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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH LEE MEREDITH, JR.,

Defendant-Appellant.

UNPUBLISHED
November 19, 2020

No. 350058
Wayne Circuit Court
LC No. 18-009990-01-FC

Before: BOONSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree criminal sexual conduct (CSC-I), MCL 750.520b (force or coercion; alternatively, armed with a weapon). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 37½ to 60 years' imprisonment. We affirm.

I. FACTUAL BACKGROUND

This case arises from the sexual assault of the victim in 2005. The victim lived with her sister in Detroit, Michigan, and took public transportation to and from a facility where she took continuing education classes in the evenings. On the night of the assault, the victim rode a bus home from her evening classes and exited at a bus stop near her home. Instead of going directly home, the victim went to a nearby convenience store. While the victim was walking, she noticed a yellow car was following her. The victim kept walking, but noticed the yellow car continued to follow her. The victim saw defendant driving the car, and noticed he appeared to be looking at her. The victim began feeling nervous and turned down a side street to get out of defendant's line of sight.

The victim decided to cut through a local park, but as she was crossing the park, she noticed defendant was still following her in the car. Defendant got out of the car, pursued the victim through the park, and knocked her over, injuring her head and shoulder. The victim was unsure whether defendant hit her with a hard object or with his fist, but testified "the whole side of [her] face split open." The victim lay face down on the ground and begged defendant not to hurt her, but defendant only replied, "You scream, I'm going to kill you." Defendant pulled the victim's

pants and underwear down, flipped her onto her back, and penetrated her with his penis. As the sexual assault was occurring, defendant told the victim, "You can call the police . . . because I am the police." Afterward, defendant got off the ground and told the victim to roll over onto her stomach. Defendant ordered the victim to stay on the ground until he was gone.

The victim remained on the ground until she believed defendant left the area, then got up and ran to a house near the park for help. The homeowner's son answered the door and saw the victim standing on her porch, crying hysterically. The homeowner called the police and stayed with the victim until police and an ambulance arrived. The victim was taken by ambulance to a nearby hospital, where doctors took evidence for a rape kit.

The victim's rape kit remained untested until 2013, when the Detroit Police Department and the Wayne County Prosecutor's Office tested the rape kit as part of an effort to eliminate a backlog of rape kits dating back to the 1980s. The victim's rape kit was sent to Bode Technology for testing, and lab technicians indicated male DNA was found in the rape kit. In September 2018, the victim's case was reviewed by Detective Regina Swift, who was assigned to the Wayne County Prosecutor's Office as a detective with the Sexual Assault Kit Task Force. Detective Swift called the victim regarding her rape kit, and informed her defendant had been identified on the basis of DNA evidence from the rape kit. The victim agreed to press charges against defendant.

Defendant was charged with CSC-I, MCL 750.520b (force or coercion; alternatively, armed with a weapon). A jury convicted defendant of CSC-I, and he was sentenced, as a fourth habitual offender, MCL 769.12, to 37½ to 60 years' imprisonment. This appeal followed.

II. CHARGING DELAY

Defendant argues that he was denied his right to due process and a fair trial on the basis of the prosecution's delay in charging him with CSC-I, MCL 750.520b. We disagree.

This Court reviews de novo a defendant's claim that he was denied due process, and the trial court's findings of fact for clear error. *People v Steele*, 283 Mich App 472, 478; 769 NW2d 256 (2009). Clear error exists when the Court is "left with a definite and firm conviction that a mistake has been made." *People v Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005). Additionally, "[w]hether defendant was denied his right to a speedy trial is an issue of constitutional law," which is also reviewed de novo. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006).

Defendant asserts that he was prejudiced by an unreasonable delay between the date the evidence in the victim's rape kit was matched to defendant's DNA in 2013, and the date of his arrest in 2018. Defendant argues that if the prosecutor had charged him in 2013 when his DNA was discovered in the victim's rape kit he could have presented a more complete defense. The testimony in question came from defendant's friend, who allegedly saw defendant walking out of the field where the sexual assault occurred. " 'Before dismissal may be granted because of prearrest delay there must be actual and substantial prejudice to the defendant's right to a fair trial and an intent by the prosecution to gain a tactical advantage.' " *People v Patton*, 285 Mich App 229, 237; 775 NW2d 610 (2009), quoting *People v Crear*, 242 Mich App 158, 166; 618 NW2d 91 (2000), overruled in part on other grounds by *People v Miller*, 482 Mich 540; 759 NW2d 850

(2008). The prejudice to a defendant must go beyond mere speculation, and a defendant cannot simply "speculate generally that any delay resulted in lost memories, witnesses, and evidence, even if the delay was an especially long one." *People v Woolfolk*, 304 Mich App 450, 454; 848 NW2d 169 (2014) (citations omitted).

Although defendant presents specific testimony he believes the now-deceased witness could have provided, there is no evidence he was substantially prejudiced by its absence. *Substantial* prejudice implies that a defendant's ability to craft a defense was "meaningfully impaired . . . in such a manner that the outcome of the proceedings was likely affected." *Patton*, 285 Mich App at 237. Defendant argues his friend would have been able to testify that she saw defendant walking out of the grassy field where the victim alleged she was sexually assaulted, and that she spoke with defendant about the incident. However, defendant does not argue that his friend was present for the sexual assault, or had any knowledge of whether the sexual encounter was consensual, either via prostitution, as defendant attested at trial, or otherwise. Nothing about the hypothetical testimony that could have been provided by defendant's friend suggests it was exculpatory or would have had a significant impact on the jury's decision to find defendant guilty of CSC-I, MCL 750.520b. Moreover, defendant likely could not introduce evidence of an out-of-court statement or conversation even if his friend's testimony was admitted because such statements constitute inadmissible hearsay. See MRE 801(c) (" 'Hearsay' is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted," and may generally not be admitted unless a hearsay exception applies.). Ultimately, defendant cannot show he was substantially prejudiced by the absence of such testimony.

Defendant also contends that the prosecution sought to gain a tactical advantage by choosing to delay charging him until 2018, because it anticipated an amendment to MCL 768.27b would come into effect soon after he was charged. MCL 768.27b has been amended, effective March 17, 2019. See 2019 PA 372. The statute previously only permitted the introduction of propensity evidence in domestic violence cases, whereas the amended version of the statute now allows for propensity evidence to be admitted in sexual assault cases as well. MCL 768.27b. Although it is true the amendment of this statute did occur before defendant's trial, defendant cannot show the prosecution waited years to charge him with CSC-I, MCL 750.520b, because it expected an amendment to an existing law would eventually allow for the introduction of propensity evidence. At most, it is merely a coincidence that the amended statute came into effect in March 2019; there is no evidence of an intentional charging delay by the prosecution.

Furthermore, there are more viable explanations for the delay. The prosecution readily admits it did not charge defendant immediately after receiving information regarding a DNA match from the victim's rape kit, but argues the delay was justified. We agree. This case arose from the discovery of defendant's DNA in the victim's rape kit, which was one of more than 11,000 backlogged rape kits tested by the Detroit Police Department and the Wayne County Prosecutor's Office in the mid-2000s. The overwhelming number of cases to be reviewed clearly suggests the Sexual Assault Kit Task Force, which was responsible for investigating and prosecuting rape kit cases, simply did not have the resources or staff to review each and every case immediately. Defendant has presented no evidence that the charging delay was intentional; rather, it was an incidental result of testing in excess of 11,000 backlogged rape kits. Additionally, defendant makes no specific argument that a delay occurred between Detective Swift's initial investigation

of the case and the start of trial. Indeed, there does not appear to have been a delay; Detective Swift began investigating the case in September 2018, and defendant's trial began on May 14, 2019. Accordingly, defendant cannot show he was prejudiced by the absence of the deceased witness's testimony, and further, he cannot show the delay was intentional. Because defendant has failed to show substantial prejudice or an unjustifiable charging delay, his claim is without merit and he is not entitled to a new trial.

III. EVIDENCE OF OTHER ACTS

Defendant argues that the trial court violated his right to due process and a fair trial, and abused its discretion, by allowing the prosecution to admit evidence of other acts under MRE 404(b) and MCL 768.27b. We disagree.

"The decision whether to admit evidence falls within a trial court's discretion and will be reversed only when there is an abuse of that discretion." *People v Duncan*, 494 Mich 713, 722; 835 NW2d 399 (2013). An abuse of discretion occurs when the trial court "makes an error of law in the interpretation of a rule of evidence," *People v Jackson*, 498 Mich 246, 257; 869 NW2d 253 (2015), or where the trial court's decision "falls outside the range of reasonable and principled outcomes[.]" *People v Swain*, 288 Mich App 609, 628-629; 794 NW2d 92 (2010). Underlying questions of law are reviewed de novo. *People v Pattison*, 276 Mich App 613, 615; 741 NW2d 558 (2007).

However, to the extent the issue concerns defendant's right to due process and a fair trial, defendant did not preserve the issue by raising it in the trial court. See *People v Gaines*, 306 Mich App 289, 306; 856 NW2d 222 (2014) (to preserve an issue regarding a due process violation, the issue must be raised in and addressed by the trial court). Therefore, our review of this portion of defendant's claim is for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. The third aspect "generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id*. Reversal will only be warranted where the plain error leads to "the conviction of an actually innocent defendant," or where an error affects the "fairness, integrity, or public reputation" of the judicial proceeding. *Id*. at 763-764.

As an initial matter, we note that defendant frames his argument as one concerning his constitutional right to due process and a fair trial. Defendant contends his right to due process and a fair trial was violated when the trial court chose to allow the admission of evidence of other acts under MRE 404(b) and MCL 768.27b. However, beyond this statement, defendant does not make a substantive argument explaining how the admission of the evidence violated his right to due process or a fair trial. Consequently, this aspect of defendant's argument is abandoned for failure to properly brief the issue on appeal. See *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004) ("The failure to brief the merits of an allegation of error constitutes an abandonment of the issue.").

Defendant's primary argument is that the trial court abused its discretion by admitting evidence of other acts under MCL 768.27b and MRE 404(b). MCL 768.27b, which governs the admission of evidence of other acts of sexual assault against adult victims, states, in relevant part:

> [I]n a criminal action in which the defendant is accused of an offense involving domestic violence or sexual assault, evidence of the defendant's commission of other acts of domestic violence or sexual assault is admissible for any purpose for which it is relevant, if it is not otherwise excluded under [MRE] 403. [MRE 768.27b(1).]

MRE 404(b), which governs the admission of other-acts evidence for purposes other than propensity, allows for the admission of such evidence to show "proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material . . . ." The evidence admitted at trial included testimony that defendant sexually assaulted four women.

The first incident occurred in 1984, when defendant sexually assaulted a former coworker, JT. Defendant invited JT to his apartment and sexually assaulted her at gunpoint. However, at trial, defendant denied assaulting JT, and stated he and JT briefly dated before she accused him of sexual assault. Information regarding the next incident arose from testimony given at trial by LM, who attested defendant sexually assaulted her in 1988. LM attested defendant offered to drive her to work after seeing her standing at a bus stop in Detroit. LM accepted the offer, and gave defendant her telephone number. Defendant and LM spoke with each other on the telephone for approximately one week, and during one conversation, defendant offered to drive LM to a job interview. However, instead of driving LM to the job interview, defendant drove her to his apartment, where he proceeded to sexually assault her at knifepoint. Defendant drove LM home, and told her, "Don't forget that if you tell anybody, I'm going to kill you and I'm going to kill your family." Defendant admitted that he did sexually assault LM at knifepoint.

Additionally, the prosecution briefly introduced evidence regarding KD, the daughter of one of defendant's ex-girlfriends, who accused defendant of squeezing her breasts in 2003. Defendant testified he was charged with sexually assaulting KD, but stated he was acquitted of the crime.[1] Finally, the prosecution presented evidence defendant sexually assaulted his former fiancé,

[1] Defendant appears to raise a brief "challenge" to the admission of this evidence in a footnote in his appeal brief, citing to *People v Beck*, 504 Mich 605; 939 NW2d 213 (2019). Any such challenge is without merit. First, this brief footnote reference is insufficient to raise the issue on appeal. See *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Second, in his footnote defendant appears to challenge the trial court's response to the prosecutor's objection to the admission of evidence that defendant was acquitted in that matter; thus, this "challenge" does not pertain to the admission of acquitted conduct under MCL 768.27b. Third, the *Beck* case addresses the use of acquitted conduct for purposes of sentence enhancement—in contravention to the jury verdict—which is not at issue here. See *Beck*, 504 Mich at 629. And fourth, there are circumstances where evidence of prior acquitted conduct, including sexual assault, is admissible in subsequent prosecutions. See, e.g., *People v Oliphant*, 399 Mich 472, 495-499; 250 NW2d 443

BH. Defendant testified that, in 2011, he and BH got into an argument, and after the argument concluded, defendant sexually assaulted her.

Defendant contends the evidence presented to the jury should have been excluded because it was not relevant and prejudiced the jury against him. Evidence admitted under MRE 404(b) or MCL 768.27b must be relevant, but even if the evidence is relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." MRE 403. MCL 768.27b was recently amended to include evidence of other acts of sexual assault against adult victims, and thus, caselaw concerning its application in sexual assault cases is sparse. However, in *People v Watkins*, 491 Mich 450; 818 NW2d 296 (2012), the Michigan Supreme Court enunciated a list of factors for which evidence may be excluded under MRE 403 in the context of MCL 768.27a, which is a similar statute concerning evidence of other acts of sexual assault against child victims. These factors include:

> (1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony. [*Id.* at 487-488.]

The evidence of the other acts presented to the trial court occurred over a long span of years, and thus, some of the evidence was considerably temporally distant from the incident underlying defendant's conviction herein. However, the acts share some similarities. When examined through the lens of MCL 768.27b, the evidence is relevant to show defendant had a propensity to commit violent sexual crimes against women, and did so repeatedly, despite being charged and convicted of such crimes. Further, when examined through the lens of MRE 404(b), the evidence is relevant to show defendant had a common plan or system in committing the acts. Defendant, on more than one occasion, violently sexually assaulted women. Defendant used force or coercion to accomplish this goal, including threating two of his victims with weapons. Further, defendant threatened to kill LM's family if she told anyone about the crime. Additionally, the evidence showed defendant has been committing sexual assault for decades, with the first act dating back to 1984, and the last act occurring in 2011.

"[A]ll evidence is somewhat prejudicial to a defendant;" indeed, evidence must be somewhat prejudicial to be considered relevant. *People v Magyar*, 250 Mich App 408, 416; 648 NW2d 215 (2002). Given the similarities between defendant's past acts and the sexual assault perpetrated against the victim in the present matter, and the number of past sexual assaults for which defendant is responsible, we conclude that the evidence was relevant for propensity purposes and to show defendant exhibited a specific pattern of behavior over time. At most, the alleged sexual assault against the daughter of defendant's ex-girlfriend is somewhat of an outlier, considering defendant was only accused of touching the victim's breasts, and no penetration was involved. However, the evidence is nevertheless relevant to show defendant has a propensity to

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(1976); *People v Cooper*, 220 Mich App 368, 374-375; 559 NW2d 90 (1996); *People v Gibson*, 219 Mich App 530, 533; 557 NW2d 141 (1996).

engage in sexually assaultive behavior, and was not unduly prejudicial to defendant. Accordingly, the evidence was admissible under MCL 768.27b and MRE 404(b).

Additionally, as the prosecution observes, the introduction of evidence of other acts provided defendant with an opportunity to explain the past allegations of sexual assault, and further, allowed defendant to inform the jury that he was guilty of some of the crimes, but not guilty of others. This opportunity for candidness and honesty may have bolstered defendant's credibility in the eyes of the jury and minimized potential prejudice to defendant. Even if the evidence was prejudicial, the trial court was able to minimize potential prejudice by giving a jury instruction regarding how the evidence is to be used. See *People v Cameron*, 291 Mich App 599, 611-612; 806 NW2d 371 (2011). The trial court gave a jury instruction regarding the other-acts evidence, and specifically instructed the jury, "You must not convict the defendant here solely because you think he is guilty of other bad conduct." Jurors are presumed to follow their instructions, and thus, any potential for prejudice was properly addressed at trial. *People v Mullins*, 322 Mich App 151, 173; 911 NW2d 201 (2017). Accordingly, the trial court did not abuse its discretion by allowing for the admission of other-acts evidence.

IV. JURY INSTRUCTIONS

Defendant argues that the trial court abused its discretion by giving a jury instruction modeled after M Crim JI 4.4, regarding escape, concealment, or flight from the scene of a crime. We disagree.

"Claims of instructional error are generally reviewed de novo by this Court, but the trial court's determination that a jury instruction is applicable to the facts of the case is reviewed for an abuse of discretion." *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Bass*, 317 Mich App 241, 256; 893 NW2d 140 (2016) (quotation marks and citation omitted).

