

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAYJUIAN JERMAINE WATTS,

Defendant-Appellant.

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UNPUBLISHED

December 28, 2010

No. 293970

Wayne Circuit Court

LC No. 09-007580-FC

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of felony murder, MCL 750.316(1)(b), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to serve life in prison without the possibility for parole for the felony murder conviction and to two years in prison for the felony-firearm conviction. Because we conclude that there were no errors warranting relief, we affirm.

Defendant raises one issue on appeal. He contends that the trial court erred when it permitted the admission of a photograph showing the dead victim, Marquis Robinson. Specifically, he contends that it was error for the trial court to admit this evidence in light of his offer to stipulate that the victim was shot in the back of the head at close range. This Court reviews a trial court's decision to admit photographs for an abuse of discretion. *People v Cervi*, 270 Mich App 603, 625; 717 NW2d 356 (2006). A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

Relevant evidence is generally admissible at trial. MRE 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. When a defendant pleads not guilty, "all elements of a criminal offense are 'in issue,'" and "the prosecution may offer all relevant evidence, subject to MRE 403, on every element." *People v Mills*, 450 Mich 61, 69-71; 537 NW2d 909 (1995).

The felony murder crime with which defendant was charged has the element of causing the death of another person. *People v Nowack*, 462 Mich 392, 401; 614 NW2d 78 (2000). Therefore, the prosecution was entitled to offer all relevant evidence establishing that Robinson died as a result of defendant's actions. Any testimony relating to the circumstances of Robinson's death, and any photographs showing Robinson's body at the accident scene, would be relevant and, thus, admissible subject only to MRE 403. MRE 403 provides that, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "Unfair prejudice exists when there is a tendency that the evidence will be given undue or preemptive weight by the jury, or when it would be inequitable to allow use of the evidence." *People v Taylor*, 252 Mich App 519, 521-522; 652 NW2d 526 (2002).

Photographic evidence is generally admissible if it is relevant and not unduly prejudicial. *People v Gayheart*, 285 Mich App 202, 227; 776 NW2d 330 (2009). If photographs are otherwise admissible for a proper purpose, they are not rendered inadmissible merely because they vividly portray the details of a gruesome or shocking accident or crime. *People v Ho*, 231 Mich App 178, 188; 585 NW2d 357 (1998). Photographic evidence is also admissible for the purpose of corroborating the testimony of a witness. *Mills*, 450 Mich at 76.

Defendant argues that the photograph's relevance was substantially outweighed by the danger of unfair prejudice because he did not dispute that Robinson died from a gunshot to the back of his head. As already noted, the prosecution is required to prove each element of the charged offense even where a defendant offers to stipulate to an element. *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998), citing *Old Chief v United States*, 519 US 172, 181; 117 S Ct 644; 136 L Ed 2d 574 (1997). This is true even though the stipulation may properly be used to establish an element of a crime. See *Old Chief*, 519 US at 186. Indeed, the prosecution is generally entitled to prove its case without regard to a defendant's offer to stipulate:

[T]he accepted rule that the prosecution is entitled to prove its case free from any defendant's option to stipulate the evidence away rests on good sense. A syllogism is not a story, and a naked proposition in a courtroom may be no match for the robust evidence that would be used to prove it. People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors asked to rest a momentous decision on the story's truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard. A convincing tale can be told with economy, but when economy becomes a break in the natural sequence of narrative evidence, an assurance that the missing link is really there is never more than second best. [*Id.* at 189.]

Nevertheless, the fact that a defendant has offered to stipulate to an element may—under some limited circumstances—properly be considered in determining whether the admission of the proposed evidence would be substantially outweighed by the danger of unfair prejudice. *Id.* at 184-185.

Here, defendant was charged with felony murder, which required the prosecution to prove the killing of a human being, with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result during the commission of a felony. *People v Smith*, 478 Mich 292, 318-319; 733 NW2d 351 (2007). The photograph depicted Robinson as found at the scene by the arriving officers. It revealed that Robinson was shot in the back of the head, suggesting that the shooter shot from behind, when Robinson was unaware of what was happening. Robinson's position on the floor reveals that his body was abandoned, presumably because the person responsible wanted to avoid detection. These matters make it more probable than not that Robinson's shooting was intentional rather than accidental or involuntary. Accordingly, the photograph was admitted for the proper purpose of proving the elements of felony murder.

The photograph was also not particularly prejudicial and, even when considered in light of defendant's offer to stipulate, the danger of unfair prejudice did not substantially outweigh the photographs probative value under MRE 403. See *Old Chief*, 191-192 (noting that, outside situations involving proof of convict status, "the prosecutor's choice [of evidence] will generally survive a Rule 403 analysis when the defendant seeks to force the substitution of an admission for evidence creating a coherent narrative of his thoughts and actions in perpetrating the offense for which he is being tried."). Although the photograph depicts blood smears on the carpet and Robinson's dead body, they are not markedly gory or gruesome. The blood is not copious, and no gaping wounds are apparent. The photograph is disturbing in that it depicts a dead man, but its overall appearance would not inflame passions or cause the trier of fact to disregard its duty to determine defendant's guilt based on the evidence. Further, the risk of unfair prejudice was minimized because this was a bench trial, and a judge is presumed to understand the law and decide a case based solely on properly admitted evidence. See *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001).

Defendant also argues that the photograph was unnecessary because the medical examiner's testimony established the location of Robinson's wounds and the trajectory of the bullets. The medical examiner's report stated that Robinson died of a single gunshot wound to his head and it ruled the manner of death a homicide. However, photographs may be admitted as evidence to corroborate a witness's testimony. *Mills*, 450 Mich at 76. Furthermore, the trial court, as trier of fact, is not required to depend solely on the testimony of experts; it is entitled to view the severity and vastness of the injuries itself. *Id.* at 72-73. Thus, on this record, we cannot conclude that the trial court abused its discretion when it admitted the photograph.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello