

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL CARL COOLEY,

Defendant-Appellant.

UNPUBLISHED

October 19, 2010

No. 292942

Hillsdale Circuit Court

LC No. 08-321794-FH

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). He was sentenced as a fourth habitual offender, MCL 769.12, to 34 to 180 months in prison. Defendant appeals as of right, challenging only the scoring of the sentencing guidelines. We affirm.

When a traffic stop was effectuated on a car in which defendant was the front seat passenger, defendant exited the car, but immediately complied when he was told to get back in the vehicle. A pack of Marlboro cigarettes containing a rock of cocaine was found on the ground near where he got out of the vehicle. Defendant had 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. On the way to 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.

Defendant argues that Offense Variable (“OV”) 19 was improperly scored. The trial court has discretion to determine the number of points to be scored and whether the evidence supports the scoring decision. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision for which there is any evidence in the record will be upheld. *People v Houston*, 261 Mich App 463, 471; 683 NW2d 192 (2004), *aff’d* 473 Mich 399 (2005).

MCL 777.49 provides that OV 19 is to be scored ten points if the offender, by something other than force or the threat of force, “interfered with or attempted to interfere with the administration of justice”.

In *People v Barbee*, 470 Mich 283, 285; 681 NW2d 348 (2004), the defendant gave police officers a false name during a traffic stop. The Court determined that the language “interference or the attempt to interfere with the administration of justice” was broader language than “obstruction of justice”. Since the term “obstruction of justice”, which pertains to conduct occurring after the filing of criminal charges, was not used in the statute, the Court concluded that scored behavior need not rise to the level of this crime. Further, the Court stated that “[t]he investigation of crime is critical to the administration of justice” and that, “[i]t is certainly interference with the administration of justice to provide law enforcement officers with a false name.” *Barbee*, 470 Mich at 288.

In *People v Ericksen*, ___ Mich App ___, ___ NW2d ___ (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 ten points were properly scored for OV 19, stating:

[D]efendant’s attempt to hide or dispose of the weapon in conjunction with his encouragement of others to lie about where he was at the time of the stabbing was a multifaceted attempt to create a false alibi and mislead police. His actions ultimately constituted fabrications that were self-serving attempts at deception obviously aimed at leading police investigators astray or even diverting suspicion onto others and away from him. [Slip op at 6.]

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.

Affirmed.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood