

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JON PATRICK RAJALA,

Defendant-Appellant.

UNPUBLISHED

October 6, 1998

No. 202247

Oakland Circuit Court

LC No. 96-147537 FC

Before: Holbrook, Jr., P.J., and Markey and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), and second-degree murder, MCL 750.317; MSA 28.549. Defendant subsequently pleaded guilty to being an habitual offender, second offense, MCL 769.10(1)(b); MSA 28.1082(1)(b). The trial court sentenced defendant to life imprisonment for the second-degree murder conviction and to life without parole for the first-degree felony murder conviction. However, the sentences were vacated, and defendant was sentenced to life without parole for the habitual offender conviction. Defendant now appeals as of right his convictions. We affirm defendant's conviction for first-degree felony murder and reinstate his original sentence of life without parole for that conviction, but we vacate defendant's conviction of second-degree murder and his sentence on the habitual offender conviction.¹

I

First, defendant argues that the trial court erred in admitting crime scene and autopsy photographs into evidence. "The decision to admit or exclude photographs is within the sole discretion of the trial court." *People v Mills*, 450 Mich 61, 76; 537 NW2d 909, modified 450 Mich 1212 (1995); accord, *People v Ho*, ___ Mich App ___, ___ NW2d ___ (Docket No. 188274, issued August 14, 1998), slip op at 5. An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994).

Generally, all relevant evidence is admissible. MRE 402. Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401. Even if evidence is relevant, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, waste of time, or needless presentation of cumulative facts. MRE 403. However, “unfair prejudice” does not mean “damaging.” *Mills, supra* at 75. Any relevant evidence will be damaging to some extent. *Id.* Unfair prejudice exists when there is a tendency that the evidence will be given undue preemptive weight by the jury, or when it would be inequitable to allow the use of the evidence. *Id.* at 75-76.

When determining admissibility of gruesome photographs, the proper inquiry is always whether the photographs’ probative value is substantially outweighed by unfair prejudice. *Id.* at 76. The trial court is not required to exclude the photographs from evidence simply because a witness can orally testify about the information contained in the photographs. *Id.*; cf. *People v Falkner*, 389 Mich 682, 685-686; 209 NW2d 193 (1973); *People v Eddington*, 387 Mich 551, 561-563; 198 NW2d 297 (1972). In addition, photographs may be used to corroborate a witness’ testimony. *Mills, supra* at 76. “Gruesomeness alone need not cause exclusion.” *Id.* In *Eddington, supra* at 562-563, quoting 29 Am Jur 2d Evidence, § 787, pp 860-861, the Supreme Court stated:

Photographs that are merely calculated to arouse the sympathies or prejudices of the jury are properly excluded, particularly if they are not substantially necessary or instructive to show material facts or conditions. If photographs which disclose the gruesome aspects of an accident or a crime are not pertinent, relevant, competent, or material on any issue in the case and serve the purpose solely of inflaming the minds of the jurors and prejudicing them against the accused, they should not be admitted in evidence. However, if photographs are otherwise admissible for a proper purpose, they are not rendered inadmissible merely because they bring vividly to the jurors the details of a gruesome or shocking accident or crime, even though they may tend to arouse the passion or prejudice of the jurors. Generally, also, the fact that a photograph is more effective than an oral description, and to that extent calculated to excite passion and prejudice, does not render it inadmissible in evidence.

In the instant case, the photographs were offered to corroborate the testimony of several witnesses at trial, and to prove defendant’s intent to kill the victim. The photographs depicted the nature of the crime and the extent of the victim’s injuries. The photographs leave little doubt that defendant intended to murder the victim. Through the use of the photographs, the jury had a greater understanding of the medical examiner’s testimony. Simply because other witnesses at trial testified about the information contained in the photographs, the trial court was not required to exclude the photographs from evidence. The jury could have disregarded the testimony of any of the witnesses. Therefore, we find that the photographs were relevant.

Because the photographs were relevant, the trial court was required to determine whether their probative value outweighed the danger of potential prejudicial effects. As long as photographs are admitted for a proper purpose, “they are not rendered inadmissible merely because they bring vividly to the jurors the details of a gruesome or shocking accident or crime, even though they may tend to arouse the passion or prejudice of the jurors.” *Eddington, supra* at 562-563. The photographs focused on the victim’s various injuries and the nature of the crime scene. Although a few of the photographs could be considered gruesome, we believe that a reasonable juror would not have been so overwhelmed by the photographs that he or she would have been unable to rationally evaluate the evidence presented against defendant.

Moreover, even if the trial court erred in admitting the photographs, any error was harmless. *People v Doyle (On Remand)*, 129 Mich App 145, 157; 342 NW2d 560 (1983), overruled in part on other grounds *People v Williams*, 422 Mich 381, 387-388 & n 2; 373 NW2d 567 (1985); *People v Musser*, 53 Mich App 683, 692; 219 NW2d 781 (1974). There was overwhelming evidence on the record to support defendant’s first-degree felony murder conviction. Defendant was arrested while riding in the victim’s car, his fingerprints were discovered in the victim’s home, and he admitted to a police officer that he entered the victim’s home and stole his car keys. While defendant did not admit to killing the victim, he related the details of the crime to a fellow inmate who testified against him at trial. Clearly, reversible error did not result from the admission of the photographs.

II

Next, defendant asserts that the trial court erred by permitting the prosecution’s witnesses to testify about railroad spikes when the trial court refused to admit into evidence a bag of railroad spikes found in the victim’s car. We review alleged errors in the admission of evidence for an abuse of discretion. *McAlister, supra* at 505. Here, we find no abuse of discretion. No testimony was presented to the jury regarding the bag of spikes that were excluded from evidence under MRE 402 as irrelevant. Further, the police and the medical examiner were properly permitted to testify that a railroad spike was found inside the victim’s home and could have been used to inflict some of the injuries found on the victim’s body. The court’s decision to exclude from evidence the bag of spikes had no impact on these witnesses’ ability to describe the crime scene.

III

Finally, both parties agree that the trial court erred by sentencing defendant to life in prison without parole pursuant to the habitual offender statute, MCL 769.10(1)(b); MSA 28.1082(1)(b). The second habitual offender statute’s maximum penalty is life imprisonment, not life without parole. Because it was the intent of the Legislature that an individual convicted of first-degree murder should be imprisoned for life without parole, the trial court erred in sentencing defendant under the habitual offender statute. See *Manuel v Dep’t of Corrections*, 140 Mich App 356, 358-360; 364 NW2d 334 (1985). Therefore, defendant’s conviction and sentence for second-degree murder and his sentence

under the habitual offender statute are vacated, and his nonparoleable life sentence for first-degree felony murder is reinstated.

We therefore affirm defendant's first-degree felony murder conviction. Only defendant's original sentence of life imprisonment without parole for his felony murder conviction is reinstated. His other sentences and convictions are vacated.

/s/ Donald E. Holbrook, Jr.

/s/ Jane E. Markey

/s/ William C. Whitbeck

¹ Although no one raises this issue on appeal, we note that the trial court erred in sentencing defendant for two murder convictions, i.e., first-degree felony murder and second-degree murder for the death of one man. In *People v Goodchild*, 68 Mich App 226, 236-237; 242 NW2d 465 (1976), this Court stated that “[h]ad defendant been convicted of first-degree murder as well as second-degree murder, it is evident that his conviction for the included offense would be set aside as constituting double punishment.” We also observed that “[s]econd-degree murder is *always* a lesser included offense of first-degree murder.” *Id.* at 236, citing *People v Carter*, 395 Mich 434, 437; 236 NW2d 500 (1975) (emphasis supplied by the *Goodchild* Court). Thus, sentencing defendant for both first-degree and second-degree murder in the death of one victim violates double jeopardy principles. Because the “remedy for multiple punishment for one offense is to expunge the lesser charge,” *Goodchild, supra* at 237, we vacate the second-degree murder conviction and only reinstate the first-degree murder conviction. Also, in *People v Bigelow*, 229 Mich App 218, 221-222; ___ NW2d ___ (1998) a conflict panel of this Court held that dual convictions arising from the death of a single victim violated double jeopardy. Rather than vacate the one conviction, this Court modified the defendant's judgment of sentence to specify that defendant's conviction and single sentence was one count of first-degree murder supported by two theories: premeditated murder and felony murder. *Id.* at 222.