

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

Judges: Elizabeth L. Gleicher, Mark J. Cavanagh, and Peter D. O'Connell

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-vs-

JOHNNY LEE WILLIAMS,
Defendant-Appellant.

Supreme Court
No. 144762

Court of Appeals
No. 299484

Wayne Circuit Court
No. 09-031564-FC

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

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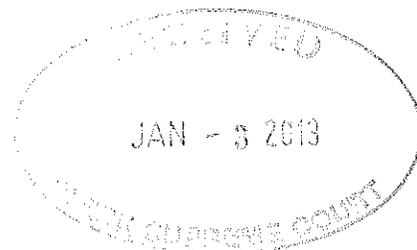


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Statement of Basis of Jurisdiction

Defendant filed an application for leave to appeal under MCR 7.302, which was granted by the Michigan Supreme Court. *People v Johnny Lee Williams*, unpublished order of the Supreme Court issued October 24, 2012 (Docket No. 144762). This Amicus Curiae Brief is governed by MCR 7.306(D).

Statement of Question Presented

Interference with the administration of justice encompasses conduct interfering with the investigation of crime, which is critical to the administration of justice. Defendant Williams claimed he was “the victim . . . who did not do anything wrong,” yet he fled after fatally shooting a man, disposed of the murder weapon, and avoided police for 15 days until finally turning himself in. Did the trial court properly score offense variable (OV) 19 at 10 points?

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 Wayne County Circuit Court jury found defendant Johnny Lee Williams guilty of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to 23 to 40 years' imprisonment for the murder conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction.¹

On appeal, defendant argued that he was entitled to resentencing because the trial court scored 10 points for offense variable (OV) 19, MCL 777.49. The Court of Appeals disagreed:

OV 19 requires a trial court to assess ten points where “[t]he offender otherwise interfered with or attempted to interfere with the administration of justice.” MCL 777.49. OV 19 has a broad application. *People v Barbee*, 470 Mich 283, 286-287; 681 NW2d 348 (2004). Any acts by a defendant that interfere or attempt to interfere with the judicial process or law enforcement officers and their investigation of a crime may support a score for OV 19. *Id.* In scoring OV 19, the trial court may consider “conduct that occurred after the sentencing offense was completed.” *People v Smith*, 488 Mich 193, 202; 793 NW2d 666 (2010).

Here, there was trial testimony that defendant left the scene by jumping in Pritchett's van and driving away with her. When the police arrived soon after the shooting, there was no gun on the premises and both defendant and Pritchett had left. Although defendant did not directly flee from police at the scene, he admittedly left the scene and did not contact the police for 15 days, even though he was aware that he was wanted in connection with the shooting. Thus, defendant hindered law enforcement efforts by leaving the scene and by remaining at large for more than two weeks. Because there is some support in the record for the trial court's scoring of OV 19, we uphold the trial court's scoring decision.²

¹ *People v Johnny Lee Williams*, unpublished opinion per curiam of the Court of Appeals issued January 19, 2012 (Docket No. 299484).

² *Id.*, pp 4-5, Slip Op.; *People v Williams*, 2012 Mich App LEXIS 129, *10-11.

At trial, the following facts emerged: immediately after the shooting, defendant disposed of his gun by giving it to the co-defendant.³ Even though defendant claimed “I was the victim” and “I did not do anything wrong,” and he stated his intention was to wait for the police at the motorcycle club, he told the co-defendant to drive away from the club.⁴ After fleeing the club and ordering co-defendant to drive him away following the shooting, defendant jumped out of the vehicle when the co-defendant pulled over as a police car went by en route to the shooting scene.⁵ Co-defendant is defendant’s fiancée, and they were living together before the shooting, but she did not see him at all after the shooting.⁶ Defendant called the co-defendant several times after the shooting, and co-defendant urged defendant to turn himself in.⁷

The Michigan Supreme Court granted leave to appeal limited to the issue whether OV 19 (interference with the administration of justice) was correctly scored.⁸ This Court invited the Prosecuting Attorneys Association of Michigan to file a brief *amicus curiae*.⁹

³ Trial transcript from 4/1/2010, pp 13-14.

⁴ Trial transcript from 4/6/2010, pp 122-123.

⁵ Trial transcript from 4/5/2010, pp 156-158; Trial transcript from 4/6/2010, pp 55, 121.

⁶ Trial transcript from 4/5/2010, pp 66, 169, 190.

⁷ Trial transcript from 4/5/2010, pp 139-140, 169-170.

⁸ *People v Johnny Lee Williams*, unpublished order of the Supreme Court issued October 24, 2012 (Docket No. 144762).

⁹ *Id.*

Issue

Interference with the administration of justice encompasses conduct interfering with the investigation of crime, which is critical to the administration of justice. Defendant Williams claimed he was “the victim . . . who did not do anything wrong,” yet he fled after fatally shooting a man, disposed of the murder weapon, and avoided police for 15 days until finally turning himself in. Did the trial court properly score offense variable (OV) 19 at 10 points?

Where defendant Williams claimed he was “the victim . . . who did not do anything wrong,” yet he fled after fatally shooting a man, disposed of the murder weapon, and avoided police for days until he finally turned himself in, 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 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 (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, also 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 *People v Ericksen*, 288 Mich App 192; 793 NW2d 120 (2010), 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, *6, 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 *People v James Vincent Harper, Jr.*,¹⁰ the panel considered defendant’s OV 19 claim that resisting private security guards did not constitute “interference with the administration of justice.” The Court of Appeals found that the trial court properly scored ten points for OV 19 under MCL 777.49(c). In *Harper, supra*, defendant resisted arrest by store security guards but was subdued by the time police arrived. The *Harper* Court wrote:

The fact that defendant resisted arrest from private security officers rather than from police officers, is not dispositive. He resisted the private security guards in order to avoid his ultimate arrest.¹¹ (Emphasis added by Amicus.)

In this case, defendant Williams left the scene by jumping in Pritchett’s van and driving away with her. When police arrived soon after the shooting, there was no gun on the premises and both defendant and Pritchett had left. Although defendant did not directly flee from police at the scene, he admittedly left the scene and did not contact the police for 15 days, even though he was aware that he was wanted in connection with the shooting. By leaving the scene and by remaining at large for more than two weeks, Williams hindered law enforcement efforts to

¹⁰ *People v James Vincent Harper, Jr.*, unpublished opinion per curiam of the Court of Appeals issued April 19, 2007 (Docket No. 265067).

¹¹ *People v Harper*, 2007 Mich App LEXIS 1059, *11.

investigate the homicide. Just as the defendant did in *Harper*, Williams also “fled in order to avoid his ultimate arrest.” The *Barbee* Court suggested that “interference with the administration of justice” should be given a broad interpretation when assessing OV 19. *Id.* at 287-288.¹²

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 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.)

¹² The *Barbee* Court overruled *People v Deline*, 254 Mich App 595, 597; 658 NW2d 164 (2002), which had limited the definition of “interference with the administration of justice” to conduct amounting to obstruction of justice.

Perhaps because “it would be extraordinary,” a criminal perpetrator who does not attempt to hide evidence of his crime or to make his crime less detectable should be rewarded by not scoring OV 19 in his case. In the case of defendant Williams, he took affirmative action to dispose of the murder weapon, and avoid law enforcement authorities for 15 days.¹³ Williams claimed that he wanted to turn himself in, but his cousin advised him against doing that without first obtaining legal representation. Common sense informs us that it does not take more than two weeks to find an attorney. Yet, for 15 days, defendant effectively thwarted a homicide investigation while Williams took his time to lawyer up. Defendant’s actions created more work and expense for law enforcement personnel as they sought to track him down.

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

¹³ Explaining the delay, defendant Williams said he had to acquire an attorney. Williams said that during that 15-day period, he was “actually going back and forth to work trying to make some money so I can pay my attorney.” Trial transcript from 4/6/2010, pp 125-126.

'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,¹⁴ he should have said so at a time when

¹⁴ "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

the sentencing court could have determined whether his claim was legitimate. *Roberts v United States*, *supra* at 560. Defendant Williams' case does not involve his unwillingness to provide information vital to law enforcement based upon his right to remain silent or the fear of self-incrimination. Rather, Williams' case involved a claim of self-defense ("I was the victim . . . I did not do anything wrong").¹⁵ As the Court of Appeals observed:

"Here, there was trial testimony that defendant left the scene by jumping in Pritchett's van and driving away with her. When the police arrived soon after the shooting, there was no gun on the premises and both defendant and Pritchett had left. Although defendant did not directly flee from police at the scene, he admittedly left the scene and did not contact the police for 15 days, even though he was aware that he was wanted in connection with the shooting. Thus, defendant hindered law enforcement efforts by leaving the scene and by remaining at large for more than two weeks.¹⁶

Following the murder, defendant Williams' actions did not involve asserting the right to remain silent. Surfacing 15 days after the homicide occurred, and asserting a claim of self-defense, Williams did not invoke his right to remain silent. Disposing of the handgun and eluding a police manhunt for more than two weeks amounted to the "affirmative misconduct" found in *State v Rollins*, 131 NC App 601, 604-605; 508 SE2d 554 (1998). In *Rollins*, the affirmative misconduct of the defendants similarly wasted valuable law enforcement resources. In *Morgan v Renico*, 2007 US Dist LEXIS 10055, at *23, the Federal Court of the Eastern District of Michigan wrote:

law; nor shall private property be taken for public use, without just compensation. Us Const, Am V. (Emphasis added by Amicus.)

¹⁵ Trial transcript from 4/6/2010, pp 122-123.

¹⁶ *People v Williams*, 2012 Mich App LEXIS 129, *10-11.

“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 investigation of crime, which is critical to the administration of justice.”

Defendant Williams disposed of the murder weapon, fled the scene of the homicide, and remained at large for 15 days. As in *Morgan v Renico, supra*, at *23-24, “this evidence established interference with the investigation of a crime and the administration of justice,” Williams interfered with the investigation of a crime by law enforcement personnel, which is critical to the administration of justice. *Barbee, supra* at 288.

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.

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 880, 884 (CA 6, 1999). 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.¹⁷ Logically, a Michigan court may score OV 19 at 10 points where a defendant conceals important evidence (i.e., the murder weapon) of which he is the only source. In Michigan, there is no requirement that the interference with the administration of justice be substantial. Defendant Williams disposed of the murder weapon. And, an investigation which otherwise would have been simple was lengthened and consumed scarce law enforcement resources by Williams’ flight and the ensuing manhunt which lasted 15 days. Williams clearly interfered with the administration of justice because, as the *Barbee* Court observed, interference may include conduct interfering with the investigation of crime, which is critical to the administration of justice. *Morgan v Renico, supra*. A sentencing court has

¹⁷ *United States v Tackett, supra* at 887.

discretion in determining the number of points to be scored for each variable, provided that the record evidence adequately supports a given score. *People v Endres, supra* at 417; *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Record evidence supported the scoring of OV 19 in this case. The trial court properly scored OV 19 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 following the murder. This Court should **affirm**.

Respectfully Submitted,

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