

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK THOMAS WEINERT,

Defendant-Appellant.

UNPUBLISHED

June 2, 1998

No. 200279

Schoolcraft Circuit Court

LC No. 96-006083 FH

Before: Markman, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of assault and infliction of serious injury, MCL 750.81a; MSA 28.276(1). He was sentenced to ten months in jail. We affirm.

Defendant argues that the trial court abused its discretion by admitting two color photographs depicting the victim's injuries. First, defendant argues that the photographs were admitted without a proper foundation. An appropriate foundation for the admissibility of photographic evidence is satisfied when a person with personal knowledge of the scene or the person photographed testifies that the scene or person photographed is accurately represented. *In re Robinson*, 180 Mich App 454, 460; 447 NW2d 765 (1989). It is not necessary that the person who took the photograph testify. *People v Riley*, 67 Mich App 320, 322; 240 NW2d 787 (1976), rev'd and remanded on other grounds 406 Mich 1016 (1979). Here, the photographs were admitted through the victim, who had personal knowledge of the injuries depicted in the photographs. As a person with personal knowledge, he was qualified to testify regarding the authenticity of the injuries depicted in the photographs. Therefore, we conclude that the trial court properly found that there was an adequate foundation for the admissibility of the two photographs.

Second, defendant argues that the photographs were unduly inflammatory and that their probative value was substantially outweighed by the prejudice they caused defendant. The admission or exclusion of photographic evidence is within the sound discretion of the trial court. *People v Duby*, 120 Mich App 241, 256; 327 NW2d 455 (1982). A trial court need only determine whether the admission of photographic evidence is substantially necessary or instructive to show material facts or conditions or

whether the photographs are being introduced merely to incite passion or prejudice against the defendant. *Id.* at 256-257. Photographic evidence is not inadmissible merely because it contains “gruesome or shocking details” of the alleged crime. *Id.* at 257. In this case, the prosecution sought to convict defendant of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. The trial court could have correctly concluded that these additional photographs depicted the additional swelling and bruising the victim suffered following defendant’s assault. These photographs were therefore instructive in showing the jury the nature and extent of the victim’s injuries, a material fact, and were therefore not cumulative. *People v Banks*, 50 Mich App 622, 627; 213 NW2d 817 (1973). We find no abuse of discretion.

Finally, defendant argues that the prosecution failed to produce the photographs in accordance with a discovery order and that they therefore should have been excluded. However, violation of a discovery order does not automatically entitle a defendant to the exclusion of what is otherwise admissible evidence. *People v Paris*, 166 Mich App 276, 281; 420 NW2d 184 (1988). In addition, a trial court does not automatically abuse its discretion by allowing the admission of evidence that violates a discovery order when the defendant has independent knowledge of the nature of the evidence. *People v Young*, 212 Mich App 630, 642; 538 NW2d 456 (1995). A trial court is entitled to fashion its own remedy for noncompliance with a discovery order. *People v Loy-Rafuls*, 198 Mich App 594, 597; 500 NW2d 480, rev’d on other grounds, 442 Mich 915 (1993). Here, the trial court found that the prosecution did not receive the photographs at issue until just before trial. Defendant was already aware of the prosecution’s intent to offer as evidence other photographs depicting the victim’s injuries. In addition, defendant was also aware that the prosecution intended to show that the seriousness of the victim’s injuries was evidence of defendant’s intent to cause harm to the victim. It follows that defendant had independent knowledge of the nature of the evidence depicted in the photographs. Therefore, we hold that the trial court correctly concluded that the photographs were admissible.

Affirmed.

/s/ Stephen J. Markman
/s/ Richard Allen Griffin
/s/ William C. Whitbeck