

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CHRISTOPHER SCOTT MANIES,

Defendant-Appellant.

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UNPUBLISHED  
September 2, 2008

No. 278520  
Muskegon Circuit Court  
LC No. 07-054421-FH

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for second-degree home invasion, MCL 750.110a(3), and resisting or obstructing a police officer, MCL 750.81d(1).<sup>1</sup> He was sentenced as an habitual offender, second offense, MCL 769.10, to 36 to 270 months' imprisonment for the home invasion conviction and to 21 to 36 months' imprisonment for the resisting or obstructing a police officer conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Officer Lori Sinclair responded to a 911 call by going to an uninhabited cottage where suspicious activity had been reported. When she arrived, a car, later determined to be defendant's, was parked in the driveway, and candlelight emanated from inside the house.

As Officer Sinclair walked around the house, defendant emerged from the back door. With her gun pointed at defendant, the officer ordered him to get down at least three times. Defendant pushed her, reentered the house, and tried to slam the door behind him, but she lodged her foot in the doorway to prevent him from doing so. Defendant then pushed Officer Sinclair, causing her to lose her footing and stumble backwards. Defendant then exited through the back door of the cottage and grabbed the barrel of Officer Sinclair's handgun. However, she maintained control of the gun's handle.

Defendant released the gun, ran about ten feet away from Officer Sinclair, and then turned and faced her. After telling him once more to get down on the ground, Officer Sinclair shot at defendant, who turned and ran toward a neighboring cottage. Minutes later, a different

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<sup>1</sup> Defendant was acquitted of attempting to disarm a police officer, MCL 750.479b(2).

suspect was seen running in the opposite direction. Defendant was arrested the following day without incident.

On appeal, defendant argues that the trial court improperly scored Prior Record Variable (“PRV”) 5, and Offense Variables (“OV”) 14 and 19. A trial court’s scoring of offense variables is reviewed for an abuse of discretion. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003); *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). “Scoring decisions for which there is any evidence in support will be upheld.” *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

First, defendant argues that PRV 5, MCL 777.55, premised in part on defendant’s previous disorderly person by jostling conviction, MCL 750.167(1)(l), was improperly scored at ten points. We disagree.

Jostling is, by definition, a crime against a person. MCL 750.167(1)(l) provides that a person is disorderly if the person “is found jostling or roughly crowding people unnecessarily in a public place.” “Jostle” means “to bump against, push, or elbow roughly or rudely”. *Random House Webster’s College Dictionary* (2000), p 716. Defendant contends that because the jostling victim testified that the touching involved was accidental, this prior conviction does not meet PRV 5’s “offense against a person” requirement. MCL 777.55 (2)(a). However, in addition to the accidental touching referred to by defendant, the jostling incident also included two non-accidental pushes, one of which caused the victim to fall to the ground. The trial court did not abuse its discretion in assessing ten points for PRV 5.

Next, defendant argues that OV 14 was improperly scored at 10 points because the record does not indicate that defendant “was a leader in a multiple offender situation.” MCL 777.44(1)(a). To score OV 14, “the entire criminal transaction should be considered.” MCL 777.44(2)(a). There is evidence to support the conclusion that defendant was a leader in a multiple offender situation. While defendant was the only suspect charged, testimony established that two people ran from the house, and Officer Sinclair saw a person other than defendant inside the house. Defendant engaged the police officer, affording his compatriot an opportunity to escape. Defendant’s vehicle was parked in the house’s driveway at the time of the offense, and was also seen there earlier that day. Defendant’s pay stub, jacket, and marijuana were found inside the house. Defendant had been near the house on several previous occasions because of his friendship with someone who lived on the same street, and therefore knew the area and that the house would be unoccupied. Scoring OV 14 at ten points was not an abuse of discretion.

Finally, defendant argues that OV 19, MCL 777.49b, was improperly scored at 15 points because defendant’s act of touching Officer Sinclair’s weapon was accidental, and, therefore, no force or threat of force can be inferred from this apparent interference with the administration of justice. While defendant was acquitted of attempting to disarm an officer, “scoring of the guidelines need not be consistent with the jury verdict . . . .” *People v Perez*, 255 Mich App 703, 712; 662 NW2d 446 (2003), *aff’d in part and vacated in part on other grounds* 469 Mich 415 (2003). It was within the trial court’s discretion to rely on testimony regarding defendant’s act of actually grabbing the handgun, as testified to by the officer, in sentencing defendant. Furthermore, in addition to the physical force inherent in the handgun incident, the testimony also established that defendant pushed Officer Sinclair twice; one which caused her to stumble

backwards. Defendant also slammed the back door on her foot as he was trying to reenter the cottage. “Conduct that occurs before criminal charges are filed can form the basis for interference . . . with the administration of justice, and OV 19 may be scored for this conduct where applicable.” *People v Barbee*, 470 Mich 283, 288; 681 NW2d 348 (2004). Because there is evidence in the record to support the conclusion that defendant used force in interfering with the administration of justice, we find no abuse of discretion in the trial court’s scoring OV 19 at 15 points.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly