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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07-CF-3790
)	
AMITTIE BROWN,)	Honorable
)	Theodore S. Patkonjak,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by admitting photographs of the victim's autopsy; we affirm.

¶ 2 In the direct appeal of his first-degree murder conviction, defendant, Amittie Brown, raises one issue: whether the trial court abused its discretion in admitting certain autopsy photographs into evidence. We hold that the trial court did not abuse its discretion and thus, affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 On October 24, 2007, defendant was charged by indictment with 15 alternative counts of first-degree murder, arising out of the death of Joseph Burrell. The victim was struck about the

head and body, kicked, and dragged to a field, where he remained outside for approximately 10 hours before he was found and taken to a hospital. The victim died approximately nine days later.

¶ 5 On the evening of September 29, 2007, a number of people were playing cards and drinking at a house located at 2414 King Drive, North Chicago. Michael Vargas lived at the house with defendant and defendant's girlfriend, Alexandra Williams. Vargas was smoking crack cocaine with Michelle Clark and others. Around 8 or 9 p.m., the victim came to the back door and walked into the kitchen. He and defendant got into an argument about money. Defendant told the victim to leave, but the victim would not go. Defendant went upstairs and returned with a gun, and, according to Vargas, struck the victim on the head two or three times. Defendant then punched the victim in the stomach, and he fell to the floor and vomited. The victim vomited again on the back porch.

¶ 6 Walter Barnett, a North Chicago patrolman, responded to a call on the morning of September 30 regarding a man found in a field east of 2414 King Drive. When he arrived, he saw a large, black man, later identified as the victim. The victim had a pulse and was breathing.

¶ 7 Marc Dahman, a trauma/critical care physician at Lutheran General Hospital, attended to the victim. He described the various abrasions and contusions on the victim's head and body, and identified a diagram and a number of photographs depicting how the victim, unconscious at the time, appeared. During his stay in the hospital, the victim's kidneys and other internal organs began to fail due to the degree of his head injury, exposure to the elements, and development of pneumonia. Barnett diagnosed the victim as having severe blunt head trauma, multiple rib fractures, and an underlying pulmonary contusion. Blood tests showed opiates, cocaine, and benzodiazepines in the victim's system. The victim had a medical history of obesity, diabetes,

hypertension, and a previous stroke. He was taking a number of medications. The victim died in the hospital on October 8, 2007.

¶ 8 Prior to trial, defendant filed a motion *in limine* to exclude autopsy photographs, arguing that they were extremely graphic, unfairly prejudicial, and not pertinent to the issues. The court conducted a hearing and examined each photograph, finding several of them too gruesome or cumulative. Exhibits 61 and 64 depict close-ups of the ribs and the fractures the victim suffered, but the entire cavity is held open. The court found that these exhibits gave a clearer picture of the broken ribs and did not have the shock value of some of the other pictures. Exhibit 69 depicts the removed “calvarium of the brain,” or skullcap. It shows the injury to the brain. The court found that this was extremely probative because it showed the type of force that had to be used and the damage that it caused to the victim. Exhibit 70 is a photograph of the brain with the skin peeled away. It also depicts the injury to the brain. The court found this was more probative than prejudicial.

¶ 9 Dr. Joseph Cogan, a forensic pathologist, performed the autopsy. During his testimony at trial, Cogan referred to four, 8½-by-11-inch color photographs taken during the autopsy. These photographs, which are exhibits 61, 64, 69, and 70, were admitted over defendant’s objection. Cogan used the photographs to describe his procedure in conducting an internal exam as part of the autopsy. He testified about the incisions of the skull and torso, opening of the chest cavities, and removal of internal organs. (Four photograph copies of the exhibits which contained the pathologist’s notions were also admitted.)

¶ 10 Cogan described the victim as 6’5” and about 330 pounds. He found external bruises on the right side of the victim’s forehead and upper right arm, abrasions on his front left chest, knees, hands, one wrist, and left eye.

¶ 11 In detail, Cogan explained the nature and extent of the victim's injuries, including the amount of force used to inflict the injuries. He opined that the most serious injury was a "fairly significant" subdural hemorrhage to the brain, with bleeding on both sides of the brain. The victim's skull was very thick and there was no evidence of a fracture. He described bleeding on both sides of the brain. However, Cogan did not think the hemorrhage was caused by a fist. Rather, he believed that a foot covered by a shoe could have caused the injury. There were nine rib fractures caused by "very severe" trauma, which probably led to pneumonia. In Cogan's opinion, death was caused by multiple blunt force injuries as a consequence of an assault.

