

DIVISION II

CACR04-1299

September 26, 2007

MICHAEL C. MYERS

APPELLANT

APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT [NO.
CR-2003-147]

V.

HON. HAROLD S. ERWIN,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

A Jackson County jury found appellant guilty of first-degree murder, for which he was sentenced to thirty years' imprisonment. On appeal, he challenges the sufficiency of the evidence and the introduction of certain photographic and video evidence. We affirm.

Considerations of double jeopardy require us to review the sufficiency of the evidence before addressing evidentiary issues. *Harris v. State*, 284 Ark. 247, 681 S.W.2d 334 (1984). In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Garner v. State*, 355 Ark. 82, 131 S.W.3d 734 (2003). In doing so we view the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.*

With regard to the sufficiency of the evidence, the only issue that was presented in appellant's directed verdict motion was stated by trial counsel as follows:

Okay. Move, move for a directed verdict on the count of first degree murder based upon the fact, one, that [responding Officer] Duvall said that, testified that in his opinion it wasn't intent -- or didn't testify, during his questioning repeatedly said he didn't think [appellant] intentionally, well, intentionally murdered [the victim], that the State has not presented evidence to prove that [appellant] purposely, as required by the statute on first degree murder, caused the death of [the victim].

This argument was less than clear; however, it is clear that the trial judge took it as an assertion that the evidence was insufficient to show purposeful conduct because one of the investigating police officers opined that he did not think appellant's act was intentional. That is reflected in his ruling: "Overruled. I don't care what Duvall thinks. That's inadmissible evidence." Appellant's trial attorney responded, "That's all I have now, Your Honor."

Although appellant's new counsel on appeal makes a more broad-ranging and cohesive argument that the evidence of appellant's intent was insufficient, he is limited by the scope of the original objection and ruling thereon. See *Abshire v. State*, 79 Ark. App. 317, 87 S.W.3d 822 (2002). That objection, essentially, was that one opinion by a witness as to appellant's state of mind negated all the other evidence of intent in the case. This is patently without merit. The weight of the evidence, even expert testimony, is within the province of the jury and of the jury alone, *Anderson v. State*, 357 Ark. 180, 163 S.W.3d 333 (2004), and credibility determinations will not be disturbed on appeal when there is substantial evidence to support the fact finder's conclusion. *Smith v. State*, 314 Ark. 448, 863 S.W.2d 563 (1993).

Quite clearly, there is substantial evidence of appellant's intent in this case. The victim, age 66, was appellant's stepfather. Appellant lived with his mother and stepfather. The victim had recently asked appellant to leave and find his own lodgings, apparently because appellant was doing something "unnatural" that was disturbing the household. The victim was in bed that night but got up to lie on the couch because he was in pain from a degenerative condition. The victim was heard to shout "No, Mike, no" while he was on the couch. Appellant was then seen, by his mother, holding a butcher knife in both hands and plunging it downward into the victim's chest as he lie on the couch. The victim, who bore defensive wounds on his hand and arm, stumbled away and collapsed in the kitchen, where he lost a considerable amount of blood. He was taken to the hospital where he died, according to the autopsy physician, of four stab wounds to the left-center of his chest that pierced his lungs. We hold that this evidence of motive, together with the testimony of appellant's mother that she saw her son stab the victim in the chest, the presence of multiple lethal stab wounds, the evidence of defensive wounds on the victim, and testimony that appellant attempted to prevent his mother calling for aid by ripping two telephone junctions out of the wall, are adequate to support a finding that appellant intentionally murdered the victim.

Appellant also argues that several photographs should have been suppressed because they were gruesome or cumulative. This, too, lacks merit. We will reverse a trial court's ruling on the admission of evidence only where there is an abuse of discretion. *O'Neal v. State*, 356 Ark. 674, 158 S.W.3d 175 (2004). Abuse of discretion is a high threshold that does

not simply require error in the trial court's decision, but requires that the trial court act improvidently, thoughtlessly, or without due consideration. *Id.*

In *Davis v. State*, 350 Ark. 22, 86 S.W.3d 872 (2002), our supreme court stated:

The admission of photographs is a matter left to the sound discretion of the trial court. *Riggs v. State*, 339 Ark. 111, 3 S.W.3d 305 (1999). When photographs are helpful to explain testimony, they are ordinarily admissible. *Id.* (citing *Williams v. State*, 322 Ark. 38, 907 S.W.2d 120 (1995)). Further, the mere fact that a photograph is inflammatory or is cumulative is not, standing alone, sufficient reason to exclude it. *Weger v. State*, 315 Ark. 555, 869 S.W.2d 688 (1994). Even the most gruesome photographs may be admissible if they assist the trier of fact in any of the following ways: by shedding light on some issue, by proving a necessary element of the case, by enabling a witness to testify more effectively, by corroborating testimony, or by enabling jurors to better understand the testimony. *Id.* Other acceptable purposes are to show the condition of the victims' bodies, the probable type or location of the injuries, and the position in which the bodies were discovered. *Jones v. State*, 340 Ark. 390, 10 S.W.3d 449 (2000). Absent an abuse of discretion, this court will not reverse a trial court for admitting photographs into evidence. *Id.*

Davis, 350 Ark. at 35, 86 S.W.3d at 880 (quoting *Barnes v. State*, 346 Ark. 91, 55 S.W.3d 271 (2001)).

Here, the exhibits alleged to be gruesome depict the defensive wounds in the victim's hand and arm and helped provide the evidence of purposefulness that appellant argued was lacking in his prior point. The remaining photographs and video are somewhat cumulative, but the video in particular was useful in depicting where the struggle began and to show that the victim attempted to flee after being repeatedly stabbed. We cannot say that the trial court

acted improvidently, thoughtlessly, or without due consideration in allowing them into evidence.

Affirmed.

ROBBINS AND GLADWIN, JJ., agree.