

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR12-804

IKE SHAWNDALE NUNN		Opinion Delivered May 1, 2013
	APPELLANT	APPEAL FROM THE JACKSON COUNTY CIRCUIT COURT [NO. CR-2011-124]
V.		
STATE OF ARKANSAS		HONORABLE HAROLD S. ERWIN, JUDGE
	APPELLEE	AFFIRMED

BRANDON J. HARRISON, Judge

A jury convicted Ike Shawndale Nunn of purposely killing his stepfather, Cecil Phillips, with a baseball bat. The circuit court sentenced Nunn to serve forty years in the Arkansas Department of Correction for committing the crime. Nunn's only issue on appeal is that the court mistakenly admitted some "overly gruesome autopsy photographs" as evidence. We disagree; the court did not abuse its discretion in allowing the jury to see three photographs that showed the deadly head trauma that Nunn inflicted on another human being.

The State filed an information in December 2011, charging Nunn with one count of first-degree murder. The case was set for a jury trial. Before the trial, Nunn moved in

limine to exclude, among other things, photographs of the victim that were taken at the crime scene and photographs showing “gruesome displays of the deceased body.”

On the morning of the first day of trial, the circuit court heard Nunn’s motion to exclude three autopsy photographs that the State intended to proffer as evidence. Nunn argued that the three photos were “more prejudicial than probative and overly gruesome.” The State replied that the photos depicted Phillips during the autopsy and that they were needed to show the victim’s injuries, which included a “skull fracture where the skull was completely caved in with a baseball bat.” Nunn stood on his prior objection and argument against the photos’ admissibility. The court overruled the objection and admitted the three autopsy photos, State Exhibit Nos. 54–56. The case was then tried to verdict.

During the trial, the State argued that Nunn had purposely killed Phillips with a baseball bat. The killing occurred at Phillips’s trailer near Tuckerman, Arkansas. A blood-stained bat was admitted into evidence. The State also showed the jury photos depicting a bloody crime scene. Three photos revealed parts of Phillips’s dead body sticking out from under the covers of his bed. The State also showed the jury one photo (State Exhibit No. 11) of Phillips’s half-naked body while it lay in his own bed, with the covers pulled back. Nunn stipulated to the admission of these photos and all the other ones that the court received as evidence, minus the autopsy photos that spawned this appeal.

The State proffered the contested autopsy photos before the State’s forensic expert, Dr. Adam Craig, testified. Nunn objected again, and the court overruled the objection. Dr. Craig then explained to the jury that a laceration to the head is usually caused by a

blunt object hitting a person's skull. Dr. Craig first used a paper anatomical chart (State's Exhibit No. 52) to show the jury where Phillips's head had been lacerated with a bat, according to the State's theory of the case. Next, over Nunn's objection, Dr. Craig used the three autopsy photos to show what happened to Phillips's skull when Nunn hit it with a bat. State's Exhibit No. 54 was taken with a view from above Phillips's head, looking down, and it showed two lacerations about four centimeters each located on Phillips's forehead and eyebrow region. The second photo (State's Exhibit No. 55) showed a one-half centimeter laceration on the left side of Phillips's scalp. Before showing State's Exhibit No. 56, Dr. Craig told the jury that the photo was taken after Phillips's skull cap had been removed. He also explained the process of revealing the bare skull. Dr. Craig told the jury that the photo showed that part of Phillips's skull was fractured and had been pushed into his brain. Brain tissue was also displaced. Dr. Craig also said that at least one blow to Phillips's head caused the fatal skull fracture and that other hits may have caused fatal bleeding. He concluded that Cecil Phillips died from multiple blunt-force injuries to the head that were consistent with receiving blows from a baseball bat.

We review evidentiary issues in a criminal case under the abuse-of-discretion standard. *Sauerwin v. State*, 363 Ark. 324, 327, 214 S.W.3d 266, 269 (2005). We will not reverse a circuit court's ruling on the admissibility of evidence unless the challenging party persuades us that the court acted improvidently, thoughtlessly, or without due consideration. *Id.* Prejudice must also be shown. *Anderson v. State*, 354 Ark. 102, 109, 118 S.W.3d 574, 578 (2003).

Our supreme court has held that a court's admission of a gruesome photograph is not an abuse of discretion if the photograph informs the jury on some issue, proves a necessary element of the case, enables a witness to testify more effectively, corroborates testimony, or enables jurors to better understand testimony. *Miller v. State*, 2010 Ark. 1, at 22, 362 S.W.3d 264, 279. Photographs may generally be admitted as evidence if they show the condition of the victim's body, the probable type or location of the injuries, the position in which the body was discovered, or some combination of the three. *Id.* A circuit court must also, of course, consider whether the photograph creates a danger of unfair prejudice that substantially outweighs its probative value. *Id.*; Ark. R. Evid. 403(b) (2012).

Nunn is exactly right in one respect: the autopsy photos are graphic, particularly State's Exhibit No. 56. A violent blunt-force killing begets a grisly crime scene. But Nunn may not shield from the jury's eyes official photos that depict the deadly injury he was charged with causing, unless the circuit court has abused its discretion and prejudiced Nunn's case by admitting them. *Perry v. State*, 277 Ark. 357, 362–63, 642 S.W.2d 865, 868 (1982).

The circuit court held a pretrial hearing, reviewed the autopsy photos, and asked about the total number of photos the State wanted to put into evidence. The court also asked about other potential evidence that the State wanted the jury to consider. And it questioned the State on whether the photos showed the victim's injury and why one photo showed Phillips's head after being altered by the autopsy. The State explained that

if the skin was not separated from the skull then the jury would not see the full extent of Phillips's fatal injuries.

We start with the number of the contested photographs because Nunn makes a cumulative-evidence argument under Rule 403. The court only admitted three photos, a reasonable number in the circumstances. *Cf. Marcyniuk v. State*, 2010 Ark. 257, at 12, 373 S.W.3d 243, 253 (admitting seventeen “ghoulish” and “gruesome” photos of the victim at the crime scene and during autopsy was not too many).

Did the autopsy photos prove a necessary element of the case, enable a witness to testify more effectively, corroborate testimony, or enable jurors to better understand testimony? The circuit court thought so, and its conclusion was reasonable. *Miller*, 2010 Ark. 1, at 22, 362 S.W.3d 243, 279. The autopsy photos depict a fatal head injury that the defendant himself was charged with committing. Nunn was not unduly prejudiced by the jury seeing for themselves the natural consequence of his conduct.

We hold that the court did not commit any prejudicial error by allowing the jury to consider the autopsy photographs. The circuit court informed itself about the evidentiary issues and then admitted the three challenged photographs, all of which aided the State's theory of the case and enabled the jury to better understand Dr. Craig's forensic testimony.

Affirmed.

GRUBER and BROWN, JJ., agree.

C. Scott Nance, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.