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**IN THE  
COURT OF APPEALS OF INDIANA**

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KOFI MOBIDO AJABU, )

Appellant-Petitioner, )

vs. )

No. 71A05-0610-PC-588

STATE OF INDIANA, )

Appellee-Respondent. )

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable William T. Means, Judge  
Cause No. 71D02-9409-CF-963

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**September 11, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-petitioner Kofi Mobido Ajabu appeals from the denial of his petition for post-conviction relief. Specifically, Ajabu argues that the post-conviction court erred in denying his petition because his trial counsel was ineffective for (1) failing to drive to the jail where Ajabu was being held to request that the police not interrogate him, (2) failing to request funds to hire a psychiatrist, (3) failing to object to the trial court's instructions regarding accomplice liability, and (4) failing to object before Ajabu was sentenced for three counts of murder. Additionally, Ajabu argues that his appellate counsel was ineffective for (1) failing to argue that the evidence was insufficient to sustain Ajabu's murder convictions, and (2) failing to argue that the trial court abused its discretion by admitting various photographs into evidence. In light of our ultimate conclusion that Ajabu's trial and appellate counsel were not ineffective, we affirm the judgment of the post-conviction court.

### FACTS

The facts, as reported by our Supreme Court on direct appeal, are as follows:

At approximately 7 a.m. on March 17, 1994, Nicholas Allemenos, Lisa Allemenos, and Christopher James were found dead in the home of Nicholas's and Lisa's father, George Allemenos, in Carmel. The house had been ransacked and the three victims' throats had been cut. Immediately after their discovery, the crimes attracted extensive coverage in both print and electronic news media. Defendant Kofi Ajabu and two other men, James Walls and Raymond Adams, soon became suspects.<sup>FN1</sup>

FN1. Walls and Adams were also charged as a result of these events and were tried separately.

The next night, at approximately 4:40 a.m., Ajabu was arrested at Adams's apartment and detained in a police vehicle. Around 6 a.m., Ajabu was transported to the Hamilton County Jail and placed in a holding cell, where he slept for a short time. Ajabu's father saw a televised news report that morning reporting that his son "had been arrested in the Carmel situation." Without his

son's knowledge, the father retained attorney Kenneth Roberts to represent Ajabu. At approximately 8:42 a.m., Roberts called the jail and asked that Ajabu not be questioned until Roberts was present. The detective who took the call, Vicky Dunbar, put Roberts on hold. Dunbar then asked several police officers and two prosecutors who were discussing the murder investigation in a nearby conference room how to respond. On learning of Roberts's request, one officer got up to halt plans to interrogate Ajabu, but Chief Deputy Prosecutor Wayne Sturtevant essentially overruled that decision. According to Hamilton County Prosecutor Steven Nation, who was also present, Sturtevant said: "Wait a minute . . . there is a case on point, you do not have to stop the interrogation." Sturtevant concluded that Ajabu (then twenty-one years old) was an adult and could make his own decision whether he wanted a lawyer present during the planned questioning. Nation believed that Ajabu's right to counsel was personal and could not be asserted by his family. Based on these conclusions, Detective Dunbar was directed to tell Roberts that the "information would be passed along to the appropriate people."

Ajabu was not informed of Roberts's call at that point and two officers began questioning him five minutes later at 8:49 a.m. Before the interrogation, Ajabu received the warnings required by Miranda v. Arizona, 384 U.S. 436 (1966), and signed a waiver of rights form. The videotaped questioning lasted until 10:40 a.m., recessed for a brief period, and then continued. Ajabu confessed his involvement in the multiple homicide. At no point during the questioning did he request the assistance of a lawyer. Around 12:30 p.m., police asked Ajabu if he would submit to a second interview at the house where the murders occurred and he agreed. Police took Ajabu to the murder scene and interviewed him there on videotape for approximately forty-five minutes. Before this questioning, an officer asked Ajabu if he understood his rights and he indicated that he did. Ajabu again confessed his involvement in the killings. As Ajabu was being transported back to the Hamilton County Jail around 2:22 p.m., he asked for an attorney and was not questioned further. At some point that afternoon, after demanding counsel, Ajabu was told about Roberts's call earlier that day.<sup>FN2</sup>

FN2. The facts outlined here are largely taken from the findings the trial court made in denying Ajabu's motion to suppress. In his motion to suppress, Ajabu asserted that he asked to call a lawyer during his initial trip to the Hamilton County Jail, but the transporting officer denied this request was made. Ajabu further contended that soon after arriving at the jail that morning he asked one of two correctional officers present if he could call his mother so that she could retain counsel, but neither officer recalled any effort by Ajabu to get their

attention. The denial of a motion to suppress a confession is reviewed similarly to other sufficiency matters. The record must disclose substantial evidence of probative value that supports the trial court's decision. We do not reweigh the evidence and we consider conflicting evidence most favorably to the trial court's ruling. See, e.g., Wilcoxon v. State, 619 N.E.2d 574, 577 (Ind. 1993); Warner v. State, 579 N.E.2d 1307, 1309 (Ind. 1991). Accordingly, we accept the trial court's resolution of these factual issues.

Ajabu was charged with three counts of murder, three counts of criminal confinement, three counts of robbery, and one count of burglary. Venue was changed to St. Joseph County and Ajabu was tried there in August 1995. A jury convicted him on all counts. . . .

Ajabu v. State, 693 N.E.2d 921, 925-27 (Ind. 1998).

The trial court sentenced him to concurrent terms of life in prison without parole ("LWOP") for each murder conviction, and to a term of years for each of the other convictions, sixty years of which to be served after the concurrent life terms. Id. at 925. In so sentencing, the court found three statutory aggravating circumstances supporting life imprisonment without parole: intentional killing, commission of another murder, and killing persons who were confined.

On appeal, this Court affirmed Ajabu's convictions, but remanded for a new sentencing order. We observed that the trial court's findings on the (b)(1) aggravator seemed more pertinent to a "knowing" killing and asked the trial judge to be more particular about what facts he thought demonstrated that Ajabu killed "intentionally"—as required, when a court relies on Ind. Code § 35-50-2-9(b)(1). Ajabu, 693 N.E.2d at 939. We noted that the other two aggravating circumstances the trial court found in imposing life without parole were unchallenged and observed: "The only open question is the quantum of aggravating evidence to be weighed against the mitigating factors." Id. at 940.

On remand, the trial court determined that it could not find proof beyond a reasonable doubt that Ajabu killed intentionally. Rather than proceed to balance the two other LWOP aggravators as against the mitigators, the court resentenced Ajabu under the general felony sentencing statutes. It imposed 60 years for each murder count, 20 years for each robbery count, and 13 years for each confinement count. The court then ordered that the sentences for confinement and robbery run concurrently, but ordered that those sentences run consecutively to the murder sentences. This resulted in three 80-year

sentences running consecutively for a total of 240 years.

Ajabu v. State, 722 N.E.2d 339, 341-42 (Ind. 2000) (various citations and footnotes omitted).

Our Supreme Court upheld the revised 240-year sentence on appeal. Id. at 345.

On April 18, 2000, Ajabu filed a pro se petition for post-conviction relief, which was ultimately amended by counsel on June 18, 2004. The post-conviction court held a hearing on September 20, 2005, and issued an order denying relief on August 25, 2006. Ajabu now appeals.

## DISCUSSION AND DECISION

### I. Standard of Review

As we consider Ajabu’s argument that the post-conviction court improperly denied his petition, we observe that the petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); McCarty v. State, 802 N.E.2d 959, 962 (Ind. Ct. App. 2004). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Id. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id. Post-conviction procedures do not afford petitioners with a “super appeal.” Richardson v. State, 800 N.E.2d 639, 643 (Ind. Ct. App. 2003). Rather, they create a narrow remedy for subsequent collateral challenges to convictions that must be based upon grounds enumerated in the post-conviction rules. Id.; see also P-C.R. 1(1).

## II. Ineffective Assistance of Counsel

We review claims of ineffective assistance of counsel based upon the principles enunciated in Strickland v. Washington, 466 U.S. 668 (1984). Specifically,

[a] claimant must demonstrate that counsel's performance fell below an objective standard of reasonableness based on prevailing professional norms, and that the deficient performance resulted in prejudice. Prejudice occurs when the defendant demonstrates that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." A reasonable probability arises when there is a "probability sufficient to undermine confidence in the outcome."

Grinstead v. State, 845 N.E.2d 1027, 1031 (Ind. 2006) (quoting Strickland, 466 U.S. at 694).

Although the two parts of the Strickland test are separate inquiries, a claim may be disposed of on either prong. Williams v. State, 706 N.E.2d 149, 154 (Ind. 1999). According to the Strickland court, the "object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed." 466 U.S. at 697.

We further note that counsel is given wide discretion in determining strategy and tactics, and, therefore, courts will accord these decisions deference. Timberlake v. State, 753 N.E.2d 591, 603 (Ind. 2001). A strong presumption arises that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. Isolated omissions or errors, poor strategy, or bad tactics do not necessarily render representation ineffective. Stevens v. State, 770 N.E.2d 739, 747 (Ind. 2002). The burden is on the petitioner to establish that some action or inaction on the part of trial counsel had no strategic purpose. Clark v. State, 597 N.E.2d 4, 11 (Ind. Ct. App. 1992).

### III. Trial Counsel

#### A. Attorney's Arrival at Jail

As detailed in the facts, Ajabu's father hired Roberts without Ajabu's knowledge. Roberts called the jail at approximately 8:42 a.m.—four hours after Ajabu's arrest—and asked that Ajabu not be questioned until Roberts was present. Because Ajabu had not personally asserted his right to counsel, the police officers did not tell Ajabu about Roberts's phone call and subsequently questioned him after he signed a waiver of rights form. During the interrogation, Ajabu “confessed his involvement in the multiple homicide.” Ajabu, 693 N.E.2d at 926. Ajabu eventually asserted his right to counsel and ended the interrogation. Kevin Scionti<sup>1</sup>—an attorney who handled felony criminal cases with Roberts—arrived at the jail that afternoon, after the interrogation had ended. While Ajabu later filed a motion to suppress his incriminating statements, the trial court denied the motion.

On direct appeal, Ajabu challenged the trial court's denial of his motion to suppress. Specifically, Ajabu argued that “the conduct of the police and prosecutors in not informing him of Roberts's phone call before any interrogation violated his right to be free from self-incrimination protected by Article I, Section 14 of the Indiana Constitution.” Id. After a lengthy analysis, our Supreme Court concluded that Ajabu knowingly, intelligent[ly], and voluntarily waived his state constitutional right to be free from self-incrimination, and [] that Article I, Section 14 of the Indiana Constitution does not bar use of the resulting confession.” Id. at 934-35. Our Supreme Court also rejected Ajabu's claim that the police officers'

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<sup>1</sup> Scionti assisted Roberts throughout Ajabu's trial. Scionti died in 2001.

actions were so offensive that they denied him due process of law pursuant to the Fourteenth Amendment to the United States Constitution. Id. at 935.

Ajabu now argues that Roberts's decision not to immediately go to the jail constituted ineffective assistance of counsel. As support for his claim, Ajabu cites Roberts's affidavit, which was submitted as evidence at the post-conviction hearing:

My experience with this case as counsel has caused me to believe that because the Indiana Supreme Court's ruling that [Ajabu's] Statements to Police Were Properly Admitted because I called to inform the police that [Ajabu] had counsel and he was not to be questioned without counsel being present, instead of me, or an attorney from my office, showing up on the jail door step to inform the police that [Ajabu] had counsel and should not be questioned without counsel present, means that [Ajabu] received inadequate assistance of counsel.

Ex. 7. Roberts identified his signature on the affidavit but testified that Ajabu's father had prepared the affidavit, that he had "not read it carefully" before signing it, and that he had "no independent recollection" of the document, which had been signed at least five years before the post-conviction hearing. PCR Tr. p. 38. Roberts opined that he did not believe that he provided ineffective assistance of counsel to Ajabu. Id. at 34.

We cannot conclude that Roberts's performance was deficient simply because he did not drive to the jail and personally request that Ajabu not be questioned. Instead, Roberts telephoned his request to the jail, which allowed him to immediately speak with the authorities and not wait the thirty-five to forty-five minutes it would have taken him to drive to the jail. Id. at 25. Although the police proceeded to question Ajabu after Roberts's telephonic request, we cannot conclude that Roberts's performance was unreasonable or deficient. Thus, Ajabu's argument fails.