The model jury instruction at issue herein, M Crim JI 4.4, states:

> (1) There has been some evidence that the defendant [tried to run away/tried to hide/ran away/hid] after [the alleged crime/(he/she) was accused of the crime/the police arrested (him/her)/the police tried to arrest (him/her)].
>
> (2) This evidence does not prove guilt. A person may run or hide for innocent reasons, such as panic, mistake, or fear. However, a person may also run or hide because of a consciousness of guilt.
>
> (3) You must decide whether the evidence is true, and, if true, whether it shows that the defendant had a guilty state of mind.

In accordance with M Crim JI 4.4, the trial court instructed the jury:

> There has been some evidence that the defendant ran away after the alleged crime. This evidence does not prove guilt. A person may run or hide for innocent reasons such as panic, mistake, or fear.

However, a person may also run or hide because of a consciousness of guilt. You must decide whether the evidence is true, and if true, whether it shows that the defendant had a guilty state of mind.

The jury instruction was given on the basis of the victim's testimony that defendant forced her to roll onto her stomach and ordered her to stay there until she was sure he was out of sight after the sexual assault was completed. The victim specifically recalled defendant telling her, "Don't move until I'm gone."

Defendant contends the trial court abused its discretion by giving a jury instruction regarding flight because there was no evidence he physically ran away from the scene of the crime, and further, because there was no evidence he was attempting to avoid detection. However, a review of the record suggests defendant directed the victim to turn onto her stomach and stay on the ground until he was gone because he did not want her to see where he was going when he left the park. Such behavior is an attempt to avoid detection because it would ensure the victim could not follow defendant or send police officers after him. Defendant does not deny he ordered the victim to remain face down on the ground until he was gone, but he also does not provide an alternate explanation for his actions. "The trial court may issue an instruction to the jury if a rational view of the evidence supports the instruction." *People v Armstrong*, 305 Mich App 230, 240; 851 NW2d 856 (2014). The evidence presented at trial supported the instruction, and thus, the trial court did not abuse its discretion by instructing the jury in accordance with M Crim JI 4.4.

V. OFFENSE VARIABLES

Defendant argues that the trial court erred when it assessed five points under offense variable (OV) 1, and 10 points under OV 19. Although we agree that the trial court erred by scoring OV 1 at five points, we conclude that OV 19 was correctly scored at 10 points. Because the reduction of five points does not change defendant's overall minimum sentencing guidelines range, he is not entitled to resentencing.

The trial court's factual determinations pertaining to the scoring of the offense variables "are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Gloster*, 499 Mich 199, 204; 880 NW2d 776 (2016). Clear error exists when the Court is "left with a definite and firm conviction that a mistake has been made." *Stone*, 269 Mich App at 242. "Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013).

Defendant first argues that the trial court should not have assessed points under OV 1 because there was no evidence defendant used a weapon during the sexual assault. OV 1 addresses the "aggravated use of a weapon" during a crime. MCL 777.31(1). Five points are assessed under OV 1 if a weapon is "displayed or implied." MCL 777.31(1)(e). The term "weapon" includes any instrument designed to be used as a weapon, as well as any object or instrument which could cause injury if it is used as a weapon. *People v Lange*, 251 Mich App 247, 256-257; 650 NW2d 691 (2002).

Defendant contends there was no evidence he used a weapon during the assault, whereas the prosecution contends evidence was presented at the preliminary examination indicating defendant struck the victim on the head with a weapon. At trial, the victim testified she could not see whether defendant struck her with a weapon or with his closed fist, but believed defendant did not have a weapon at the time and merely punched her in the side of the head. To clarify the victim's testimony, the prosecution read the victim's preliminary examination testimony into the record:

> *Q*. Okay . . . . do you remember being asked [the following]:
>
> "And what did the impact—did the—what exactly did it feel like when you got hit?"
>
> And you answered:
>
> "When he hit me, I just—it was like somebody hit me with something. Like, it didn't feel like a fist. It felt like something harder. And that's when I fell."
>
> * * *
>
> *A*. Yes, I do.
>
> *Q*. Okay. And today you told us it felt like it was a fist?
>
> *A*. Yes.

The victim's trial testimony and preliminary examination testimony do not give a conclusive answer regarding whether defendant used a weapon, or implied he used a weapon, during the sexual assault. The issue is further complicated by information in the presentence investigation report (PSIR), which indicates the victim "noticed a handgun, possibly a 9 [millimeter], in defendant's hand," and states defendant pointed the gun at her during the sexual assault. Ultimately, the record indicates the victim's recollection of whether a weapon was used during the assault changed over time, and it appears she grew less certain a weapon was used over time. By the time the victim testified at trial, she was confident defendant only struck her with his fist.

When calculating the minimum sentencing guidelines range, a trial court is entitled to consider all record evidence, including the PSIR, trial testimony, and preliminary examination testimony. *People v Johnson*, 298 Mich App 128, 131; 826 NW2d 170 (2012). "[T]he trial court may rely on inferences that arise from the record evidence when making the findings underlying its scoring of offense variables." *People v McFarlane*, 325 Mich App 507, 532; 926 NW2d 339 (2018). However, the record indicates the trial court only relied on testimony from the preliminary examination and trial when it assessed points under OV 1. Although the PSIR contains evidence a weapon was used, there is no evidence the trial court utilized it in rendering its ruling. Since there are extreme conflicts between the information contained in the victim's preliminary examination and trial testimony compared to the information contained in the PSIR, which the trial court did not properly consider, this Court cannot conclude that the scoring of OV 1 was supported

by a preponderance of the evidence. Accordingly, the trial court erred by assessing five points under OV 1.

Defendant also argues the trial court erred by assessing 10 points under OV 19. A trial court correctly assesses 10 points under OV 19 in circumstances where "[t]he offender . . . interfered with or attempted to interfere with the administration of justice . . . ." MCL 777.49(c). "The plain and ordinary meaning of 'interfere with the administration of justice' for purposes of OV 19 is to oppose so as to hamper, hinder, or obstruct the act or process of administering judgment of individuals or causes by judicial process." *People v Hershey*, 303 Mich App 330, 343; 844 NW2d 127 (2013).

At trial, the victim testified that defendant told her, "You can call the police . . . because I am the police." At sentencing, the trial court reasoned that this statement was meant to discourage the victim from reporting the sexual assault. Specifically, the trial court reasoned:

> I don't have any case law cited either way on this, but I know that attempting to intimidate a witness can also be scored under this. And those types of statements to the victim after she's just been sexually assaulted saying that he is the police—try to contact the police if you want to, but I am the police, I think that that does have a chilling effect on someone's desire to go forward to the police and report this.

Defendant contends 10 points should not have been assessed under OV 19 because no evidence was presented to show defendant interfered with law enforcement's efforts to investigate the crime. In making this argument, defendant improperly narrows the scope of OV 19 to only pertain to conduct involving law enforcement or the judicial proceedings leading to his conviction. However, this Court has previously ruled "threatening or intimidating a victim or witness," as well as "telling a victim or witness not to disclose the defendant's conduct," constitute grounds for the assessment of points under OV 19. *Hershey*, 303 Mich App at 344. Defendant attempted to interfere with the administration of justice by threatening and intimidating the victim in an effort to prevent her from reporting the sexual assault to the police. Therefore, the trial court did not err by scoring OV 19 at 10 points.

In sum, the trial court erred by scoring OV 1 at five points, but correctly scored OV 19 at 10 points. Defendant's prior record variable (PRV) score was 100, placing him in PRV Level F, and his overall OV score was 50, placing him in OV Level III. Defendant's minimum sentencing guidelines range was calculated at 135 months to 450 months. The elimination of five points from OV 1 reduces defendant's OV score from 50 points to 45 points. Although the trial court erred by scoring OV 1 at five points, correcting the error does not change defendant's minimum sentencing guidelines range. "Where a scoring error does not alter the appropriate guidelines range, resentencing is not required." *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006). Accordingly, defendant is not entitled to resentencing.

VI. CONCLUSION

Defendant's right to due process and a fair trial was not violated by a prearrest charging delay or by the admission of evidence of other acts under MCL 768.27b and MRE 404(b). Further,

the trial court did not abuse its discretion by instructing the jury in accordance with the model jury instruction concerning flight from the scene of a crime, M Crim JI 4.4. Regarding defendant's objections to the scoring of OV 1 and OV 19, defendant correctly argues OV 1 was improperly scored. However, OV 19 was properly scored, and since the reduction of five points from OV 1 does not change defendant's minimum sentencing guidelines range, he is not entitled to resentencing.

Affirmed.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello