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IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

Gleicher, P.J., and Cavanagh and O'Connell, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

JOHNNY LEE WILLIAMS,

Defendant-Appellant.

Supreme Court No. 144762

Court of Appeals No. 299484

Circuit Court No. 09-031564-FC

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**AMICUS CURIAE BRIEF OF THE
CRIMINAL DEFENSE ATTORNEYS OF MICHIGAN
IN SUPPORT OF DEFENDANT-APPELLANT**

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Criminal Defense Attorneys of Michigan (CDAM) is an organization consisting of hundreds of criminal defense attorneys licensed to practice in this state. CDAM was organized for the purposes of promoting expertise in criminal and constitutional law; providing training for criminal defense attorneys to improve the quality of representation; educating the bench, bar, and public of the need for quality and integrity in defense services; promoting enlightened thought concerning alternatives to and improvements in the criminal justice system; and guarding against erosion of the rights and privileges guaranteed by the United States and Michigan Constitutions and laws. *CDAM Constitution and By-laws*, Art 1, sec 2.

CDAM was invited to file an amicus brief in this matter. *People v Williams*, 493 Mich 876 (2012).

ARGUMENT

- I. **FOR PURPOSES OF OV 19, “INTERFERENCE” WITH A POLICE INVESTIGATION SHOULD BE INTERPRETED TO MEAN ACTIVE DEFIANCE OF A POLICE DIRECTIVE, AND NOT MERE FAILURE TO OFFER ASSISTANCE TO THE INVESTIGATION. THE DEFENDANT-APPELLANT’S FAILURE TO LINGER AT THE CRIME SCENE OR TO IMMEDIATELY CONTACT THE POLICE SHOULD NOT BE VIEWED AS INTERFERENCE.**

This Court has made clear that Michigan Sentencing Guidelines Offense Variable 19 applies not just to behavior that obstructs justice, but also to behavior that interferes with law enforcement officers in their investigation of crime. *People v Barbee*, 470 Mich 283, 288 (2004). *Barbee* did not make clear, though, exactly what it means to “interfere with” a police investigation. Need the offender act affirmatively to impede the investigation? Or is it enough that he fails to assist it?

This Court must of course answer the question by determining the legislative intent. As the plaintiff-appellee notes in its brief, the Court must look to the statutory language and give it its plain and ordinary meaning (except to the extent the language contains a term of art). Plaintiff-Appellee’s Brief at p 10. “The statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme.” *Id.* (quoting *Bush v Shabahang*, 484 Mich 156, 167 [2009]).

The statutory language in question is as follows: “interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). The key word is “interfere.” The statute does not define the term. Nor are there any instructions to aid a court in its scoring decision.¹ Reference to a dictionary definition is therefore appropriate. *Fremont Ins Co v Izenbaard*, 493

¹ As noted in *People v Underwood*, 278 Mich App 334, 338 (2008), OV 19 is the only variable without instructions.

Mich 859 (2012). “Interfere” has been defined, as the plaintiff-appellee points out, to mean “to come into opposition or collision so as to hamper, hinder, or obstruct someone or something.” Plaintiff-Appellee’s Brief at p 10 (quoting Random House Webster’s College Dictionary 1997). And the Court of Appeals apparently had such a definition in mind when it concluded that the defendant-appellant “hindered law enforcement efforts by leaving the scene and by remaining at large for more than two weeks.” *People v Williams*, unpublished opinion per curiam of the Court of Appeals, issued January 19, 2012 (Docket No. 299484) (Appendix, p 10a).

Yet simply to redefine interference as hampering, hindering, or obstructing ignores the first part of the definition: “to come into opposition or collision.” And it still fails to resolve whether the Legislature intended “interference” (or hindering or hampering or obstructing) to be viewed broadly or more narrowly.

The Court of Appeals, in this case, took a broad view.² Its conclusion that the defendant-appellant interfered with the police investigation by not remaining at the crime scene or immediately afterwards coming forward necessarily reflects a view that failing to assist is a form of interference.

