual." The trial court indicated that the guidelines did not take into account the "gruesome" nature of this case or the fact that defendant not only lacked any motive for the killing and showed no remorse, but appeared to derive pleasure from the trial proceedings. The trial court stated that it had reviewed photographs of the victim's body and that they portrayed reprehensible and heinous conduct. We conclude that the trial court correctly determined that the many extreme elements of the crime, as well as defendant's demeanor during the trial, were factors not considered by the guidelines, and the trial court appropriately considered them in fashioning an appropriate sentence. See *Dixon-Bey*, 321 Mich App at 525.

Defendant also argues that the trial court improperly found premeditation, despite the fact that defendant was convicted of second-degree murder (not first-degree murder). We disagree. The trial court stated that defendant had "bragged about how you could get rid of someone, and that you knew how to get rid of blood and fingerprints and things like that." The trial court further stated that the "only motive that was presented by a preponderance of the evidence was that you could kill somebody and ultimately you did. And the Guidelines do not take that into effect." Contrary to defendant's contention, there is no evidence to suggest that the trial court considered this a premeditated murder. The trial court merely indicated that the guidelines did not consider defendant's lack of motive. We find no merit to defendant's argument.

Defendant further argues that the trial court erred when considering defendant's misrepresentations to Kristine following the murder, because this conduct was adequately covered by OV 19. "OV 19 applies if there was a 'threat to the security of a penal institution or court or interference with the administration of justice or the rendering of emergency services.'" *People v Hershey*, 303 Mich App 330, 342; 844 NW2d 127 (2013). An assessment of 10 points for OV 19 is proper when "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice, or directly or indirectly violated a personal protection order." MCL 777.49(c). The phrase "interfere with the administration of justice" is defined in accordance with its plain and ordinary meaning "to oppose so as to hamper, hinder, or obstruct the act or process of administering judgment of individuals or causes by judicial process." *Hershey*, 303 Mich App at 343. Ten points is the most that can be scored for OV 19 when a defendant has not used force or threatened the security of a court or penal institution. See MCL 777.49(a)-(c).

The trial court assessed 10 points for OV 19, but stated that the guidelines "do not take into effect also the few days after you committed this murder, all the lies and misrepresentations you made to Ashley's mother. The Guidelines don't take those things into effect." In other words, although defendant's lies and attempts to hide the evidence of his crime may have been covered by

OV 19, they were “factors considered by the guidelines but given inadequate weight.” See *Dixon-Bey*, 321 Mich App at 525. We need not reiterate defendant’s extensive post-offense conduct designed to hamper the discovery of and investigation into Ashley’s death. Given the circumstances surrounding the offense and the offender, OV 19 did not adequately consider this conduct, and the trial court did not err by so holding.

Defendant also argues that the trial court improperly considered his refusal to admit guilt when it imposed its out-of-guidelines sentence. We disagree. The trial court stated in relevant part:

And more significantly, the Guidelines do not take into effect the level of brutality involved in this matter, and your lack of compassion and total lack of remorse. Unfortunately, I have been doing this type of work for 34 years. I’ve been on the bench for 13 years. I personally have been involved in over 200 murder or death cases. This is without question the worst case that I have ever been involved in.

What you did and what I saw in photographs was reprehensible and heinous. This goes beyond comprehension. To—for the jury to even have to see the limited number of pictures that I allowed in was just in—incomprehensible. And yet, you sat during trial and even today, you make no comment. I haven’t—I know you have a right to—to not incriminate yourself. However, I observed you during the course of this trial and you seemed, at time, to derive pleasure from the testimony in this trial that was, at best, described as gruesome.

“A court cannot base its sentence even in part on a defendant’s refusal to admit guilt.” *People v Conley*, 270 Mich App 301, 314; 715 NW2d 377 (2006) (quotation marks and citation omitted). Although lack of remorse is an appropriate consideration, a trial court may not impose a sentence solely on the basis of defendant’s refusal to admit guilt. *People v Pennington*, 323 Mich App 452, 468-469; 917 NW2d 720 (2018). “Resentencing is warranted if it is apparent that the court erroneously considered the defendant’s failure to admit guilt, as indicated by action such as asking the defendant to admit his guilt or offering him a lesser sentence if he did.” *Conley*, 270 Mich App at 314 (quotation marks and citation omitted). This Court looks “to three factors to determine if a sentencing court improperly considered a defendant’s refusal to admit guilt: (1) the defendant’s maintenance of innocence after conviction; (2) the judge’s attempt to get the defendant to admit guilt; and (3) the appearance that had the defendant affirmatively admitted guilt, his sentence would not have been so severe.” *People v Payne*, 285 Mich App 181, 194; 774 NW2d 714 (2009) (quotation marks and citation omitted).

