

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

Judges: Donald S. Owens, William C. Whitbeck, and Karen M. Fort Hood

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Supreme Court
No. 142228

-vs-

Court of Appeals
No. 292942

MICHAEL CARL COOLEY,
Defendant-Appellant.

Hillsdale Circuit Court
No. 08-321794-FH

BRIEF OF THE PROSECUTING ATTORNEYS ASSOCIATION
OF MICHIGAN IN SUPPORT OF THE STATE OF MICHIGAN

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Statement of Basis of Jurisdiction

Defendant filed an application for leave to appeal under MCR 7.302, which was granted by the Michigan Supreme Court. *People v Michael Carl Cooley*, unpublished order of the Supreme Court issued April 8, 2011 (Docket No. 142228). This Amicus Curiae Brief is governed by MCR 7.306(D).

Statement of Question Presented

Where the defendant threw away evidence and repeatedly denied guilt to police officers, did his conduct “interfere with or attempt to interfere with the administration of justice” supporting the scoring of 10 points under offense variable (OV) 19?

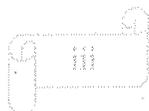
Court of Appeals Answers: “Yes.”

Trial Court Answers: “Yes.”

Defendant-Appellant Answers: “No.”

Plaintiff-Appellee Answers: “Yes.”

Amicus Curiae Answers: “Yes.”



Counter-Statement of Facts

A Hillsdale County Circuit Court jury convicted Michael Carl Cooley (defendant) of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). Sentenced as a fourth habitual offender, MCL 769.12, defendant received 34 to 180 months in prison.¹ Defendant appealed as of right, challenging only the scoring of the sentencing guidelines, and the Court of Appeals affirmed.²

Police made a traffic stop on a car in which defendant was the front seat passenger. Defendant exited the vehicle, but immediately complied when police told him to get back in the car. Police found a pack of Marlboro cigarettes containing a rock of cocaine on the ground near where defendant got out of the vehicle. Defendant possessed three loose Marlboro cigarettes in his pocket, but denied that he had placed the cigarette pack on the ground. A police officer acknowledged that it was possible that the cigarette pack belonged to the back seat passenger. En route to the jail, defendant repeatedly asked that the cigarette pack be checked for fingerprints. Either the cellophane wrapped around the cocaine rock or the cellophane around the pack of cigarettes was tested, but no prints were available to be taken.³

The Michigan Court of Appeals considered, under MCL 777.49, whether Offense Variable (OV) 19 was properly scored at 10 points where the offender, by something other than force or the threat of force, “interfered with or attempted to interfere with the administration of justice.”⁴ Citing *People v Barbee*, 470 Mich 283, 285; 681 NW2d 348 (2004) and *People v Ericksen*, 288 Mich App 192; 793 NW2d 120 (2010), the Court of Appeals held:

¹ *People v Michael Carl Cooley*, unpublished opinion per curiam of the Court of Appeals issued October 19, 2010 (Docket No. 292942).

² *Id.*

³ *Id.*

⁴ *Id.*

Giving the police a false impression about the ownership of the cocaine is akin to giving the police a false name, as in *Barbee*. Neither would constitute obstruction of justice, but both actions were intended to hamper the investigation of the police. Moreover, defendant engaged in self-serving deception aimed at diverting suspicion onto the other passengers in the car when he threw the cocaine out the car window or dropped it after exiting the car, denied ownership, and requested fingerprint analysis. This deception is analogous to the behavior properly scored in *Ericksen*. Given these facts, the trial court did not err in assessing ten points for OV 19.⁵

The Michigan Supreme Court granted defendant's application for leave to appeal with instructions to brief the following issue: whether offense variable (OV) 19 was properly scored at 10 points under MCL 777.49(c), because the defendant "interfered with or attempted to interfere with the administration of justice," based on his conduct in throwing away evidence and denying guilt." The Court invited the Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan to file briefs amicus curiae.⁶ This amicus curiae brief is filed on behalf of the Prosecuting Attorneys Association of Michigan.

Issue

Where the defendant threw away evidence and repeatedly denied guilt to police officers, did his conduct "interfere with or attempt to interfere with the administration of justice" supporting the scoring of 10 points under offense variable (OV) 19?

Where the defendant threw away evidence and repeatedly denied guilt to police officers, his conduct "interfered with or attempted to interfere with the administration of justice" supporting the scoring of 10 points under OV 19.

Standards of Review: An issue involving the interpretation of a statute is a question of law that the Supreme Court reviews de novo. *People v Kimble*, 470 Mich 305, 308-309; 684 NW2d 669 (2004). A sentencing court has discretion in determining the number of points to be

⁵ *Id.*

⁶ *People v Michael Carl Cooley*, unpublished order of the Supreme Court issued April 8, 2011 (Docket No. 142228).

scored for each variable, provided that the record evidence adequately supports a given score. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

Issue Preservation: MCL 769.34(10) precludes appellate review if the sentence is within the appropriate guidelines range and the party failed to raise the issue at sentencing, in a motion for resentencing, or in a motion to remand. *People v Kimble, supra* at 310. Defendant previously raised this issue.

Analysis: In *People v Barbee*, 470 Mich 283, 284; 681 NW2d 348 (2004), this Court granted leave to appeal to determine if a defendant's conduct that occurs before criminal charges are filed can form the basis for an assessment of points under offense variable 19 (OV 19) for interference with the administration of justice. Because the unanimous Court found that conduct occurring before criminal charges are filed can form the basis for interference, or attempted interference, with the administration of justice, the Justices affirmed the trial court's scoring of ten points for OV 19. In *Barbee, supra* at 288, the Court wrote:

“The investigation of crime is critical to the administration of justice.”
(Emphasis added by Amicus.)

The *Barbee* Court, *supra* at 288, held: “Law enforcement officers are an integral component in the administration of justice, regardless of whether they are operating directly pursuant to a court order.” (Emphasis added by Amicus.) Interpreting the plain language of MCL 777.49(c), the Justices held: “Because the language of the statute is plain and unambiguous, we enforce the statute as written and follow its plain meaning, giving effect to the words used by the Legislature.” *Barbee, supra* at 286. Providing a false name to the police constitutes interference with the administration of justice. *Barbee, supra* at 288.

In addition to *Barbee*, the Court of Appeals panel deciding *Cooley* also cited *People v Ericksen*, 288 Mich App 192; 793 NW2d 120 (2010). In *Ericksen*, the defendant wiped down a

knife, asked another to dispose of it, and asked others to lie about his whereabouts on the night of the crime. The *Ericksen* Court held that 10 points were properly scored for OV 19. The Supreme Court denied leave to appeal. *People v Ericksen*, 488 Mich 1045; 794 NW2d 598 (2011).

Barbee and *Ericksen* are the seminal cases controlling current OV 19 scoring decisions. In *People v Jamison-Laws*, 2011 Mich App LEXIS 429, the Court of Appeals panel, consisting of judges Mark Cavanagh, Cynthia Stephens and Amy Ronayne Krause, held: “Any error in the scoring of OV 19 would not alter the appropriate range. Nevertheless, pursuant to *People v Barbee*, 470 Mich 283, 288; 681 NW2d 348 (2004) and *People v Ericksen*, 288 Mich App 192; ___ NW2d ___ (2010), we would conclude that OV 19 was properly scored.”

In defendant Cooley’s case, police made a traffic stop on a car in which defendant was the front seat passenger. Cooley exited the vehicle, but immediately complied when he was told to get back in the car. A pack of Marlboro cigarettes containing a rock of cocaine was found on the ground near where defendant got out of the vehicle. Cooley possessed three loose Marlboro cigarettes in his pocket, but denied that he had placed the cigarette pack on the ground. A police officer acknowledged that it was possible that the cigarette pack belonged to the back seat passenger. En route to the jail, Cooley repeatedly asked that the cigarette pack be checked for fingerprints. Either the cellophane wrapped around the cocaine rock or the cellophane around the pack of cigarettes was tested, but no prints were available to be taken.⁷

Giving effect to the plain meaning of the words used by the Legislature has resulted in a presumptive scoring of OV 19 where the facts support such scoring. Witness intimidation, even where it constitutes a separate charge, also constitutes interference with the administration of

⁷ *Id.*

justice for purposes of scoring OV 19. *People v Smith*, 488 Mich 193, 196-202; 793 NW2d 666 (2010). In *People v Spangler*, 480 Mich 947; 741 NW2d 25 (2007), the Court denied leave to appeal. Dissenting, Justice Markman wrote:

Ten points are scored for OV 19 where the defendant has “interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). In this case, defendant hid himself and items used in methamphetamine production in a closet when the police arrived at the house to investigate a crime committed by another person. For doing so, he was scored ten points under OV 19. Given that it would be extraordinary for a criminal perpetrator not to attempt to hide evidence of his or her crime or to make such crime less detectable, it would seem that OV 19 would almost always be scored under the trial court’s interpretation. Perhaps this is consistent with OV 19, but, if that was the Legislature’s intention, it would seem that it would have simply increased the base level for theft offenses and other criminal offenses involving contraband. Because the guidelines are more than hortatory, and must be construed in the same fashion as any other binding law of this state, I would grant leave to enable a closer review of the Legislature’s intentions. See *People v Barbee*, 470 Mich 283; 681 NW2d 348 (2004). (Emphasis added by Amicus.)

A criminal perpetrator who does not attempt to hide evidence of his crime or to make such crime less detectable should be rewarded by not scoring OV 19 in his or her case. In the case of defendant Cooley, he took affirmative action to cast blame upon another suspect inside the stopped vehicle. Defendant’s actions created more work (investigating the back seat passenger) and expense (an attempt to obtain fingerprints which proved fruitless) for law enforcement personnel.

In *Roberts v United States*, 445 US 552, 557-558; 100 S Ct 1358; 63 L Ed 2d 622 (1980), the Court wrote:

There is no question that petitioner rebuffed repeated requests for his cooperation over a period of three years. Nor does petitioner contend that he was unable to provide the requested assistance. Indeed, petitioner concedes that cooperation with the authorities is a “laudable endeavor” that bears a “rational connection to a defendant’s willingness to shape up and change his behavior. . . .” Brief for Petitioner 17. (Footnote omitted.) Unless a different explanation is provided, a defendant’s refusal to assist in the investigation of ongoing crimes gives rise to an inference that these laudable attitudes are lacking.

It hardly could be otherwise. Concealment of crime has been condemned throughout our history. The citizen's duty to "raise the 'hue and cry' and report felonies to the authorities," *Branzburg v. Hayes*, 408 U.S. 665, 696 (1972), was an established tenet of Anglo-Saxon law at least as early as the 13th century. 2 W. Holdsworth, *Westminster Second*, 13 Edw. 1, chs. 1, 4, and 6, pp. 112-115 (1285). The first Congress of the United States enacted a statute imposing criminal penalties upon anyone who, "having knowledge of the actual commission of [certain felonies,] shall conceal, and not as soon as may be disclose and make known the same to [the appropriate] authority. . . ." Act of Apr. 30, 1790, § 6, 1 Stat. 113. (Footnote omitted.) Although the term "misprision of felony" now has an archaic ring, gross indifference to the duty to report known criminal behavior remains a badge of irresponsible citizenship.

This deeply rooted social obligation is not diminished when the witness to crime is involved in illicit activities himself. Unless his silence is protected by the privilege against self-incrimination, see Part III, *infra*, the criminal defendant no less than any other citizen is obliged to assist the authorities. The petitioner, for example, was asked to expose the purveyors of heroin in his own community in exchange for a favorable disposition of his case. By declining to cooperate, petitioner rejected an "[obligation] of community life" that should be recognized before rehabilitation can begin. See Hart, *The Aims of the Criminal Law*, 23 *Law & Contemp. Prob.* 401, 437 (1958). Moreover, petitioner's refusal to cooperate protected his former partners in crime, thereby preserving his ability to resume criminal activities upon release. Few facts available to a sentencing judge are more relevant to "the likelihood that [a defendant] will transgress no more, the hope that he may respond to rehabilitative efforts to assist with a lawful future career, [and] the degree to which he does or does not deem himself at war with his society." *United States v. Grayson*, *supra* at 51, quoting *United States v. Hendrix*, 505 F.2d 1233, 1236 (CA2 1974). (Emphasis added by Amicus.)

The Justices also held that if petitioner believed that his failure to cooperate was privileged under the Fifth Amendment,⁸ he should have said so at a time when the sentencing court could have determined whether his claim was legitimate. *Roberts v United States*, *supra* at 560. Defendant Cooley's case does not involve his unwillingness to provide information vital to

⁸ "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. US Const, Am V. (Emphasis added by Amicus.)

law enforcement based upon the right to remain silent or the fear of self-incrimination. Rather, defendant Cooley's case involved the facts that, "defendant engaged in self-serving deception aimed at diverting suspicion onto the other passengers in the car when he threw the cocaine out the car window or dropped it after exiting the car, denied ownership, and requested fingerprint analysis."⁹ Defendant Cooley's actions went beyond asserting the right to remain silent, instead carrying out actions and making statements in a deliberate effort to mislead law enforcement officers. This amounted to the "affirmative misconduct" found in *State v Rollins*, 131 NC App 601, 604-605; 508 SE2d 554 (1998), i.e., active misrepresentation to law enforcement officials. The *Rollins* Court cited *United States v Ruminer*, 786 F 2d 381, 385 (CA 10, 1986), where the defendants not only refused to cooperate with law enforcement officials, but also suggested false leads. Such affirmative misconduct on the part of the defendants wasted valuable law enforcement resources expended in following-up the false leads. "These defendants not only generally failed to cooperate with officials, but also suggested false leads in a purposeful attempt to hinder the investigation. We are not faced with the problem of drawing inferences from an ambiguous silence." *Id.* at 385.

"This case goes beyond merely lying to the police about being guilty, but affirmatively interfering with the administration of justice."

In *Morgan v Renico*, 2007 US Dist LEXIS 10055, the Federal Court for the Eastern District of Michigan wrote:

Petitioner alleges that the state sentencing guidelines were miscalculated. At issue is offense variable 19, which measures the extent to which the defendant was a threat to the security of a penal institution or court or interfered with the administration of justice or the rendering of emergency services. Mich Comp Laws § 777.49. This offense variable was relevant to Petitioner's conviction for making a false report of a felony. Petitioner argues that there was no evidence

⁹ *People v Michael Carl Cooley*, unpublished opinion per curiam of the Court of Appeals issued October 19, 2010 (Docket No. 292942).

that he made a false report of a robbery and, therefore, offense variable 19 should not have been scored at ten points. (Footnote omitted.)

The Michigan Court of Appeals determined that “this case goes beyond merely lying to the police about being guilty, but affirmatively interfering with the administration of justice by inventing a crime where none existed, and falsely reporting that non-existent crime to the police.” *Morgan*, 2003 Mich App LEXIS 2602, 2003 WL 22399525, at *3. The court of appeals concluded that the sentencing guidelines were correctly scored.

The issue is one of statutory interpretation, *People v Barbee*, 470 Mich 283, 285, 681 NW2d 348; 470 Mich 283, 681 NW2d 348, 349 (2004), and questions of state sentencing law are not cognizable on federal habeas corpus review. *Miller v Vasquez*, 868 F2d 1116, 1118-19 (9th Cir 1989); *Branan v Booth*, 861 F2d 1507, 1508 (11th Cir 1988). In particular, a petitioner’s claim that sentencing guidelines were incorrectly scored fails to state a claim for which relief may be granted, because it is a state law claim. *Long v Stovall*, 450 F Supp 2d 746, 754 (ED Mich 2006) (Gadola, J.); *Whitfield v Martin*, 157 F Supp 2d 758, 762 (ED Mich 2001) (Tarnow, J.). Federal courts may grant the writ of habeas corpus only on the ground that the petitioner is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 USC § 2254(a).

The only constitutional issue that the Court can discern is whether the trial court relied on “misinformation of constitutional magnitude” when sentencing Petitioner. *Roberts v United States*, 445 US 552, 556; 100 S Ct 1358; 63 L Ed 2d 622 (1980) (quoting *United States v Tucker*, 404 US 443, 447; 92 S Ct 589; 30 L Ed 2d 592 (1972)). As noted, offense variable nineteen measures interference with, or the attempt to interfere with, the administration of justice. Such interference is not limited to conduct interfering with the judicial process; it encompasses conduct interfering with the investigation of crime, which is critical to the administration of justice. *Barbee*, 470 Mich at 287-88; 681 NW2d at 350-51.

Police officer Charles Coleman testified that Petitioner informed him that his wife was assaulted and robbed in the driveway of their home. Because this evidence established interference with the investigation of a crime and the administration of justice, it cannot be said that the trial court relied on “extensively and materially false” information, which Petitioner had no opportunity to correct. *Townsend v Burke*, 334 US 736, 741; 68 S Ct 1252; 92 L Ed 1690 (1948). Petitioner’s due process claim has no merit, and his state law claim is not cognizable here. (Emphasis added by Amicus.)

As in *Morgan v Renico*, *supra*, defendant Cooley interfered with the investigation of a crime by law enforcement personnel, which is critical to the administration of justice.

Feds define “substantial interference with the administration of justice”

In the federal system, where a defendant adds significant expense or loss of time investigating false leads or when substantial resources must be expended in connection with the initial offense, that is a substantial interference with the administration of justice.¹⁰

“Substantial interference with the administration of justice” includes a premature termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources. *United States v Tackett*, 193 F3d 880, 884 (CA 6, 1999) (Emphasis added by Amicus.)

In *United States v Tackett*, *supra*, at 884, the Court wrote that 18 USC § 1503 US Sentencing Guideline § 2J1.2 sets the base offense level for violation of § 1503 at twelve and provides a three-level increase “if the offense resulted in substantial interference with the administration of justice.” USSG § 2J1.2(b)(2). The application note to § 2J1.2 explains that “substantial interference with the administration of justice” includes “the unnecessary expenditure of substantial governmental or court resources.” USSG § 2J1.2, Application Note 1.

The *Tackett* Court, at 884, found that the defendants’ conduct generated governmental expense. In deciding whether to give a sentence enhancement, the federal district court must make a specific finding that the defendant’s conduct resulted in the substantial expenditure of governmental resources. *Id.* at 887.

Whether the government expenditures constituted “substantial resources” is a question of law applied to fact, which the 6th Circuit reviewed de novo. *Id.* at 887, citing *United States v*

¹⁰ In the federal system, the guidelines remain advisory, and a federal district judge must consult the guidelines before imposing sentence, but the judge is not bound to follow the guidelines. *United States v Booker*, 543 US 220, 264; 125 S Ct 738; 160 L Ed 2d 621 (2005).

Wilson, 920 F2d 1290, 1294 (CA 6, 1990). The 6th Circuit concluded that the district court's factual findings were minimally sufficient to support its conclusion that the Tacketts had substantially interfered with the administration of justice. *Id.*

The federal sentencing guidelines do not define the adjective "substantial." Several federal circuits have found, however, that one factual situation demarcates substantiality: "in some cases, when the defendant has concealed evidence and is the only known source of information, substantial interference with the administration of justice may be inferred." *Id.*

This is a logical proposition: if a person is the only source of important information, her active concealment of this information will almost certainly change the course of the proceedings, making the investigation more difficult and costly, and hampering the truth-seeking function of government agents. *Id.*

In order to assist district courts in determining when interference is "substantial," the Court adopted the *Jones*¹¹ formulation as the rule of the Sixth Circuit. Accordingly, where a defendant actively conceals important evidence of which she is the only source, a court may infer that the defendant's interference with the administration of justice was substantial. *United States v Tackett, supra* at 887 (Emphasis added by Amicus.)

Other federal circuits have fallen in line. In *United States v Seifert*, 90 Ed Appx 175 (CA 7, 2004), the Court held there was no clear error in an obstruction-of-justice upward adjustment because defendant's lie led to an investigation by the FBI at a time when the agency was already strained by the events of September 11, 2001.

In *United States v Ahlers*, 154 Fed Appx 551 (CA 8, 2005), the Court held that the three-level enhancement for substantial interference with the administration of justice following a conviction under 18 USCS § 1623 was appropriate where a special agent testified that an

¹¹ *United States v Jones*, 900 F2d 512 (CA 2 1990).

investigation which otherwise would have been simple was made more exhaustive and arduous as a result of defendant's failure to testify truthfully. (Emphasis added by Amicus.)

However, in *United States v Leeper*, 886 F2d 293 (CA 11, 1989), the Court held that enhancement for substantial interference with the administration of justice was not warranted where the alleged interference occurred before defendant's conviction and thus did not result from his offense conduct. The *Leeper* Court, at 294, wrote: "The only question posed on appeal is whether the court could enhance Leeper's base offense level three levels for substantial interference with the administration of justice on the theory that he caused unnecessary waste of governmental resources." The *Leeper* Court went on to say:

"The Government certainly expended substantial resources in the 600 hours of investigation, probably caused by Leeper's false statements to the federal agents. Leeper, however, was not convicted of the falsehoods committed prior to his grand jury testimony. Therefore, the argument goes, this alleged waste of resources did not result from the "offense conduct." If Leeper had recanted his prior lies and testified truthfully when he appeared before the Grand Jury, the Government would still have expended the 600 hours of investigation prior to his testimony." *Id.*

In *People v Smith*, 488 Mich at 195, the Supreme Court clarified this issue for Michigan courts. The Justices wrote: "[o]ffense variables must be scored giving consideration to the sentencing offense alone, unless otherwise provided in the particular variable." Here, we hold that because the circumstances described in OV 19 expressly include events occurring after the completion of the sentencing offense, scoring OV 19 necessarily is not limited to consideration of the sentencing offense. Thus, under the exception to the general rule set forth in *McGraw*, the offense variable may be scored for conduct that occurred after the sentencing offense was completed." (Emphasis added by Amicus.) In *People v McGraw*, 484 Mich 120, 124; 771 NW2d 655 (2009), the Court had previously held that usually only conduct relating to the sentencing offense may be taken into consideration when scoring the offense variables.

Finally, in *Coleman v Curtin*, 2009 US Dist LEXIS 44644, Judge Janet Neff wrote:

In *Gajos*, the Michigan Court of Appeals held that merely fleeing police did not amount to “interference with the administration of justice” for purposes of scoring the sentencing guidelines. *Gajos, supra*, 2009 Mich App LEXIS 244 at *2. However, the court went on to note that providing law enforcement with a false name constitutes “interference with the administration of justice.” (quoting *People v Barbee*, 470 Mich 283; 681 NW2d 348 (2004)). (Emphasis added by Amicus.)

In the federal system, “substantial interference with the administration of justice” includes the unnecessary expenditure of substantial governmental resources. *United States v Tackett*, 193 F3d at 884. Take out the word “substantial” from the federal test, and what’s left is “interference with the administration of justice,” which is behavior that justifies the scoring of OV 19 at 10 points: “The offender otherwise interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c).

Conclusion and Request for Relief

Unlike the federal guidelines, Michigan’s statute governing the scoring of OV 19 does not require “substantial” interference with the administration of justice. For 10 points to be scored, MCL 777.49(c), only requires that “[t]he offender otherwise interfered with or attempted to interfere with the administration of justice.” In the federal system, where a defendant actively conceals important evidence of which he or she is the only source, a court may infer that the defendant’s interference with the administration of justice was substantial. Surely, a Michigan court may score OV 19 at 10 points where a defendant actively conceals important evidence of which he or she is the only source. In Michigan, there’s not even a requirement that the interference with the administration of justice be substantial. Defendant Cooley actively concealed important evidence (rock cocaine dropped on the ground outside the vehicle) of which he was the only source. Furthermore, an investigation which otherwise would have been simple

was made more exhaustive and arduous by defendant Cooley's actions and words intended to deflect suspicion from him to another person in the suspect vehicle. *United States v Ahlers*, 154 Fed Appx at 552. Based on these considerations, defendant Cooley clearly interfered with the administration of justice because, as the *Barbee* Court observed, interference is not limited to conduct interfering with the judicial process; it encompasses conduct interfering with the investigation of crime, which is critical to the administration of justice. *Morgan v Renico*, 2007 US Dist LEXIS 10055. The trial court properly scored OV 19 properly at 10 points under MCL 777.49(c), because the defendant "interfered with or attempted to interfere with the administration of justice," based on his conduct in throwing away evidence and denying guilt. This Court should **affirm**.

Respectfully Submitted,

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