

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
August 7, 2007

v

JOHN RICHARD TYLER,
Defendant-Appellant.

No. 267441
Livingston Circuit Court
LC No. 05-014894-FC

Before: Murphy, P.J., and Zahra and Servitto, JJ.

PER CURIAM.

SERVITTO, J. (*concurring*)

I concur with the majority, but write separately to address the potential implications of MCL 777.49. Under this statute, points are to be assessed for OV 19 if a defendant has, among other things, interfered with the administration of justice. While undefined in the statute, the above language has been interpreted broadly to include more than interference with the actual judicial process, and is not limited only to those acts that constitute an obstruction of justice. See, *People v Barbee*, 470 Mich 283, 286-287; 681 NW2d 348, 350 (2004). As worded, this statute appears all-encompassing and could theoretically serve as a basis to assess points under OV 19 if a defendant does anything other than immediately inform the police of his crime after its completion.

In the instant matter, there is no dispute that defendant simply told his victim that if she told anyone what had happened, he would get in trouble. While clearly intended to keep the victim silent, the nature of defendant's statement does not approach the type of conduct previously found to warrant assessment of points under OV 19. See, e.g., *People v Endres*, 269 Mich App 414, 421; 711 NW2d 398 (2006)(15 points assessed because defendant threatened to kill the victim). Moreover, in nearly all cases where the scoring of OV 19 has been at issue, the conduct giving rise to OV 19 points occurred during the investigation of the crime, during some sort of police involvement, or during the judicial process itself. See, e.g., *Barbee*, *supra*. Nevertheless, the Legislature has elected to provide no real parameters to application of this statute and we are bound by both the Legislature's choice of the expansive statutory language, and *Barbee's* equally expansive interpretation of the pertinent language. Thus, although I do express concern about the apparent limitlessness of the statute, I can find no abuse of discretion in the trial court's assessment of points for OV 19 in this matter.

/s/ Deborah A. Servitto