

Affirmed and Memorandum Opinion filed May 19, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00209-CR

PRINSTON MORTEL WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 1136639**

MEMORANDUM OPINION

Appellant, Prinston Mortel Williams, was charged with capital murder but convicted of the lesser-included offense of aggravated robbery. In a single issue, appellant contends the trial erred by admitting three autopsy photographs. We affirm.

BACKGROUND

In October 2007, appellant and his brother entered an illegal gaming establishment, shot a security guard (the “decedent”) in his left thigh, robbed an employee at gunpoint,

and then left the scene.¹ The decedent later died from loss of blood caused by the gunshot wound.

Appellant was apprehended and charged with capital murder. The jury acquitted appellant of capital murder but convicted him of the lesser-included offense of aggravated robbery and sentenced him to life imprisonment.

AUTOPSY PHOTOGRAPHS

In his sole issue, appellant contends the trial court erred by admitting three autopsy photographs, State's Exhibits 116, 117, and 118, because the probative value of the photographs was substantially outweighed by the danger of unfair prejudice. *See* Tex. R. Evid. 403.

A. Applicable Law and Standard of Review

Under Texas Rule of Evidence 403, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]” Tex. R. Evid. 403.² The admissibility of photographs is within the trial court's sound discretion, and we will not reverse the court's ruling unless it falls outside the zone of reasonable disagreement. *Resendiz v. State*, 112 S.W.3d 541, 544 (Tex. Crim. App. 2003).

In determining whether the probative value of evidence is substantially outweighed by the danger of unfair prejudice, we consider (1) the probative value of the evidence, (2) the potential to impress the jury in some irrational, yet indelible, way, (3) the time needed to develop the evidence, and (4) the proponent's need for the evidence. *Erazo v. State*,

¹ Whether it was appellant or his brother who possessed and used the gun is irrelevant in this appeal.

² “Probative value” refers to the inherent probative force of an item of evidence—that is, how strongly it serves to make more or less probable the existence of a fact of consequence to the litigation—coupled with the proponent's need for that item of evidence. *Gigliobianco v. State*, 210 S.W.3d 637, 641 (Tex. Crim. App. 2006). “Unfair prejudice” refers to a tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one. *Id.*

144 S.W.3d 487, 489 (Tex. Crim. App. 2004). Additionally, we consider many factors in determining whether the trial court violated Rule 403 by admitting autopsy photographs, including (1) the number of exhibits offered, (2) their gruesomeness, (3) their detail, (4) their size, (5) whether they are in color or black-and-white, (6) whether they are close up, (7) whether the body depicted is clothed or naked, (8) the availability of other means of proof, and (9) other circumstances unique to the individual case. *Davis v. State*, 313 S.W.3d 317, 331 (Tex. Crim. App. 2010). Generally, photographs are admissible if verbal testimony about the matters depicted in the photographs would be admissible and their probative value is not substantially outweighed by any of the Rule 403 counter-factors. *Threadgill v. State*, 146 S.W.3d 654, 671 (Tex. Crim. App. 2004). Further, autopsy photographs are generally admissible unless they depict mutilation of the victim caused by the autopsy itself. *Salazar v. State*, 38 S.W.3d 141, 151 (Tex. Crim. App. 2001) (quoting *Rojas v. State*, 986 S.W.2d 241, 246 (Tex. Crim. App. 1998)). However, mutilation caused during an autopsy is not necessarily fatal to the admissibility of a photograph if the photograph is highly probative of the medical examiner's findings and conclusions or when it allows the jury to see an internal injury. *See Gallo v. State*, 239 S.W.3d 757, 763 (Tex. Crim. App. 2007); *Harris v. State*, 661 S.W.2d 106, 108 (Tex. Crim. App. 1983).

B. Analysis

Before determining whether the trial court erred by admitting the challenged photographs, it is important to reiterate appellant was on trial for *capital murder* although he was ultimately convicted of the lesser-included offense of aggravated robbery. *See Prible v. State*, 175 S.W.3d 724, 736 & n.25 (Tex. Crim. App. 2005) (explaining trial court erred by admitting autopsy photographs of children because, “most important,” defendant was not charged with murdering the children.). Therefore, in context, the State introduced the photographs while presenting a murder case.

The State presented the testimony and autopsy report of Luisa Florez, M.D., the medical examiner who performed the decedent's autopsy. Dr. Florez testified that the

twenty-four autopsy photographs admitted into evidence, including State's Exhibits 116, 117, and 118, "would aid the jury in discussing the cause and manner of death of [the decedent]." Several unchallenged photographs depict close-up views of the entry and exit wounds on the decedent's thigh caused by the bullet. Dr. Florez testified that the entry wound was caused by a contact gunshot wound, meaning the gun was fired while the barrel was contacting the decedent's thigh. Dr. Florez concluded the decedent's death resulted from loss of blood caused by the gunshot wound.

Dr. Florez testified there was no precise method for determining the amount of blood lost by the decedent as a result of the gunshot wound, but that an indirect method was to observe how pale the decedent's organs were. State's Exhibit 116 is a photograph depicting the decedent's liver and spleen lying on a table. Dr. Florez explained that the decedent's liver should be a "dark red brown[color,]" but the photograph reflected that liver was "very pale."

We acknowledge appellant did not dispute the cause of the decedent's death. Nevertheless, probative autopsy photographs may be admissible even when cause of death is undisputed. *See Holford v. State*, 177 S.W.3d 454, 464 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd); *see also Newbury v. State*, 135 S.W.3d 22, 41–44 (Tex. Crim. App. 2004). State's Exhibit 116 is relatively large in size (seven inches by eleven inches), in full color, and depicts close and detailed views of the decedent's liver and spleen. However, the photograph is not excessively gruesome: the organs are not dripping in blood or covered in other tissue but are simply presented on a clean table. A photograph depicting internal organs that have been removed from the decedent is not considered to be a depiction of mutilation of the decedent because there is no danger the jury would attribute the removal of the organs to the defendant. *See Salazar*, 38 S.W.3d at 151–52. Additionally, the photograph supported and complimented Dr. Florez's conclusion that the decedent died from blood loss because it depicts the pale coloration of the decedent's liver, indicating he had lost a great amount of blood. *See Erazo*, 144 S.W.3d at 491 ("A

photograph should add something that is relevant, legitimate, and logical to the testimony that accompanies it and that assists the jury in its decision-making duties.”). Thus, considering all factors, we conclude the trial court did not abuse its discretion by admitting State’s Exhibits 116.

Dr. Florez also testified that she dissected the gunshot-wound area to determine what internal injuries occurred. State’s Exhibits 117 and 118 depict close-up views of the decedent’s left thigh after Dr. Florez dissected the thigh and refracted the tissue to display the thigh’s interior. A metal probe was placed where the femoral artery would have been located in the thigh before it was transected by the bullet. Dr. Florez testified that transection of the femoral artery caused a large hematoma on the decedent’s thigh and demonstrated this finding by describing State’s Exhibit 117 as follows: “And the vessel [the femoral artery] I’m talking about is this one. It should run all the way from the bifurcation really of the aorta down. And as you can see, I put up a probe in one end of the vessel and there’s no vessel here. So, it’s like completely gone. [The bullet] just took this whole chunk of the vessel away.” During cross-examination, Dr. Florez agreed the gunshot wound would have been non-fatal if the bullet had not transected the femoral artery.

State’s Exhibits 117 and 118 are seven inches by eleven inches in size, in full color, and depict close and detailed views of the decedent’s dissected thigh. Admittedly, these photographs are more gruesome than the other photographs in the record because they reveal internal injuries to the thigh. However, in order to depict the transection of the femoral artery, an injury that was not otherwise visible, Dr. Florez needed to show the interior of the decedent’s thigh. *See Gallo*, 239 S.W.3d at 763 (concluding trial court did not err by admitting photographs of the decedent’s rib, skull cap, and brain, all visible due to the decedent’s autopsy, because they were necessary to show the injuries sustained); *Harris*, 661 S.W.2d at 108 (concluding trial did not err by admitting photograph of decedent’s skull with skin refracted because it was necessary to show the skull fracture);

see also Davis, 313 S.W.3d at 331 (concluding trial court did not err by admitting photograph of cross-section of decedent’s tongue because it was “not excessively gruesome and was necessary to show injury not otherwise visible”). The photographs supported and complimented Dr. Florez’s conclusion that the bullet transected the decedent’s femoral artery, causing him to bleed profusely. *See Erazo*, 144 S.W.3d at 491. Further, no other exhibit demonstrated this internal injury; Dr. Florez’s autopsy report did not contain a diagram of the interior of a thigh. Finally, there was no danger the jury would believe appellant caused the depicted mutilation because the jury saw other photographs of the gunshot wound before dissection and Dr. Florez explained that she dissected the thigh to determine internal injuries. *See Gallo*, 239 S.W.3d at 763. Considering all factors, we conclude the trial court did not abuse its discretion by admitting State’s Exhibits 117 and 118.

Accordingly, we overrule appellant’s sole issue and affirm the trial court’s judgment.

/s/ Charles W. Seymore
Justice

Panel consists of Justices Anderson, Seymore, and McCally.

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