

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

MIKE ALEXANDER SUTTON,

Defendant-Appellant.

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UNPUBLISHED

December 14, 2001

No. 225189

Ionia Circuit Court

LC No. 99-011525-FH

Before: Wilder, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of being a prisoner in possession of a weapon, MCL 800.283(4). The trial court sentenced defendant to a term of three to five years' imprisonment. We affirm.

Defendant first argues that the trial court erroneously denied his motion for an adjournment because the court failed to make reasonable inquiries into defendant's reasons for requesting the adjournment and because the court articulated no reasons for denying his request. We disagree.

The decision to grant an adjournment is within the trial court's discretion and is reviewed on appeal for an abuse of that discretion. *People v Echavarría*, 233 Mich App 356, 368; 592 NW2d 737 (1999). To establish error warranting reversal, defendant must demonstrate prejudice resulting from the court's abuse of discretion. *People v Pena*, 224 Mich App 650, 661; 569 NW2d 871 (1997), modified 457 Mich 885 (1998). The following considerations should guide the exercise of the trial court's discretion when faced with a request for an adjournment in a criminal case: "(1) the origin and the nature of the right asserted, (2) the defendant's reasons for asserting the right, (3) the defendant's negligence or untimely assertion of that right, and (4) the extent to which previous delays or disruptions are attributable to the defendant." *People v Hollerman*, 138 Mich App 108, 112; 358 NW2d 897 (1984), quoting *People v Eddington*, 77 Mich App 177, 186; 258 NW2d 183 (1977). This Court's inquiry regarding the continuance is properly grounded in the circumstances of the case and the reasons presented to the trial judge at the time the request was denied. *Hollerman*, *supra* at 112, citing *People v Williams*, 386 Mich 565, 575; 194 NW2d 337 (1972).

In the case at bar, defendant sent a letter to the court requesting to proceed in propria persona and requesting an adjournment to allow additional time to prepare. During the

subsequent *Anderson*<sup>1</sup> inquiry, before the start of trial, defendant conceded that there had been no breakdown in the attorney-client relationship and conceded that he had discussed the possible defenses and mitigating circumstances with counsel. Because matters of trial strategy and mitigating circumstances were previously discussed, and witnesses were subpoenaed, we conclude that defendant lacked a valid reason for an adjournment. The *Anderson* inquiry elicited testimony sufficient to support the court's conclusion that defendant was fully prepared for trial, all *res gestae* witnesses were either available or summoned, and the request for an adjournment was untimely. *Hollerman, supra* at 112. Furthermore, defendant was afforded the opportunity of having counsel assist at trial, and the record indicates that a vigorous defense was mounted. Accordingly, defendant has failed to meet his burden of demonstrating prejudice.

Defendant next challenges the trial court's decision to admit evidence regarding: (1) the injuries inflicted on the other prisoner during the fight, and (2) the prisoner's bloody shirt, arguing that this evidence was irrelevant and unduly prejudicial. We disagree.

The decision to admit evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *People v Lerversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). MRE 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). All relevant evidence is admissible, and irrelevant evidence is not. MRE 402; *People v Starr*, 457 Mich 490, 497; 577 NW2d 673 (1998). "Under this broad definition, evidence is admissible if it is helpful in throwing light on any material point." *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001).

To secure a conviction, the prosecutor must prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The relationships of the elements of the charge, the theories of admissibility, and the defenses asserted govern relevance and materiality. *People v Brooks*, 453 Mich 511, 517-518; 557 NW2d 106 (1996). It is well settled that circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime, *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), and reasonable inferences may be drawn from established facts. *People v Wilson*, 107 Mich App 470, 474; 309 Mich 584 (1981).

The uncontroverted evidence established that defendant and a fellow prisoner were the only two persons fighting in the prison bathroom. Evidence indicating that the other prisoner was wounded by a weapon was material because it allowed the factfinder to reasonably conclude that defendant was in possession of a weapon – the crux of the crime. This inference was warranted by the circumstances and supported the prosecutor's attempt to establish proof beyond a reasonable doubt that defendant possessed a weapon. The evidence concerned a material point and, thus, was admissible as relevant. *Aldrich, supra* at 113.

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<sup>1</sup> *People v Anderson*, 398 Mich 361, 367; 247 NW2d 857 (1976).

Although relevant, evidence may still be excluded under MRE 403. “Relevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter under Rule 403.” *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995), quoting *United States v McRae*, 593 F2d 700, 707 (CA 5, 1979). Unfair prejudice exists where there is a tendency that the evidence will be given undue or preemptive weight by the jury or when it would be inequitable to allow use of the evidence. *Mills, supra* at 75-76. The prejudicial effect of evidence is best determined by the trial court’s contemporaneous assessment of the presentation, credibility and effect of the testimony. *People v Bahoda*, 448 Mich 261, 291; 531 NW2d 659 (1995).

Gruesome evidence of a victim’s bloody jacket has been held to be properly admitted into evidence as relevant to show the location of the wounds, premeditation and deliberation, and to negate the defendant’s assertion of self-defense. *People v Daniels*, 192 Mich App 658, 673; 482 NW2d 176 (1992). Here, in overruling defendant’s objection, the trial court implicitly found that any unfair prejudice failed to substantially outweigh relevance and this Court will defer to its contemporaneous assessment. *Bahoda, supra* at 291.

Defendant also challenges the trial court’s scoring of OV 1 and OV 3 arguing that the court erred in considering a victim when scoring OV 1 (aggravated use of a weapon) and OV 3 (physical injury to the victim) because the charged offense – prisoner in possession of a weapon – is a victimless crime. Thus, defendant argues that increasing his scoring for these variables resulted in punishment for a crime of which he was not convicted. We disagree.

We review sentencing guidelines scoring errors for an abuse of discretion, and we will uphold the trial court’s decision provided there is evidence on the record that adequately supports a particular score. *People v Cain*, 238 Mich App 95, 129-130; 605 NW2d 28 (1999). A sentencing court may use a broad range of information when weighing the sentencing factors, including the facts underlying uncharged offenses. *People v Ewing (After Remand)*, 435 Mich 443, 446 (Brickley J.), 473 (Boyle J.); 458 NW2d 880 (1990); *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). It may also consider “all record evidence before it when calculating the guidelines, including, but not limited to, the contents of a presentence investigation report, admissions made by a defendant during a plea proceeding, or testimony taken at a preliminary examination or trial.” *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993). The trial court is usually allowed considerable discretion to allocate points to individual offense variables, where there is record evidence to adequately support a particular score. *People v Williams*, 191 Mich App 269, 276; 477 NW2d 877 (1991).

Here, there was no abuse of discretion. The context of the charged offense supports consideration of the uncharged offenses in determining defendant’s sentence. The evidence established that defendant was found in possession of a weapon following a fight for which the victim had to seek medical treatment. Defendant was afforded the opportunity in adversarial

proceedings to refute the veracity of this uncharged assault and declined to do so. Accordingly, resentencing is not warranted.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Richard Allen Griffin  
/s/ Michael R. Smolenski