### B. Failure to Obtain Funds for Psychiatrist

Ajabu argues that his trial counsel was ineffective for failing to obtain funds to appoint a psychiatrist. Sifa Wekewa, a social worker who holds a master of arts in social psychology and a master of social work degree, testified for the defense at trial. Wekewa was a friend of Ajabu's father and had known Ajabu since he was young. At trial, Wekewa testified that because Ajabu had been exposed to the murders but had not assisted the victims or reported the crime to the police, it was possible that he had suffered acute stress disorder. However, on cross-examination, Wekewa admitted that only a psychiatrist could make that diagnosis. Tr. p. 5630. Ajabu now argues that his trial counsel was ineffective for not obtaining funds for a psychiatrist.

It is clear from the record that Roberts's decision to have Wekewa testify was strategic. The fact that Wekewa had known Ajabu since he was young gave Wekewa a unique perspective from which to evaluate Ajabu. Wekewa described acute stress disorder and analyzed a hypothetical crime involving facts identical to the crime at issue. Essentially, Wekewa testified that it was possible that Ajabu suffered from acute stress disorder but that only a licensed psychiatrist could make an official diagnosis. Contrary to Ajabu's argument, it does not automatically follow that Roberts was ineffective for not requesting funds for a psychiatrist simply because Wekewa was unqualified to make an official diagnosis. Wekewa's professional qualifications and personal knowledge of Ajabu made his analysis uniquely authoritative. Roberts's strategic decision to present Wekewa and not request funds for a psychiatrist did not constitute deficient performance.

### C. Jury Instructions

Ajabu argues that his trial counsel was ineffective for failing to object to three jury instructions regarding accomplice liability. A defendant can be convicted on an accomplice liability theory even if he was charged as a principle. Hampton v. State, 719 N.E.2d 803, 807 (Ind. 1999). As our Supreme Court held,

the Indiana statute governing accomplice liability does not establish it as a separate crime, but merely as a separate basis of liability for the crime charged. See Ind. Code § 35-41-2-4 (1998). Where the facts in the case raise a reasonable inference that the crime was carried out with an accomplice, it is appropriate for the judge to give such an instruction.

Id. (some citations omitted). When a defendant bases an ineffective assistance of counsel claim on counsel's failure to object at trial, the defendant must show that a proper objection, if made, would have been sustained. Jackson v. State, 683 N.E.2d 560, 563 (Ind. 1997).

As the post-conviction court noted, Ajabu's trial was based upon an accomplice liability theory "from its inception due to the inability to obtain any concrete admissions or physical evidence from any of the defendants that would definitively show who actually inflicted the lethal wounds to any of the victims during the course of the murders." Appellant's App. p. 275. Therefore, following the close of evidence, the jury was instructed:

Final Instruction No. 2: A person is responsible for the actions of another person when, either before or during the commission of a crime, he knowingly aids, induces or causes the other person to commit a crime. To aid is to knowingly support, help or assist in the commission of a crime.

In order to be held responsible for the actions of another, he need only have knowledge that he is helping in commission of a crime.

Final Instructions No. 3: Under the laws of the State of Indiana a person may be charged as a principal, yet convicted as an accomplice. Where two (2) or

more persons combine to commit a crime, each is criminally responsible for the acts of his confederates. Thus, to prove the offenses charged, it is not necessary for the State to prove that the defendant participated in each element of every crime so long as the evidence convinces you beyond a reasonable doubt that the defendant combined with another person or persons to commit that crime and that between them they fulfilled all of the essential elements for the commission of the crime or crimes as charged.

Final Instruction No. 4: An accomplice may be held criminally liable for acts of his confederate which were a natural and probable consequence of their common plan.

Id. at 275-76.

Ajabu argues that the “accomplice liability instructions confused the jury because the crimes of which Mr. Ajabu allegedly abetted were not delineated within these instructions.” Appellant’s Br. p. 14. Therefore, Ajabu argues that it was ineffective for his trial counsel to not object. However, Ajabu cites no authority to support his proposition that specific crimes must be delineated in an accomplice liability instruction. Instead, it is clear that Jury Instructions 2, 3, and 4 were intended to instruct the jury on the general principal of accomplice liability. Because the State presented evidence regarding accomplice liability, it was proper for the trial court to instruct the jury on that theory. Hampton, 719 N.E.2d at 807. Therefore, we agree with the State that Ajabu’s trial counsel’s failure to object to the instructions did not constitute deficient performance because an objection would not have been sustained.

#### D. Failure to Object to Before Sentencing

Ajabu argues that his trial counsel was ineffective for failing to object to Ajabu being sentenced for the murders because Ajabu “did [not] have the requisite intent to be guilty of

murder.” Appellant’s Br. p. 14. Again, post-conviction proceedings do not afford a petitioner the right to a super appeal. Richardson, 800 N.E.2d at 643. Rather, post-conviction proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. Davidson v. State, 763 N.E.2d 441, 443 (Ind. 2002).

In making this argument, Ajabu attempts to mask a sufficiency argument as an ineffective assistance of counsel argument. Nevertheless, the gravamen of Ajabu’s argument remains focused on sufficiency—specifically, that he did not have the requisite intent to be convicted of the murders. However, post-conviction proceedings are not the proper forum for a petitioner to raise issues that were known on direct appeal. While we will later address a separate argument Ajabu makes regarding his appellate counsel’s decision not to raise the sufficiency of the evidence issue on appeal, it is not proper for us to review this issue at this time. As a final point, to the extent that Ajabu is arguing that his trial counsel was ineffective for not objecting before he was sentenced for the murders, that argument fails because any such objection would have been unsuccessful.

#### IV. Appellate Counsel

On direct appeal to our Supreme Court, Ajabu’s appellate counsel argued that (1) the police officers’ interrogation of Ajabu violated Article I, Section 14 of the Indiana Constitution; (2) the police officers’ conduct violated Ajabu’s right to due process pursuant to the Fourteenth Amendment to the United States Constitution; and (3) Ajabu’s LWOP sentence was improper. Ajabu argues that his appellate counsel was ineffective for not

raising two additional issues: (1) the sufficiency of the evidence regarding Ajabu's murder convictions, and (2) that the trial court abused its discretion by admitting various photographs of the crime scene and the victims into evidence.

Claims of ineffective assistance of appellate counsel are reviewed using the same standard applicable to claims of trial counsel ineffectiveness. Bieghler v. State, 690 N.E.2d 188, 193 (Ind. 1997). These claims generally fall into three categories: (1) denying access to the appeal, (2) waiver of issues, and (3) failure to present issues well. Id. at 193-95. The decision of what issue or issues to raise on appeal is one of the most important strategic decisions made by appellate counsel. Id. at 193. Thus, ineffectiveness is rarely found when the issue is the failure to raise a claim on direct appeal. Id. To show that counsel was deficient for failing to raise an issue on direct appeal, the defendant must overcome the strongest presumption of adequate assistance, and judicial scrutiny is highly deferential. Ben-Yisrayl v. State, 738 N.E.2d 253, 261 (Ind. 2000).

Our Supreme Court has adopted the following test to evaluate the performance prong of appellate counsel's performance: (1) whether the unraised issues are significant and obvious from the record; and (2) whether the unraised issues are "clearly stronger" than the issues that were presented. Bieghler, 690 N.E.2d at 194. If that analysis demonstrates deficient performance by counsel, the court then examines whether "the issues which . . . appellate counsel failed to raise, would have been clearly more likely to result in reversal or an order for a new trial." Id. Further, the reviewing court must consider the totality of an attorney's performance to determine whether the client received constitutionally adequate

assistance and “should be particularly sensitive to the need for separating the wheat from the chaff in appellate advocacy, and should not find deficient performance when counsel’s choice of some issues over others was reasonable in light of the facts of the case and the precedent available to counsel when that choice was made.” Id.

#### A. Sufficiency

Ajabu argues that his appellate counsel was ineffective for not raising the sufficiency of the evidence supporting his murder convictions. Specifically, Ajabu incorporates the previous argument he made regarding his lack of requisite intent to commit the murders.

As previously noted, the accomplice liability statute “does not establish it as a separate crime, but merely as a separate basis of liability for the crime charged.” Hampton, 719 N.E.2d at 807 (interpreting I.C. § 35-41-2-4). Therefore, as our Supreme Court has previously held, “one who intentionally aids, induces, or causes another person to commit Murder is also guilty of Murder.” Ledo v. State, 741 N.E.2d 1235, 1238 (Ind. 2001).

Ajabu argues that “[n]either of Mr. Ajabu’s co-defendants directly implicate Mr. Ajabu in any of the murders” and there is “no evidence from which it can be reasonably inferred that Mr. Ajabu knew of any plan to kill any of the residents.” Appellant’s Br. p. 15, 16. However, the State presented evidence that Ajabu, Walls, and Adams planned to rob the Allemenos home. Tr. p. 4889-4901. Specifically, Ajabu used a red bandana as a mask and brought a knife and duct tape to bind whoever was found inside the home. Id. at 4911, 4915. While in the house, Ajabu helped confine the victims and stood over Nick with a knife after Walls had cut Christopher’s throat. Id. at 4939-40.

While Ajabu emphasizes the lack of evidence demonstrating that he actually killed any of the victims, it is well established that the State was not required to prove that Ajabu was the principal actor in the murders of Nick, Lisa, or Christopher. Ledo, 741 N.E.2d at 1238. And while Ajabu argues that killing the people in the home was not part of the original plan, our Supreme Court has held that “[t]he criminal liability of an accomplice is not negated by the principal’s commission of an offense greater in severity than the offense originally planned if the resulting offense is a probable and natural consequence of the planned offense.” Johnson v. State, 687 N.E.2d 345, 349-50 (Ind. 1997). Thus, even if we assume for the sake of the argument that Ajabu, Walls, and Adams did not initially plan to kill anyone found inside the home, the evidence at trial showed that Ajabu brought a knife and duct tape with him to commit the crime. Thus, it was reasonable to infer that, at the very least, the men planned to use force to confine anyone found inside the home. The evidence also showed that, once inside the home, Ajabu helped confine the victims and stood over Nick with a knife after Walls had cut Christopher’s throat. In sum, it was reasonable for the jury to infer that the victims’ murders were a natural and probable consequence of the planned robbery and that Ajabu willingly participated as an accomplice. Therefore, because the evidence was sufficient to sustain Ajabu’s murder convictions, Ajabu was not prejudiced by his appellate counsel’s failure to raise the issue on appeal.

#### B. Photographs

Ajabu argues that his appellate counsel was ineffective for failing to argue that the “cumulative gory photographs of the victims” were erroneously admitted at trial. Appellant’s

Br. p. 17. While Ajabu concedes that the admission of evidence lies within the trial court's discretion, he argues that the trial court nonetheless abused its discretion and that his appellate counsel was ineffective for not raising the issue on appeal.

Regarding the admission of photographic evidence, our Supreme Court has provided that the task

is within the sound discretion of the trial court, and this Court reviews the admission of photographic evidence only for abuse of discretion. Photographs, as with all relevant evidence, may only be excluded if their probative value is substantially outweighed by the danger of unfair prejudice. Admission of cumulative evidence alone is insufficient to warrant a new trial. An appellant must establish that the probative value of the evidence was outweighed by the unfair prejudice flowing from it.

Moreover, “[e]ven 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.” Gruesome and gory photographs with strong probative value are admissible where they help interpret the facts of the case for the jury. Autopsy photographs frequently pose unique problems where the pathologist has manipulated the corpse during the autopsy. . . . Evaluating whether an exhibit's probative value is substantially outweighed by the danger of unfair prejudice is a discretionary task best performed by the trial court.

Helsley v. State, 809 N.E.2d 292, 296 (Ind. 2004) (internal citations omitted).

Ajabu argues that his appellate counsel was ineffective for not arguing that the trial court abused its discretion by admitting various photographs of the crime scene and of the victims' wounds. Initially, we note that Ajabu's trial counsel filed a pretrial motion to exclude the gruesome and gory depictions of the crime scene. Appellant's App. p. 7. The trial court held a hearing and specifically ruled on the admissibility of the evidence. During the trial, Ajabu's trial counsel again specifically objected to various photographs, arguing that they were cumulative and prejudicial. These objections gave the trial court another



opportunity to evaluate the photographs and weigh their prejudicial effect, if any.

As the State notes in its brief, the photographs that Ajabu argues were cumulative and gruesome depict the intact crime scene and the wounds as the coroner found them on the victims' bodies. The photographs illustrate various perspectives of the crime scene and detail the victims' wounds and the binding methods that were used to detain them. As our Supreme Court has held, the task of "[e]valuating whether an exhibit's probative value is substantially outweighed by the danger of unfair prejudice is a discretionary task best performed by the trial court." Helsley, 809 N.E.2d at 296. Here, the trial court had multiple opportunities to review the exhibits and rule on their admissibility. Ajabu's argument that the trial court abused its discretion by admitting the photographs is unconvincing and, therefore, his appellate counsel was not ineffective for failing to raise the issue on appeal.

The judgment of the post-conviction court is affirmed.

BAILEY, J., and VAIDIK, J., concur.