STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 9, 2010
v	No. 288655 Berrien Circuit Court
ARTHUR EARL GRICE, Defendant-Appellant.	LC No. 2008-402613-FH

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant was convicted by a jury of resisting arrest, MCL 750.81d(1). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 46 months to 15 years in prison. This minimum sentence was at the high end of the recommended range under the sentencing guidelines. Defendant appeals as of right, seeking resentencing on the grounds that two guidelines variables were misscored. We affirm.

A state police trooper testified that she and her partner were on patrol during the early morning hours of May 28, 2008, when they observed a car stopped in the middle of the road. Someone stood outside the car for several seconds, then entered it through the rear passenger door. The officer explained that this took place in an area known for prostitution and drug dealing. The officers, in uniform and operating out of a marked police car, affected a traffic stop by activating their vehicle's lights. As the suspect car slowed nearly to a stop, defendant ran from the car. The officer testified that experience led her to be suspicious of such flight, and so she pursued the suspect on foot, loudly commanding him to stop and identifying herself as "state police." The officer stated that she chased defendant through a few lawns and driveways, during which she tripped on some rough pavement and ended up with major scrapes and bruises. The officer nonetheless resumed the chase, continued to issue loud verbal commands, then turned a corner and spotted defendant standing in a dark place. The officer produced her Taser and demanded that defendant show his hands, but defendant kept them in his pockets. Defendant then took two or three steps toward, or "almost charged," the officer, inducing her to deploy her Taser, albeit unsuccessfully. According to the officer, defendant again ran, and jumped a fence, before she and other police officers found him under a bush and took him into custody.

At sentencing, defense counsel suggested that offense variable (OV) 3, which concerns physical injury to the victim, be scored at five points, rather than ten, because the pursuing police officer's injuries did not require medical attention. The trial court agreed. Defense counsel

additionally suggested that OV 19, which concerns interference with the administration of justice, be scored at ten points, rather than 15, because there was no overt aggression against the police. The court disagreed, citing testimony that defendant, having briefly moved in the direction of the pursuing police officer when she found him standing in a dark area, had thus threatened force.

On appeal, defendant argues that his scores for both challenged offense variables should be zero. We conclude that defendant affirmatively waived objections to the scoring of five points for OV 3, thus extinguishing appellate objections, and that the trial court had a reasonable evidentiary basis for retaining the score of 15 points for OV 19.

Again, the trial court initially scored OV 3 at ten points, which MCL 777.33(1)(d) prescribes where a victim suffered bodily injury requiring medical treatment. At sentencing, defense counsel urged upon the court a score of five points, MCL 777.33(1)(e), on the ground that the injuries the pursuing police officer suffered did not rise to that level of seriousness. The court accepted that suggestion and so changed the score to five points. Having successfully urged upon the court the score that resulted, the defense has waived appellate review of that decision, leaving nothing for this Court to review. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000); see also *Vannoy v City of Warren*, 386 Mich 686, 690; 194 NW2d 304 (1972), citing 5 Am Jur 2d, Appeal and Error, §§ 713-722, pp 159-166 (under the doctrine of invited error, a party is foreclosed from raising as error on appeal any action or decision that the party successfully advocated below).

With respect to OV 19, MCL 777.49(b) prescribes 15 points where the offender "used force or the threat of force against another person . . . to interfere with . . . the administration of justice." Defendant argues that no points should be assessed on the ground that merely fleeing from a police officer does not constitute interference with the administration of justice. However, because defendant, at sentencing, requested a reduction in this score to ten, which MCL 777.49(c) prescribes where the offender "otherwise interfered with or attempted to interfere with the administration of justice," not zero, we deem this issue preserved only in connection with the request for a reduction to ten points, and waived in connection with appellate demands for a reduction to zero. In any event, the argument has no merit.

Defendant relies on *People v Gajos (On Reconsideration)*, unpublished opinion per curiam of the Court of Appeals, issued February 3, 2009 (Docket No. 281344), where this Court held that merely fleeing a police officer did not itself constitute interference with the administration of justice. *Id*. at 2. Unpublished opinions of this Court are not precedentially binding under the doctrine of stare decisis. MCR 7.215(C)(1). The instant case is readily distinguishable in any event. In *Gajos*, this Court noted that there was no evidence that the fleeing suspect disobeyed any commands from the police in the course of fleeing. *Gajos*, unpub op at 2. In this case, there was police testimony of several shouted, and disobeyed, commands to stop, and even of resumed flight after a failed effort to use a Taser. As the *Gajos* panel noted, our Supreme Court has stated that, "'[l]aw enforcement officers are an integral component in the administration of justice.'" *Id*. at 1, quoting *People v Barbee*, 470 Mich 283, 288; 618 NW2d 348 (2004). Fleeing a pursuing officer in disobedience to proper commands to stop thus constitutes interference with the administration of justice. Defense counsel at sentencing apparently agreed, having recommended a score of ten points for OV 19.

Defendant argues that he "did not use force or the threat of force" against the pursuing police officer, but as the trial court noted, the officer testified that, when she confronted defendant as he attempted to hide in darkness, defendant, before resuming flight, took steps in her direction, a gesture which she characterized as "almost charged" her. Because of the suspicious circumstances, darkness, and the officer's inability to ascertain whether defendant was armed at that moment, the trial court did not err in concluding that this action on defendant's part justified a score of 15 points for OV 19 for defendant's having threatened force against the officer. See *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002), quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996) (a scoring decision will not be reversed if any evidence exists to support the score).

Affirmed.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello