

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GORDON GENE DOTSON,

Defendant-Appellant.

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UNPUBLISHED

September 22, 2009

No. 285325

Monroe Circuit Court

LC No. 07-036490-FC

Before: Donofrio, P.J., and Wilder and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree murder, MCL 750.316. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to life in prison. This case arises out of the death of Betty Dotson, defendant's wife, on August 3, 2007, at their home in Frenchtown Township, Michigan. Because the trial court did not abuse its discretion in admitting the challenged photographs, we affirm.

Defendant argues on appeal that the trial court erroneously admitted four photographs because of the gruesome nature of the photographs. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Pattison*, 276 Mich App 613, 615; 741 NW2d 558 (2007). Preliminary questions of law are reviewed de novo. *Id.* A court abuses its discretion when it selects a course outside of the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Nevertheless, an erroneous evidentiary ruling does not require reversal unless it "affirmatively appear[s] that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999) (internal quotations omitted); see also MCL 769.26; MCR 2.613(A); MRE 103.

The decision to admit or exclude photographs is within the sole discretion of the trial court. *People v Mills*, 450 Mich 61, 76; 537 NW2d 909 (1995). As with all evidence, a photograph must be relevant to be admissible. *People v Unger*, 278 Mich App 210, 247; 749 NW2d 272 (2008); MRE 401. Relevant evidence may, however, be excluded if the probative value of the photograph is substantially outweighed by the danger of unfair prejudice. *Mills*, *supra* at 74-76; MRE 403. "Gruesomeness alone need not cause exclusion." *Mills*, *supra* at 76; see *People v Ho*, 231 Mich App 178, 188; 585 NW2d 357 (1998). But if the photograph is introduced merely to "arouse the sympathies or prejudices of the jury" it may require reversal. *Ho*, *supra* at 188.

The victim in this case was killed as a result of five stab wounds to her neck and chest. She was found dead in a reclining chair. The four photographs at issue all depict the victim's dead body. The first photograph shows her entire body in a reclining chair as it is positioned in the room. It is possible to see that her neck is bloodied. The second photograph also shows her entire body, from a different angle and from a slightly closer vantage point. Again, one can see that her neck is bloodied. Further, one can see that one of her legs is hanging off the side of the chair. The third photograph is a close-up of the victim's head and chest area. One can see extensive blood on the chair and on the victim's shirt. Further, the wounds on the victim's neck are evident and extensive. There is blood extending up onto the victim's face, near her mouth. Finally, the last photograph is an extreme close-up of the victim's neck. One can clearly see gaping wounds on her neck and blood on her chin, ear, and the side of her face.

"The proper inquiry is always whether the probative value of the photographs is substantially outweighed by unfair prejudice." *Mills, supra* at 76. The prosecutor argued that the photographs of the victim's injuries and dead body were relevant to impeach defendant's statements that he walked to the victim's side and gave her a kiss before he discovered that anything was wrong. The first three photographs show the body as it lay at the scene of the murder. The first two photographs show different views of how the body lay in the chair. Her body is no longer sitting up in the chair; one leg is hanging off the side of the chair. Her mouth is gaping open. Her head is tilted up. The third photograph shows how the victim's head and neck area would have appeared to someone approaching her body. All three of these photographs are plainly relevant to impeach defendant's implied statement that he did not notice the victim's injuries until after he kissed her. The first two photographs are not particularly gruesome, as defendant contends. While they show the victim's body and bloody neck, they are from a distance and do not have a direct angle to the actual injuries on her neck. Moreover, because all three photographs depict a scene about which defendant has made statements, there is no basis to conclude that they were introduced merely to arouse the sympathies of the jury. *Ho, supra* at 188.

The fourth photograph is a close-up view of the victim's injuries wherein her head was tilted back to expose the wounds. The gaping wounds are dramatic and off-putting. It is plain from this photograph that one would have a difficult time *not* realizing that something was amiss when approaching the body. The wounds as demonstrated in the fourth photograph, though gruesome, are relevant to show defendant's actual involvement in the crime, to impeach some of defendant's video statements, to impeach defendant's statements at trial denying intent, and to show specific intent. The trial court did not abuse its discretion in admitting the final photograph.

Even if admission into evidence of the photographs was error, it is not more probable than not that this error affected the outcome of this trial. *Lukity, supra* at 495-496. Contrary to defendant's initial statement to the police that he discovered the victim's dead body, he later confessed to the police that he was complicit in the killing and watched his girlfriend stab and kill the victim. A video of this confession was played for the jury. Defendant's only rebuttal to the confession was that he did not remember it. There is no basis to conclude that the jury would have come to a different conclusion absent the introduction of the photographs.

Defendant also raises a series of issues in an *in propria persona* supplemental brief on appeal. Because these issues were insufficiently briefed, lacking citation to the record or

coherent argumentation, they are deemed abandoned and we need not address them. *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001).

Affirmed.

/s/ Pat M. Donofrio  
/s/ Kurtis T. Wilder  
/s/ Donald S. Owens