

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CARL DIXON,

Defendant-Appellant.

---

UNPUBLISHED

May 17, 2002

No. 228760

Saginaw Circuit Court

LC No. 99-018059-FH

Before: Saad, P.J., and Owens and Cooper, JJ.

PER CURIAM.

Defendant Carl Dixon appeals as of right his jury trial conviction of assault and infliction of serious injury (aggravated assault), MCL 750.81a, carrying a dangerous weapon with unlawful intent, MCL 750.226, and prisoner possessing a weapon, MCL 800.283(4). Defendant was sentenced to twelve months' imprisonment for aggravated assault, twenty-four to sixty months' imprisonment for carrying a dangerous weapon with unlawful intent, and twenty-four to sixty-months' imprisonment for prisoner possessing a weapon. These sentences are to be served concurrently, but are consecutive to the sentence defendant is currently serving. We affirm.

Defendant argues that the trial court abused its discretion by denying his motion for new trial. Specifically, defendant claims that a new trial was warranted based on newly discovered photographs of his hands. We disagree. "This Court reviews a trial court's postconviction ruling granting or denying a new trial based on newly discovered evidence for an abuse of discretion." *People v Lester*, 232 Mich App 262, 271; 591 NW2d 267 (1998). An abuse of discretion exists if an unprejudiced person could find no justification for the trial court's decision. *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001).

A motion for new trial based on newly discovered evidence may be granted if the defendant proves that the evidence (1) is newly discovered, (2) is not merely cumulative, (3) is likely to render a different result at a retrial, and (4) could not have been discovered and produced at trial despite reasonable diligence. *Lester, supra* at 271.

Defendant claims that the newly discovered photographs show that his hands were injured and support the theory that he was using his fists, and not a weapon, during the fight. However, even if defendant could prove that the photographs were relevant to his convictions, he failed to prove that they were newly discovered. Evidence is not considered newly discovered if either defendant or his attorney knew about it at the time of trial. *People v LoPresto*, 9 Mich

App 318, 324-325; 156 NW2d 586 (1967). According to defendant in this case, “[he] knew these photographs had existed, but at the time of trial [he] could not prove they existed during trial because [he] did not know the officer’s name or clock number who had taken these photographs.” If defendant had informed his attorney of these photographs during trial, it is likely that reasonable diligence could have procured them.

Moreover, defendant’s conviction for aggravated assault does not require the use of a weapon. MCL 750.81a(1). Likewise, defendant’s other offenses only require possession and not the actual use of a weapon. MCL 750.226; MCL 800.283(4). Because the photographs of defendant’s hands would not have provided new evidence regarding his possession or intended use of a weapon, defendant has failed to demonstrate that a new trial would produce different results.

According to MCR 6.431(B), a trial court is required to state its rationale for denying a new trial on the record. In this case, the trial court denied defendant’s motion for new trial without specifying its reasons. However, because the photographs clearly failed to meet the standards meriting a new trial, defendant has not shown that a miscarriage of justice resulted from the trial court’s actions. MCL 769.26.

Defendant next contends that the trial court abused its discretion by admitting photographs of the victim taken after the assault. We disagree. We review a trial court’s decision to admit photographs into evidence for an abuse of discretion. *People v Ho*, 231 Mich App 178, 187; 585 NW2d 357 (1998).

Relevant evidence is any “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; see also *People v Starr*, 457 Mich 490, 497-498; 577 NW2d 673 (1998). All relevant evidence is generally admissible unless its probative value is substantially outweighed by its prejudicial effect. MRE 402; MRE 403; *Starr, supra* at 497. Even gruesome photographs may be admissible if they are necessary to convey the extent and nature of a victim’s injuries. *People v Mills*, 450 Mich 61, 77, 79; 537 NW2d 909, mod 450 Mich 1212 (1995); see also *Ho, supra* at 188.

In this case, the photographs of the victim depicted a laceration on his head and blood on his head and shirt. Defendant does not contend that the photographs inaccurately represented the victim’s injuries. Rather, he claims that the testimony of the doctor and nurse regarding the extent of the victim’s injuries was sufficient and that the photographs were merely admitted to inflame the jury. However, “[p]hotographs are not excludable simply because a witness can orally testify about the information contained in the photographs. *Mills, supra* at 76. The photographs in this case revealed the extent of the victim’s injuries which was relevant to defendant’s intent and whether a weapon was used. See *People v Herndon*, 246 Mich App 371,

413-414; 633 NW2d 376 (2001). Thus, the trial court did not abuse its discretion by admitting photographs of the victim that were taken after the assault.

We affirm.

/s/ Henry William Saad

/s/ Donald S. Owens

/s/ Jessica R. Cooper