

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK SAMUEL KELSEY,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 160541

Kent Circuit Court

LC No. 92-57551-FC

Before: Wahls, P.J., and Young and J.H. Fisher*, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The court sentenced defendant to a term of imprisonment of two years for the felony firearm conviction and to life in prison for the first-degree murder conviction. We affirm.

Defendant's sole contention on appeal is that the circuit court erred in admitting into evidence twelve slides depicting the gunshot wounds in the victim's head and torso. We disagree. The decision to admit evidence is within the discretion of the trial court and we will not disturb it on appeal absent an abuse of discretion. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Defendant argues that the circuit court should not have admitted the slides because the danger of unfair prejudice to him substantially outweighed their probative value. "Unfair prejudice" does not mean "damaging." *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909, modified and remanded on other grounds 450 Mich 1212 (1995) (citation omitted). Any relevant evidence will be damaging to some extent. Rather, unfair prejudice exists when the jury would tend to give the evidence undue or preemptive weight, or when the use of the evidence would be inequitable. *Id.* The gruesome nature of photographs, by itself, need not cause their exclusion. *Id.* at 76; *People v Hoffman*, 205 Mich App 1, 18; 518 NW2d 817 (1994).

* Circuit judge, sitting on the Court of Appeals by assignment.

The slides were probative to defendant's intent, the issue of premeditation, and the cause of death. *People v Anderson*, 209 Mich App 527, 536; 531 NW2d 780 (1995). The slides depicted the eight gunshot wounds to the victim's head and upper torso. The court properly allowed the jury to view the nature and extent of the victim's wounds to aid in determining defendant's intent. Because defendant admitted that he shot the victim, his intent, or lack thereof, was crucial to his defense. The slides illustrated that defendant changed his aim between the victim's head and back, from which the jury could have inferred that defendant was aware of his actions and that he had an opportunity to premeditate. The medical examiner testified that two of the wounds inflicted by defendant could have been fatal. The examiner also testified that the shot to the victim's temple, which defendant did not inflict, could have been fatal. The slides corroborated the examiner's testimony and aided the jury in determining which wounds caused the victim's death. Photographs may be used to corroborate a witness' testimony. *Mills, supra*, 450 Mich at 76, citing *People v Nathaniel Jones*, 24 Mich App 702, 704; 180 NW2d 818 (1970).

The slides were not more prejudicial than probative. The slides depicted the victim's body in a medical examination room. The slides accurately represented the victim's injuries. The wounds had been thoroughly cleansed. The evidence does not reflect that the pictures were enhanced or altered in any way. Although the slides were somewhat graphic, their probative value was not substantially outweighed by the danger of unfair prejudice.

Affirmed.

/s/ Myron H. Wahls

/s/ Robert P. Young, Jr.

/s/ James H. Fisher