

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIRK ARON HOLM,

Defendant-Appellant.

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UNPUBLISHED  
December 20, 2005

No. 256985  
Jackson Circuit Court  
LC No. 03-000541-FH

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of receiving or concealing stolen property over \$20,000, MCL 750.535(2)(a). He was sentenced as a fourth-felony habitual offender, MCL 769.12, to nine to twenty years' imprisonment. He appeals as of right. We affirm.

I

Defendant was convicted of receiving and concealing stolen property for his involvement in taking money that was in a safe stolen from a home. According to evidence presented at trial, the safe at one point was taken to defendant's business, where the safe was dismantled. There was more than \$70,000 and possibly upwards of \$180,000 in cash in the safe. Although defendant denied any knowledge of the theft, there was evidence that defendant and several other males and females were involved in various aspects of the criminal activity. Defendant was arrested in Florida with another of the men involved after their vehicle was stopped by the police. More than \$75,000 was recovered from the vehicle. The three males who were directly involved in breaking into the home and stealing the safe or sharing in the money taken from the safe were convicted following guilty pleas.

II

Defendant first argues that he was denied a fair trial when, in response to defendant's interruption during defense counsel's cross-examination of a prosecution witness,<sup>1</sup> the trial court

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<sup>1</sup> The substance of defendant's interruption is not apparent from the record. It is not identified by the parties and is recorded only as "inaudible" in the trial transcript.

stated, "Quiet, if you want to remain, or we will proceed but you will be sitting in the lock up. Do we understand each other here now?" Because defendant did not object to the trial court's response, this issue is unpreserved and we review it for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

A judge's comments deny a defendant a fair trial when the comments may well have unjustifiably raised the jury's suspicions concerning witness credibility or when partiality quite possibly could have influenced the jury to the defendant's detriment. *People v Conyers*, 194 Mich App 395, 405; 487 NW2d 787 (1992). Defendant asserts that the trial court's comment improperly conveyed to the jury the court's belief that defendant belonged in jail and thereby lessened defendant's credibility in the eyes of the jury before he testified. We disagree. The court's comment was brief and served as a warning that outbursts during trial would not be tolerated. Moreover, the record discloses that the trial court did not single out defendant during trial, but rather consistently interjected when any witness was not cooperative or following instructions. Viewed in context, the trial court's brief comment was not calculated to unduly influence the jury against defendant. We find no plain error.

### III

Next, defendant argues that he is entitled to resentencing because the trial court erroneously scored offense variables 13 and 19 of the sentencing guidelines. We disagree.

A trial court has discretion in determining the number of points to be scored provided there is evidence on the record that adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Thus, this Court reviews a scoring decision to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supports a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). Statutory interpretation of the sentencing guidelines is reviewed de novo. *People v Houston*, 473 Mich 399, 403; 702 NW2d 530 (2005).

### A

Defendant argues that the trial court erroneously scored ten points for OV 13 for criminal activity directly related to an organized criminal group. MCL 777.43(1)(d). We disagree.

OV 13 is scored at ten points if the "offense was part of a pattern of felonious criminal activity directly related to membership in an organized criminal group." MCL 777.43(1)(d). Defendant contends there was no group. What comprises an "organized criminal group" is not specifically defined in the statute, but the Legislature provided some guidance:

The presence or absence of multiple offenders, the age of the offenders, or the degree of sophistication of the organized criminal group is not as important as the fact of the group's existence, which may be reasonably inferred from the facts surrounding the sentencing offense. [MCL 777.43(2)(b).]

The evidence adequately supports the scoring. It was undisputed that defendant and at least three others were involved in various stages of the criminal activity at issue. According to the testimony of Mark Granger, who stole the safe from the home of his former employer, where

Granger had previously lived, defendant agreed to dispose of the safe and was to receive a share of the stolen money. Granger and Joseph Ely broke into the home and stole the safe, which was taken to defendant's business. Evidence established that defendant was thereafter involved with Granger, Ely, and Kyle Reder, defendant's roommate, in concealing the criminal activity and sharing the stolen money. There was adequate evidence to infer the existence of an organized criminal group. Moreover, it is clear that defendant did not act alone, but instead was part of a group that worked together to perpetrate the criminal activity. See *People v Johnson*, 144 Mich App 497, 502; 376 NW2d 122 (1985) (no organized criminal group because defendant acted alone).

B

Defendant also argues that ten points should not have been scored for OV 19 (interference with the administration of justice) because the "undisputed" evidence showed that he went to Florida as part of a pre-planned trip, the purpose of which was to visit a friend and scope out potential new business locations, not to evade the police and avoid prosecution. The only evidence that the trip was pre-planned, however, was defendant's own testimony. Other evidence indicated that defendant left town within a week after coming into contact with the stolen money, that an accomplice told defendant that the police were looking for him near the time he left, that defendant gave the accomplice a bogus destination, and that defendant and another accomplice, who went to Florida with defendant, never registered for hotel rooms in their own names. The evidence supports an inference that defendant left the state to evade the police and avoid prosecution.

In *People v Cook*, 254 Mich App 635, 640-641; 658 NW2d 184 (2003), this Court recognized that conduct involving fleeing the police constitutes interfering with or attempting to interfere with the administration of justice for purposes of OV 19. In *People v Barbee*, 470 Mich 283, 286-287; 681 NW2d 348 (2004), our Supreme Court concluded that the language under OV 19, "interfered with or attempted to interfere with the administration of justice," is a broad phrase that is not limited to acts that constitute the "obstruction of justice." The Court observed that "[t]he investigation of crime is critical to the administration of justice," and held that giving the police a false name constitutes interfering with the administration of justice. *Id.* at 288. Because there was evidence here that defendant attempted to hinder the investigation of the crimes and sought to elude the police by fleeing to Florida, we conclude that ten points were properly scored for OV 19.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Alton T. Davis