Such a view is too broad because it knows no limiting principle. If an offender can be said to have interfered with a police investigation simply by not lingering at the crime scene or not promptly turning himself over to the authorities, he can as easily be said to have interfered with an investigation by doing virtually anything else that makes it more difficult for the police to apprehend him. If, for example, while committing a crime he covers his tracks or wipes a gun to conceal his fingerprints he has, according to this broad view, hindered police investigation—and thus interfered with the administration of justice. If following a crime he avoids suspicious

² In other cases, it has taken a narrower one. *See, e.g., People v Gajos*, unpublished opinion per curiam of the Court of Appeals, issued February 3, 2009 (Docket No. 281344) (cited in Defendant-Appellant’s Brief at p 12).

behavior and shuns contact with the police, he has interfered with the administration of justice. Indeed, even by committing the criminal act itself he might be said to have interfered with police investigative work by forcing officers to divert their attention from other, pressing police matters in order to focus instead on his case.³ In each example he has, in some broad sense, hindered the police.

No principle limits application of OV 19 to cases like the one at bar and not to those given as examples. The plaintiff-appellee does not even suggest the existence of such a principle, and instead readily agrees that its view will result in scoring for almost all offenders. Plaintiff-Appellee's Brief at p 18. But the Legislature cannot have intended such a result. If it had (as the amicus curiae Prosecuting Attorneys Association of Michigan suggest in their brief at p 7) intended to "reward" those offenders who do not attempt to "hide evidence" or to make their crimes "less detectable," it could—and doubtless would—have done so in a much more direct way than by "not scoring OV 19 in [their] case[s]." See *People v Spangler*, 480 Mich 947, 948 (2007) (Markman, J, dissenting from denial of leave to appeal).

A more sensible view that better reflects the legislative intent is one that requires, for purposes of OV 19, a more active form of interference—one in which the offender affirmatively acts to impede the investigation. Indeed, the very dictionary definition cited by the plaintiff-appellee suggests this more active sense: "*to come into opposition or collision so as to hamper, hinder, or obstruct.*" Plaintiff-Appellee's Brief at p 10 (emphasis added). An offender "comes into opposition" with the police and thereby hinders their investigation when, having come into contact with them, he does something in defiance of a lawful directive. If, for example, a police

³ This example, at least, cannot be correct, because the statute contemplates that at least some offenders will receive a 0-point score for OV 19, and thus will not have "interfere[d] with or attempt[ed] to interfere with the administration of justice." MCL 777.49(d).

officer stops him on suspicion of drunk driving and asks his name, and if he gives a false one, he has defied the officer, hindered the investigation, and thus “interfered” within the meaning of OV 19. *Barbee*, 470 Mich at 288. Similarly, if an offender has just bought an illegal controlled substance and a police officer who has spotted the suspicious transaction demands that he stop, he must do so or “come into opposition” with the officer, hinder the officer’s investigation, and (upon conviction and sentencing) earn a 10-point OV 19 score. However, if the same offender buys the drugs, walks away, and, seeing an officer in the distance, crosses the street in hopes of avoiding her, he has not “interfered with” that officer’s investigation unless and until she attempts to stop him and he disobeys.

A rule that focuses on the defendant’s defiance of police directives not only better reflects the dictionary definition of “interference” than does the rule advocated by the plaintiff-appellee and applied by the courts below, it also possesses two other advantages. First, it provides a sensible and easily applied limit on the application of the variable. Second, it better comports with a basic precept of our criminal procedure: “our preference for an accusatorial rather than an inquisitorial system of justice.” *People v Bender*, 452 Mich 594, 623 (1996) (quoting *Murphy v Waterfront Comm’n of New York Harbor*, 378 US 52, 55; 84 S Ct 1594, 1596–1597; 12 L Ed 2d 678 [1964]).

In short, the plain language of the statute does not require a defendant to help the police capture or convict him; instead, it requires him only to refrain from “interfering with or attempting to interfere with” with police efforts to investigate his crime. A defendant who leaves the crime scene before the police have arrived and does not soon after contact the police has not “interfered with” (or attempted to interfere with) the investigatory process; he has only tarried in assisting that investigation. His behavior would have risen to the level of “interference with the

administration of justice” only if he had ignored a police demand to remain at the scene of the crime for questioning, or if he remained at large in defiance of an order to surrender to police.

Because under this view the defendant-appellant did not “interfere or attempt to interfere with the administration of justice,” this Court should reverse the Court of Appeals.

CONCLUSION

Because the Michigan Court of Appeals was in error when it held that the defendant-appellant's behavior justified a 10-point score for OV 19, the Criminal Defense Attorneys of Michigan support his request to reverse that that decision.

Respectfully submitted,

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