The trial court did not base its sentence on defendant’s refusal to admit guilt, and even noted that defendant had a right not to incriminate himself. Moreover, there is no evidence to suggest that the trial court attempted to get defendant to admit guilt or that the sentence would have been different if defendant had admitted guilt. *Id.* Therefore, defendant has not established that his sentence was based, even in part, on a refusal to admit guilt.

In sum, we hold that the trial court did not abuse its discretion by imposing an out-of-guidelines sentence because the sentence was proportionate to the seriousness of the offense and the offender. *Steanhouse*, 500 Mich at 471.

IV. INDETERMINATE SENTENCING

Defendant also argues that his sentence of 100 to 200 years for second-degree murder violates the indeterminate sentencing rule of *People v Moore*, 432 Mich 311; 439 NW2d 684 (1989). “Questions of law are reviewed de novo.” *People v Smith*, 502 Mich 624, 631; 918 NW2d 718 (2018).

In *Moore*, our Supreme Court held that “a ‘term of years’ must be an indeterminate sentence less than life. It must be something that is reasonably possible for a defendant actually to serve.” *Moore*, 432 Mich at 329. However, in *People v Merriweather*, 447 Mich 799, 802; 527 NW2d 460, 461 (1994), our Supreme Court held that the Legislature possessed the power to authorize a term of years sentence that is greater than a human lifespan, notwithstanding the fact that such a sentence may be more severe than a life sentence because of the lack of parole eligibility. This Court has held that *Merriweather* overruled *Moore*, stating:

The issue in *Moore* and *Merriweather* was the same; the reasoning of the dissent in *Moore* and the majority in *Merriweather* was congruent; and, the same three justices who dissented in *Moore* were joined by a fourth justice to constitute the majority in *Merriweather*. We conclude from this that the holding of *Moore* is overruled by *Merriweather*. [*People v Kelly*, 213 Mich App 8, 15; 539 NW2d 538 (1995).]

Published opinions of this Court issued on or after November 1, 1990, bind subsequent panels of this Court. See MCR 7.215(J)(1); see also *People v Mansour*, 325 Mich App 339, 351 n 8; 926 NW2d 26 (2018). Moreover, our Supreme Court denied leave to appeal this Court’s decision in *Kelly*. See *People v Kelly*, 454 Mich 930 (1996). Although the Supreme Court’s decision to deny leave to appeal has no precedential value, its denial did create binding precedent because this Court’s *Kelly* decision became a final adjudication. See MCR 7.305(H)(3) (“If leave to appeal is denied after a decision of the Court of Appeals, the Court of Appeals decision becomes the final adjudication and may be enforced in accordance with its terms.”). This Court is therefore bound to follow *Kelly*. Defendant’s claim accordingly fails.

V. COURT COSTS

Lastly, defendant challenges the trial court’s imposition of \$1,000 in court costs. We conclude that defendant has waived appellate review of this issue. In sentencing defendant, the trial court considered the recommendations set forth in defendant’s presentence investigation report (PSIR), which in part recommended the imposition of \$1,000 in court costs. While defense counsel challenged other aspects of the PSIR, he raised no objection to its recommendation regarding court costs, and instead stated that he had “no additional comment as far as the presentence report goes.” At sentencing, after the trial court awarded court costs, victim’s rights fund costs, and restitution, defense counsel again made no objection. We decline to consider this

issue that was not raised before, argued, or decided by the trial court when defense counsel was given the opportunity to do. See *People v Carter*, 460 Mich 750, 761; 597 NW2d 130 (1999).²

Affirmed.

/s/ James Robert Redford
/s/ Jane E. Markey
/s/ Mark T. Boonstra

² Since the Legislature amended MCL 769.1k in 2014, and this Court's subsequent opinion in *People v Konopka (On Remand)*, 309 Mich App 345, 356; 869 NW2d 651 (2015), this Court has frequently reviewed for plain error whether the court costs imposed in a particular case were reasonably related to the actual costs incurred, when a defendant has failed to raise the issue before the trial court. However, it has been over five years since *Konopka* was decided and over six years since the legislative amendment; at some point, it becomes reasonable to assume that explicit or implicit approval of court costs by defense counsel constitutes the intentional waiver of a known right. *Carter*, 460 Mich at 761. That being said, the requirements of MCL 769.1k(1)(b)(iii) should be well known to both the bench and bar at this point, and we would encourage trial courts to follow the better practice of placing on the record some statement about the relationship of the costs imposed to the actual costs incurred by the court, as well as encouraging defense counsel to raise any issues they have with costs and fees imposed at sentencing.