¶ 12 Before speaking with defendant at the police station on September 30, Cesar Flores, a North Chicago police officer, spoke with witnesses Williams and Clark. Clark was the person who implicated defendant. The police gave defendant a *Miranda* warning, and he first denied that he knew what had happened to the victim. Eventually, defendant admitted hitting the victim over the head three times, punching him in the rib cage twice, and kicking him once. He stated that he did this because the victim owed him \$35 or \$45 from a previous purchase of cocaine. The victim had come to the house that night to obtain more cocaine but, when he said he would not pay what he owed for the last purchase, defendant got the key to a padlock, opened his bedroom, retrieved a BB gun, returned downstairs, and hit the victim three times with the gun. Defendant did not know how the victim got to the location where he was found. Defendant stated that he was going to hit the victim with a cement block but Williams stopped him. The interrogation was videoed and a DVD of the interrogation was played to the jury.

¶ 13 The jury returned verdicts of guilty of first-degree murder, and special verdicts finding the victim to have been 60 years of age or over, and that the conduct was exceptionally brutal

and heinous indicative of wanton cruelty. Defendant was subsequently sentenced to 55 years' imprisonment.

¶ 14

II. ANALYSIS

¶ 15 Defendant's sole contention on appeal is that the trial court abused its discretion in admitting certain prejudicial autopsy photographs. Specifically, defendant cites to exhibits, numbers 61, 64, 69, and 70, and the four photograph copies of the exhibits which contained the pathologist's notions, asserting that they were extremely graphic, calculated to arouse horror, inflame passions, and not pertinent to the issues. Defendant argues that any probative value accompanying the admission of these extraordinarily gruesome photographs of the victim's body during his autopsy was far outweighed by the harm it caused to defendant's basic right to a fair trial without passion or prejudice. See *People v. Blue*, 189 Ill. 2d 99, 138 (2000).

¶ 16 The decision whether to admit into evidence photographs of the victim is at the discretion of the trial court. The trial court's determination will not be disturbed absent an abuse of discretion. *People v. Bounds*, 171 Ill. 2d 1, 47 (1995); *People v. Zoph*, 381 Ill. App. 3d 435, 459-60 (2008). An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would agree with the trial court's decision. *People v. Becker*, 239 Ill. 2d 215, 234 (2010).

¶ 17 Photographic evidence may be admitted and shown to the jury when it "is relevant to establish some material fact." *People v. Garlick*, 46 Ill. App. 3d 216, 224 (1977). Autopsy photographs may be relevant to proving a number of issues, such as "the nature and extent of the injuries and the force needed to inflict them; the position, condition, and location of the body; the manner and cause of death; to corroborate a defendant's confession; and to aid in understanding the testimony of a pathologist or other witness." *People v. Henderson*, 142 Ill. 2d 258, 319

(1990). Nevertheless, relevant photographs must be excluded in cases in which “their nature is so prejudicial and so likely to inflame the jurors’ passions that their probativeness is outweighed.” *Id.* at 319-20. When photographs “depict grisly details without shedding light on a disputed issue,” the photographs are generally inadmissible. *People v. Batchelor*, 202 Ill. App. 3d 316, 330 (1990).

¶ 18 Defendant argues that the cause of death was not at issue and that the defense did not dispute that the victim died from the beating inflicted upon him on the night in question. Rather, the defense to the jury was that defendant did not harm the victim; another person, who was at the house that night, was responsible. Accordingly, defendant maintains that the disputed photographs were not relevant to his defense.

¶ 19 The State is not prevented at trial from proving every element of the charged offense and every relevant fact, even though the defendant fails to contest an issue or is willing to stipulate to a fact. *Bounds*, 171 Ill. 2d at 46. The State is required to prove each element beyond a reasonable doubt, whether or not a defendant contests them. See *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). In the case at bar, the State was required to prove that defendant performed acts that caused the death of the victim and that defendant knew the acts would cause death or a strong probability of death or bodily harm. The State also charged that defendant’s actions were exceptionally brutal or heinous, indicative of wanton cruelty.

¶ 20 Dr. Cogan, the forensic pathologist who performed the autopsy on the victim, testified that the cause of death was multiple blunt force injuries or multiple traumas as a consequence of an assault. Cogan testified that exhibits 69 and 70 showed hemorrhages in the scalp itself and subdural hemorrhages. The victim had bleeding on both sides of his brain. Cogan described the brain injuries as “very severe.” The injuries indicated blunt force trauma to the right side of the

head. Cogan testified that exhibits 61 and 64 showed multiple rib fractures and hemorrhaging associated with the rib fractures. Cogan noted that these types of rib fractures might be seen in traffic collisions and represent very severe trauma. The multiple rib fractures were the probable cause of the victim's severe pneumonia.

¶ 21 In *Bounds*, the supreme court held that the photographs challenged by the defendant provided evidence of the victim's injuries and of the manner and cause of her death. *Bounds*, 171 Ill. 2d at 47. The photographs depicted the injuries to the victim's neck and head and also the injuries to her extremities. *Id.* The photographs also corroborated certain details related by the defendant in his confession. *Id.* Moreover, the photographs assisted the jury in understanding the medical examiner's testimony about the autopsy. *Id.* Similar to *Bounds*, the photographs in the present case showed the cause and manner of the victim's death and assisted the jury in understanding the forensic pathologist's testimony. Also, the nature of the victim's injuries corroborated defendant's confession, wherein he admitted where and how many times he struck the victim.

¶ 22 In *Zoph*, the trial court found that, although the photographs were "graphic," they were necessary to assist the jury in understanding the testimony of the pathologist who conducted the autopsy and to demonstrate the extreme force used to attack the victim. *Zoph*, 381 Ill. App. 3d at 461. On appeal, we rejected the defendant's argument that the admission of the photographs was so shocking that the mere sight of them would unfairly prejudice the jury and prevent it from "dispassionately" evaluating whether the offense was committed in an exceptionally brutal or heinous manner indicative of wanton cruelty, or that the pictures would foreclose any other possible result. *Id.* at 460. We found the trial court had carefully considered the photographs and had not abused its discretion in admitting the photographs. *Id.* at 460-61.

¶ 23 Here, the trial court conducted a hearing on defendant's motion *in limine* to exclude the autopsy photographs. The trial court excluded some as repetitive and some as particularly gruesome. The trial court gave its reasons for allowing these four photographs into evidence, which were not unreasonable. As in *Zoph*, the photographs in this case were necessary for the jury to understand the testimony of the forensic pathologist and for the jury to decide whether or not the death resulted from exceptionally brutal or heinous behavior, indicative of wanton cruelty. Accordingly, we find that the trial court did not abuse its discretion in determining that the autopsy photographs would aid the jury in understanding the pathologist's testimony and in determining whether the victim's injuries were inflicted in an exceptionally brutal or heinous manner indicative of wanton cruelty, as alleged by the State.

¶ 24 Defendant's reliance on *Garlick* and *People v. Coleman*, 116 Ill. App. 3d 28 (1983), is inapposite. In neither opinion were the photographs probative of any material issue to warrant admission. In *Garlick*, the court observed that the photograph that was admitted could serve no purpose other than to inflame and prejudice the jury in the grossest manner. Due to the defendant's admission of the offense and his defense of insanity, the court found that the photograph admitted was not probative of any material issue in the case. Moreover, there was no issue of the cause of death or the identity of the victim which would warrant the introduction of the gruesome photograph. *Garlick*, 46 Ill. App. 3d at 224.

¶ 25 In *Coleman*, the jury was shown a color slide of the victim's "decomposing, maggot-infested, partially autopsied body, which depicted the brain exposed and laying next to the head." *Coleman*, 116 Ill. App. 3d at 35. The State claimed that the slide was probative of the victim's identity and cause of death. The court found that there was no probative value to the slide whatsoever. The State's pathologist testified that the slide was of no use to him in establishing

the identity of the decedent. Even absent this admission, there was extremely little probative value of a photograph of an autopsied, decomposed body to establish the identity of the decedent. Moreover, the court noted that the cause of death was not at issue, and even if it were, the rag which caused the suffocation already had been removed from the cadaver's mouth. *Id.* at 36. Here, as stated, the photographs were relevant on the issues of cause and manner of death, and to corroborate defendant's confession.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we affirm defendant's murder conviction.

¶ 28 Affirmed.