

SUPREME COURT OF ARKANSAS

No. CR10-1052

DERRICK ROBERTSON
APPELLANT

VS.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 5, 2011

APPEAL FROM THE LITTLE RIVER
COUNTY CIRCUIT COURT,
NO. CR 2008-48-1
HON. TOM COOPER, JUDGE

AFFIRMED.

COURTNEY HUDSON HENRY, Associate Justice

Appellant Derrick Robertson appeals a verdict from a Little River County jury finding him guilty of first-degree murder and sentencing him to a term of life imprisonment in the Arkansas Department of Correction. For reversal, appellant argues that the circuit court erred in admitting multiple photographs taken at the scene of the crime. We have jurisdiction pursuant to Arkansas Supreme Court Rule 1-2(a)(2) (2010), because the jury imposed a life sentence. We affirm.

Because appellant does not challenge the sufficiency of the evidence, we provide a brief recitation of the facts. Investigator Doyle Crouch, a detective with the Ashdown Police Department, testified that he received a dispatch on August 1, 2008, advising that a victim had been shot at the corner of South Park and Cowling streets. When the officer arrived at the scene, he checked for vital signs, secured the area, checked for weapons, and directed another officer to take photographs of the victim, who was later identified as Patricia Norwood.

The State filed a felony information charging appellant with first-degree murder. On October 27, 2008, the circuit court held a pretrial hearing during which appellant objected to the admission of certain photographs of the victim and the crime scene. Appellant argued that some photographs were cumulative and asserted that others were inflammatory. Many of these photographs included close-up images of the victim. The court asked how many times the victim was shot, and the prosecutor responded that “eight or nine [shots]” hit the victim with seven shots to the head. The circuit court sustained appellant’s objections to several photographs but permitted the introduction of others over appellant’s objections.

At trial, Investigator Crouch testified that he directed a fellow officer to take the photographs at the scene. According to Crouch, Exhibit 2 depicted a view of the victim lying near the roadway. Crouch described Exhibit 3 as a photograph of the victim lying on her right side with her left hand to her mouth as if she were in pain or shock. Crouch stated that Exhibit 7 showed the victim’s shoulder area and a bullet fragment before pulling back her shirt to reveal a wound to her shoulder. He also noted that Exhibit 8 showed a bullet fragment under the right eye of the victim. Crouch testified that Exhibits 9 and 10 depicted different views of the victim’s cell phone. Crouch described Exhibit 14 as a close-up photograph of the side of the victim’s face, while Exhibit 15 depicted an apparent bullet wound to the back of the head behind her left ear. Finally, Crouch testified that Exhibit 18 illustrated the victim’s face after the officers turned her over. The State moved to introduce

Exhibits 1 through 16 and Exhibit 18, and appellant renewed his objections. The circuit court overruled appellant's objections and permitted these photographs to be introduced into evidence.

The jury heard from other witnesses, including Dr. Stephen Erickson, Deputy Chief Medical Examiner at the Arkansas State Crime Laboratory. Erickson testified that he performed an autopsy on the victim and found nine gunshot wounds. According to Erickson, seven of the victim's gunshot wounds penetrated her head or neck. Additionally, appellant testified that the victim came toward him carrying "something in her hand," and that she "wasn't coming to play." After hearing the evidence, the jury found appellant guilty of first-degree murder and sentenced him to life imprisonment. On June 17, 2010, the circuit court entered a judgment and commitment order reflecting the jury's conviction and sentence, and appellant timely filed his notice of appeal.

For the sole point on appeal, appellant argues that the circuit court erred in admitting multiple crime-scene photographs of the victim. Appellant contends that he conceded during his opening statement that he shot the victim multiple times and that any photographs of the victim were cumulative, irrelevant, or inflammatory to the jury in light of his justification defense. In response, the State asserts that the circuit court did not abuse its discretion in admitting the photographs and, alternatively, that appellant did not show prejudice from the admission of these photos.

We have held that the admission of photographs is a matter left to the sound discretion of the trial court, and we will not reverse absent an abuse of that discretion. *Springs v. State*,

Cite as 2011 Ark. 196

368 Ark. 256, 244 S.W.3d 683 (2006). When photographs are helpful to explain testimony, they are ordinarily admissible. *Id.* The mere fact that a photograph is inflammatory or cumulative is not, standing alone, sufficient reason to exclude it. *Sweet v. State*, 2011 Ark. 20, 370 S.W.3d 510. Even the most gruesome photographs may be admissible if they assist the trier of fact in any of the following ways: (1) by shedding light on some issue; (2) by proving a necessary element of the case; (3) by enabling a witness to testify more effectively; (4) by corroborating testimony; or (5) by enabling jurors to better understand the testimony. *Id.* Other acceptable purposes include showing the condition of the victim's body, the probable type or location of the injuries, and the position in which the body was discovered. *Jones v. State*, 340 Ark. 390, 10 S.W.3d 449 (2000). A defendant cannot prevent the admission of a photograph by conceding the facts portrayed therein. *Sanders v. State*, 340 Ark. 163, 8 S.W.3d 520 (2000).

Further, we have rejected a *carte blanche* approach to admission of photographs. *Newman v. State*, 353 Ark. 258, 106 S.W.3d 438 (2003); *Berry v. State*, 290 Ark. 223, 718 S.W.2d 447 (1986). We have cautioned against “promoting a general rule of admissibility which essentially allows automatic acceptance of all the photographs of the victim and crime scene the prosecution can offer.” *Berry*, 290 Ark. at 228, 718 S.W.2d at 450. We require the trial court to consider whether such evidence, although relevant, creates a danger of unfair prejudice, and then to determine whether the danger of unfair prejudice substantially outweighs its probative value. *Camargo v. State*, 327 Ark. 631, 940 S.W.2d 464 (1997).

In the case at bar, appellant specifically challenges Exhibits 2, 3, 7, 8, 9, 10, 14, 15, and 18. First, we turn to the alleged cumulative photographs. Appellant challenges Exhibit 2 and claims that it is cumulative because it shows nothing that could not have been observed in Exhibit 3. However, Exhibit 2 shows a rear angle of the victim with drops of blood on her shirt, while Exhibit 3 provides a lateral view of the victim, who has her hand near her mouth. We note that the victim's face and hands are not visible in Exhibit 2, and these exhibits support Investigator Crouch's testimony. Because these two photographs provide different angles of the victim, we cannot say that they are cumulative and that they should not have been admitted into evidence.

Appellant also takes issue with Exhibits 9 and 10 as being cumulative because they are two photographs of the same red-and-silver cell phone. However, Exhibit 9 gives a face-down image of the cell phone while Exhibit 10 depicts a face-up image of the same cell phone. At trial, appellant claimed that he did not know whether the victim had a weapon but that she did not approach him "coming to play." Given this testimony, we conclude that Exhibits 9 and 10 were not cumulative; rather, they were relevant for the jury to determine whether appellant believed that the victim carried a weapon. Therefore, we hold that the circuit court properly admitted these exhibits because the cell phone photographs were relevant to the jury's determination of appellant's defense.

Next, we consider the alleged inflammatory photographs. Appellant admits that Exhibits 7 and 8 show different views of the victim but claims that both pictures were

irrelevant to the jury's determination of his guilt. Exhibit 7 reveals a close-up image of a bullet hole in the victim's right shoulder and a bullet fragment below the wound. It also shows blood on the victim's shirt, neck, and arm. Exhibit 8 depicts the victim's blood-streaked face with a bullet fragment under the victim's right eye. This photograph also depicts a blue-gloved hand pointing to the fragment. Appellant contends that Exhibit 8 is "especially graphic" and inflammatory. However, both exhibits reveal the nature and extent of the victim's injuries. See *Halford v. State*, 342 Ark. 80, 27 S.W.3d 346 (2000) (holding that the nature and extent of the victim's wounds are relevant to a showing of intent). For these reasons, we conclude that these photographs were not unduly prejudicial or inflammatory.

Appellant also challenges the admissibility of Exhibits 14, 15, and 18 and argues that the close-up photographs only serve to inflame the jury and distract the jury from his defense. Exhibits 14 and 15 reveal close-up images of gunshot wounds to the left side of the victim's head. Exhibit 18 depicts the gunshot wounds to the victim's face. These photographs were not inflammatory but were necessary for the jury to determine how many times the victim was shot when considering appellant's defense. Moreover, these photographs corroborated Erickson's testimony regarding the multiple gunshot wounds to the victim's head and neck. For these reasons, we cannot say that the circuit court erred in admitting these exhibits.

Further, appellant attempts to distinguish *Garcia v. State*, 363 Ark. 319, 214 S.W.3d 260 (2005), from the case at bar by claiming that the defendant in *Garcia* gave a statement to police that conflicted with the crime-scene photographs. In *Garcia*, the appellant engaged in

a physical altercation involving the beating, stabbing, and strangulation of his wife, who later died. On appeal, Garcia challenged the introduction of four crime-scene and nine autopsy photographs, arguing that the purpose of the photographs was to incite the jury's emotions because there was no question of his guilt. We noted each photograph and held that the photographs showed the "nature, extent, and location of the victim's wounds," and as a result, the photographs were properly admitted and relevant to show the intent element of the crime. *Garcia*, 363 Ark. at 323, 214 S.W.3d at 263. However, appellant's argument that *Garcia* is distinguishable from the present case is misplaced. The challenged photographs in this case, like the exhibits in *Garcia*, showed the "nature, extent, and location of the victim's wounds" and were relevant to show appellant's intent. *Id.* Therefore, based upon our standard of review, we hold that the circuit court properly admitted these photographs into evidence for the jury's consideration. Accordingly, we affirm the circuit court's rulings.

In compliance with Arkansas Supreme Court Rule 4-3(i) (2010), the record has been examined for adverse rulings containing objections by appellant but not argued on appeal, and we found no prejudicial error.

Affirmed.