

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RON ISAAC,

Defendant-Appellant.

UNPUBLISHED

January 28, 1997

No. 183727

Recorder's Court

LC No. 94-03833

Before: Corrigan, P.J., and J.B. Sullivan* and T.G. Hicks,** J.J.

PER CURIAM.

Following a jury trial in Detroit Recorder's Court, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277. He was sentenced to two years, eight months to four years imprisonment. He filed this appeal as of right, and we affirm.

Defendant first argues that the evidence was insufficient to support his felonious assault conviction. We disagree. When reviewing the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

The essential elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Malkowski*, 198 Mich App 610, 614; 499 NW2d 450 (1993). Defendant specifically contends that there was insufficient evidence that he harbored the specific intent to injure complainant. However, complainant testified that defendant "jumped" him as he was leaving a store, that defendant hit him in the head several times with the butt of a gun or a hard object, dragged him into a car, threw

* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

** Circuit judge, sitting on the Court of Appeals by assignment.

him down a flight of stairs, broke his fingers on his right hand, then hit him in the head again. Complainant awoke from the beating to find himself laying near railroad tracks without a coat on a winter morning. Complainant's injuries, including a fractured skull, were consistent with his testimony. We think that a rational trier of fact could have concluded from this evidence that defendant harbored the specific intent to injure complainant.

Next defendant argues that the trial court improperly admitted medical testimony concerning the nature of complainant's injuries. We disagree. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *Id.*

Defendant claims that the medical testimony was irrelevant and more prejudicial than probative. Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403. Prejudice means more than simply damage to the opponent's case. *People v Vasher*, 449 Mich 494, 501; 537 NW2d 168 (1995). A party's case is always damaged by the evidence that the facts are contrary to his contentions, but that cannot be grounds for exclusion. *Id.* What is meant here is an undue tendency to move the tribunal to decide on an improper basis, commonly, though not always, an emotional one. *Id.*

We find that the medical testimony was both relevant and more probative than prejudicial. The testimony described the nature of the injuries sustained by complainant, which included swelling and abrasions on the left side of his face, fractured bones around the eye socket, fractured nasal bones, fractured skull bones, cracked ribs, and swelling of the right hand to the extent that complainant's ring had to be cut off. This testimony was relevant because it corroborated complainant's version of the offense that he was hit in the head several times with the butt of a gun, thrown down a flight of stairs, and had his hand broken. We do not think that the potential prejudicial effect of the testimony outweighed its probative value because the testimony was not gruesome or graphic, and it substantiated testimony already given by complainant. The trial court did not abuse its discretion in admitting the evidence.

Defendant also complains that the trial court did not articulate on the record its reasons for imposing defendant's sentence. We disagree. To facilitate appellate review, the sentencing court must articulate on the record the criteria considered and the reasons for the sentence imposed. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). A sentencing judge's reference only to the sentencing guidelines when giving reasons for the sentence imposed is a sufficient explanation when the guidelines recommendation is followed. *People v Broden*, 428 Mich 343, 355; 408 NW2d 789 (1987). Our review of the sentencing transcript reveals that the trial court did refer to the sentencing guidelines on the record and that defendant's sentence was within the guidelines' recommended range.

The trial court also indicated that it believed that defendant inflicted serious injury upon complainant for the purpose of revenge. We find that the trial court sufficiently articulated its reasons for sentencing defendant at the high end of the guidelines.

Finally, defendant claims that the trial court erred in scoring fifteen points each for OV 1 and OV 5. A trial court's scoring of a sentencing guidelines range will be upheld if there is evidence to support the score. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993). The Michigan Sentencing Guidelines, Second Edition, indicate that OV 1 should be scored fifteen points where a firearm is pointed toward the victim or a touching occurs with another weapon. The Guidelines also provide that fifteen points should be scored for OV 5 if the victim was moved to another place of greater danger, or was held captive significantly beyond that which was necessary to commit the offense. Complainant testified that defendant hit him in the head several times with either the butt of a gun or a very hard object. The object was hard enough to fracture complainant's skull. Complainant also was taken from the drug store, where he initially was assaulted, to the basement of a residence, where he was tied to a chair, beaten, and his hand was broken by defendant and at least one other man. There is support on the record which justifies the trial court's decision to score fifteen points for both OV 1 and OV 5. Accordingly we uphold the trial court's scoring decision.

Affirmed.

/s/ Maura D. Corrigan

/s/ Joseph B. Sullivan

/s/ Timothy G. Hicks