Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Nov 16 2009, 10:07 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

JOHN PINNOW
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER MACY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0903-CR-144
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0804-MR-071221

November 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Christopher Macy appeals his conviction of voluntary manslaughter. He argues the trial court abused its discretion by admitting three photographs from the victim's autopsy. Finding no abuse of discretion, we affirm.

FACTS AND PROCEDURAL HISTORY

In March 2008, Macy lived with his girlfriend, Amber Patterson, and her mother, Dana Sweazey, in an apartment in Keystone Towers. Willard Butler lived in an apartment across the hall from Macy. Macy worked as a maintenance man for Keystone Towers.

At about 3:30 p.m. on March 26, 2008, Sweazey spoke to Macy, who was upset because his tools were missing. Around 4:00, Butler encountered Macy in the apartment building, and Macy said he was looking for Darrick Mitchell. Mitchell came over to Butler's apartment around 5:30.

According to Butler, Patterson came to his door around 6:00. Patterson came over to where Butler was sitting and gave him a hug. Butler heard two "thumps," and moved Patterson aside so he could see what was happening. (Tr. at 84.) He saw Macy strike Mitchell in the head four or five times with a flashlight. Butler heard Macy say, "that was my sh*t you stole, you m*****f***er." (*Id.* at 88.) Mitchell did not say anything and did not make any defensive moves. After being struck, Mitchell slumped down in his chair and started making gurgling noises. Butler called 911 and told the operator, "Somebody was just hit in the head several times, and he's convulsioning [sic] and bleeding real bad." (*Id*. at 98.)

Patterson testified she arrived home from work around 6:15 that day. She saw Macy outside the apartment building, and he said his tools had been stolen. She went up to her apartment briefly, and then went to Butler's apartment. Patterson saw Macy standing in the doorway holding a flashlight and Patterson heard Macy ask "where the f*** his tools were." (*Id*. at 152.) Macy went inside Butler's apartment, and Patterson went to the doorway. From the doorway, she saw Macy hit a man with the flashlight multiple times.

Patterson ran back to her apartment and told Sweazey that she needed to come quickly, because something bad had happened. Sweazey looked into Butler's apartment, and she saw Macy hit Mitchell underneath his chin. Sweazey heard Mitchell making a gurgling sound, and his whole body was shaking.

Officer David Bolling was dispatched to the scene and arrived within minutes. At that time, Mitchell was still alive. His eyes were rolled back in his head, and he was unresponsive. There was blood around his mouth and his head looked misshapen. Mitchell died from his wounds, and Macy was charged with murder.

At trial, Dr. Joye Carter, the chief forensic pathologist for the Marion County Coroner, testified concerning the autopsy she had conducted. She observed bruises around both eyes. There was bleeding in the eyes, swelling of the head, and a superficial abrasion on the scalp. The scalp felt thicker than it normally would be. She could not tell what was causing the swelling, so she made an incision to look at the scalp, skull, and brain. On the outside of the skull, she saw "four areas of circular fractures associated with a lot of blood." (*Id*. at 340.) Those injuries were "consistent with blunt impact from

a hard circular object." (*Id*. at 353.) During Dr. Carter's testimony, the State admitted, over Macy's objection, three photographs of Mitchell's fractured skull with the scalp removed. Macy argued the photographs should not be admitted because they were gruesome, showed Mitchell's head in an altered condition, and were cumulative of two admitted diagrams on which Dr. Carter had indicated the location of Mitchell's injuries.

The jury was instructed on murder, voluntary manslaughter, and involuntary manslaughter. The jury found Macy guilty of voluntary manslaughter.

DISCUSSION AND DECISION

The admission of evidence falls within the sound discretion of the trial court, and we review its decision only for abuse of discretion. *Swingley v. State*, 739 N.E.2d 132, 133 (Ind. 2000).

> Relevant evidence, including photographs, may be excluded only if its probative value is substantially outweighed by the danger of unfair prejudice. "Even gory and revolting photographs may be admissible as long as they are relevant to some material issue or show scenes that a witness could describe orally." Photographs, even those gruesome in nature, are admissible if they act as interpretative aids for the jury and have strong probative value.

Id. (citations omitted).

"Autopsy photos often present a unique problem because the pathologist has manipulated the corpse in some way during the autopsy. Autopsy photographs are generally inadmissible if they show the body in an altered condition." *Corbett v. State*, 764 N.E.2d 622, 627 (Ind. 2002). However, there are situations where showing the body in an altered state is necessary to demonstrate the testimony being given. *Id*.

> Though autopsy photographs have been found to be inadmissible to avoid the risk that the fact-finder could mistakenly infer that the defendant inflicted the autopsy incisions, exclusion of such photos is not necessary if they are accompanied by testimony to explain what had been done to the body, thus minimizing the potential for confusion and showing that the probative value outweighed the prejudicial effect.

Ward v. State, 903 N.E.2d 946, 958 (Ind. 2009) (citations omitted), *reh'g granted on other grounds*.

Macy's case is similar to *Fentress v. State*, 702 N.E.2d 721 (Ind. 1998). Fentress was drinking with a group of people. He got into a fight with Stuart and sustained a cut lip. Fentress left the scene, and the others continued drinking. Fentress returned with a stick, and Stuart attempted to flee, but he fell down. Fentress hit Stuart with the stick at least two times and stopped only when one of the witnesses told him to. Stuart's skull was shattered, and he died from the trauma to his head.

The jury was instructed on voluntary manslaughter and murder, and the jury found Fentress guilty of murder. On appeal, Fentress argued the trial court had erred by admitting into evidence two photographs from the victim's autopsy. The photographs depicted the victim's shattered skull with the hair and skin pulled away from it. Our Supreme Court found no error in the admission of the photographs:

> The State contends that the photographs were probative of Fentress's intent to kill because they show the extent of the damage caused by the blows to the victim's head, and the other autopsy pictures did not. The State also contends that the two photographs illustrated the pathologist's testimony. Fentress responds that the pathologist's testimony itself was enough evidence of the extent of the victim's injuries. In *Allen v. State*, 686 N.E.2d 760, 776 (Ind. 1997), *petition for cert. filed* (U.S. Aug. 28, 1998) (No. 98-5855), where a substantially similar photograph was offered as evidence because the victim's hair obscured the wound, we observed that "autopsy photographs are generally inadmissible if they show the body in an altered

> condition" because they may impute to the defendant the work of the pathologist. In this case, however, the pathologist described the procedure and its outcome to the jury and the jury also had pictorial evidence of the victim prior to the procedure. The potential for confusion is minimal. Moreover, because the injury was the result of a blow with a blunt instrument and the damage to the shattered skull was visible only if the victim's skin was pulled back, the trial court was within its discretion in determining that the probative value of this evidence – to show the force of the blow which in turn bore on the intent to kill – outweighed its prejudicial effect.

Id. at 722.

Dr. Carter testified she could not see or feel Macy's skull fractures from an external examination, and so she removed the scalp so she could examine the skull. Dr. Carter used the photographs to illustrate her testimony. Therefore, the photographs helped the jury understand the testimony, and it is unlikely that the jury was confused about which injuries were caused by Macy. *See id*.

Furthermore, the photographs were relevant to refute Macy's theory of the case. Macy argued he had no intent to kill and did not know his actions would result in Mitchell's death. The photographs demonstrate that Macy hit Mitchell forcefully in the head at least four times, and therefore are relevant to his *mens rea*. *Cf. Turben v. State*, 726 N.E.2d 1245, 1247 (Ind. 2000) (photographs showing a "bloody mass that barely resembles a human form" should not have been admitted; their relevance was marginal because Turben admitted he strangled the victim and his theory of the case was that he acted in sudden heat).

Macy argues the photographs should not have been admitted because the diagrams the pathologist prepared were adequate to demonstrate Mitchell's injuries to the jury. We

disagree. The diagrams were two dimensional drawings that depicted the location of the injuries, but did not fully depict the extent of the injuries. The photographs demonstrate the depth of the impact sites and the fact that, in some places, the skull was not merely cracked, but had been broken all the way through. The photographs were not merely cumulative of the diagrams, because they enhanced the jury's understanding of the extent of Mitchell's injuries. Therefore, we conclude the trial court did not abuse its discretion by admitting the photographs.

Affirmed.

CRONE, J., and BROWN, J., concur.