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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1999-459 (9-716) / 98-1970
Filed February 23, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES JEROME PATTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

On appeal from his conviction for willful injury, defendant contends the court erred in admitting photographs of the victim's injuries despite the fact that he had stipulated a serious injury had occurred. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael Hunter, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Miller, J.J.

MILLER, J.

Defendant James Patton appeals his conviction of willful injury following jury trial, claiming the trial court erred in admitting photographs of the injuries. We affirm.

The following facts are undisputed. On June 20, 1998, the victim, Kory Boersma, hosted a party involving alcohol in his Des Moines home. During the party, the keg ran dry and Boersma went to Tait's Supermarket to purchase another. While at Tait's, Boersma struck up a conversation with Patton, whom he previously did not know, while in the check out line. Thinking that Patton was a nice guy, Boersma invited him back to the party. Patton accepted the invitation, and rode to the party with Boersma.

Everything went smoothly at the party until about 11:00 p.m., when the police arrived and told everybody they needed to leave. All but five people left. Both Boersma and Patton remained. At this time, Boersma decided to go downtown to bail two friends out of jail. Patton wanted a ride to "Big Earl's," a strip bar in Des Moines, before Boersma went downtown. Boersma told Patton that he would take Patton to Big Earl's after he bailed his friends out. After discussing the ride situation several times, the conversation turned into an argument. Eventually, Boersma told Patton he was going to bail his friends out first, and if Patton did not like it he could leave. Boersma eventually told Patton to leave, but he wouldn't. Boersma then grabbed Patton by either the neck or arm and "escorted" him outside.

Patton then walked almost to the end of the yard and then turned and came back while Boersma was standing in the middle of the yard. Patton said

something like, "Do you want some of this." Although Boersma did not hear him, Patton also threatened to kill Boersma and Boersma's friend who had helped escort Patton out of the house. Patton then swung at Boersma. At first, Boersma thought that Patton had missed, but, he testified, then "all of a sudden my lip felt turned inside out and I realized he had a knife." Patton cut Boersma with the knife several times, including at least three deep gashes in his face and neck areas. Boersma also suffered knife injuries to his arm. His injuries required more than 300 stitches and plastic surgery. After a struggle, Boersma made it back into the house. Patton tried to follow Boersma into the house, but the door was held shut. Patton left as the police were called.

Two of the police officers that responded to the scene observed a person matching the description of the suspect running in the area. As the police officer slowed his patrol car, Patton nearly ran into them. The officers got out and aimed their weapons at Patton. Patton stopped, threw something with his left hand, and said, "You got me." He then put his hands on the patrol car without any prompting. Patton was covered with blood. The police secured the item that Patton threw, a razor blade-style box cutter, that also had fresh blood on it. Patton was charged with willful injury, in violation of the Code of Iowa, section 708.4 (1997).

At trial, the State offered three pictures of the victim's injuries, taken shortly after the attack. State's exhibit two depicted the victim lying in a hospital bed. This photograph showed what the victim's face looked like as a whole after the attack. A second picture, exhibit three, was a close-up of the knife wound suffered by the victim that ran from the left side of his lip, past his nose and

ended very close to his left eye. The third picture, exhibit four, showed two of the other serious knife wounds suffered by Boersma, one that ran along his jaw line from his left ear toward his chin, the other wound located about three centimeters lower on his neck, close to his jugular vein and about an inch deep. Each exhibit was a five-inch by seven-inch color photograph. Patton offered to stipulate the victim had suffered "serious injury,"[1] and objected to the admission of each photograph "on the grounds of Iowa Rule of Evidence 403." The State asserted it was nevertheless entitled to present evidence and that the pictures were relevant. The court overruled the objections and admitted the three pictures.

After the State rested, the defense presented evidence that at the time of the attack Patton was unable to form the specific intent to cause serious injury and that he was legally insane. The jury apparently found that evidence unconvincing and found Patton guilty. Patton received a term of imprisonment not to exceed ten years. Patton appeals, claiming the court committed prejudicial error in admitting the three photographs of the victim's injuries.

On appellate review of an evidentiary ruling concerning Iowa Rule of Evidence 403 we grant the district court wide latitude regarding admissibility and will disturb the court's ruling only upon finding an abuse of discretion. *State v. Sallis*, 574 N.W.2d 15, 16 (Iowa 1998). To show an abuse of discretion, one generally must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Most*, 578 N.W.2d 250, 253 (Iowa App. 1998). We will uphold the trial court's ruling on the

[1] The State must prove the victim suffered a "serious injury" in a willful injury case. *See* Iowa Code § 708.4 (1997).

admissibility of evidence on any ground in the record, whether urged or not. *State v. Tate*, 569 N.W.2d 364, 368 (Iowa 1997).

Patton concedes the photographs were relevant to the issue of whether a serious injury occurred. He argues that because he offered to stipulate that Boersma suffered serious injury the photographs' admission violated Iowa Rule of Evidence 403, which states in part that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. . . ."

The test for admitting photographs is two-fold: (1) the evidence must be relevant and (2) if the evidence is relevant the trial court must determine whether the probative value of the exhibits outweighs the prejudice which would be caused by their admission into evidence. *State v. Brown*, 397 N.W.2d 689, 700 (Iowa 1986). Our supreme court defined "unfair prejudice" as used in rule 403 as:

> evidence that appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action [which] may cause a jury to base its decision on something other than the established propositions in the case. The appellate court may conclude that "unfair prejudice" occurred because an insufficient effort was made below to avoid the dangers of prejudice, or because the theory on which the evidence was offered was designed to elicit a response from the jurors not justified by the evidence.

State v. Brown, 569 N.W.2d 113, 117 (Iowa 1997). The complaining party has the burden of establishing the trial court abused its discretion in the balancing process under rule 403. *State v. Cott*, 283 N.W.2d 324, 329 (Iowa 1979).

Patton argues there was no need for the photographs because he offered to stipulate to the "serious injury" element of the willful injury charge. He further

argues the photographs were not relevant to any other element of the charge. He concludes there was no purpose for the admission of the photographs other than "to show the gore." We disagree.

It has long been the law in Iowa that the "State has the right, undiluted by stipulation, to present relevant evidence of the crime committed." *State v. Moore*, 276 N.W.2d 437, 441 (Iowa 1979); *see also State v. Nowlin*, 244 N.W.2d 596, 600 (Iowa 1976); *State v. Griffin*, 218 Iowa 1301, 1311, 254 N.W. 841, 846 (1934); *State v. Stansberry*, 182 Iowa 908, 914-16, 166 N.W. 359, 360-61 (1918). Therefore, despite Patton's offer to stipulate that Boersma had suffered serious injury, the photographs were nevertheless relevant to prove the required element that a serious injury had occurred. The permanently disfigured victim and other witnesses testified as to the injuries sustained by the victim. The photographs may be seen as simply embellishing the picture that had been drawn by that testimony. *See, e.g., State v. Brown*, 397 N.W.2d 689, 700 (Iowa 1986) (holding autopsy pictures were relevant and not unfairly prejudicial despite extensive and graphic testimony about the nature, extent, and severity of wounds).

Contrary to Patton's assertions, the pictures were also probative on a second element, which the parties hotly contested: Patton's specific intent to cause serious injury.[2] *See, e.g., State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984) (stating "[T]he nature, extent and severity of the wounds which are indicated in the photographs bore on the character of the assault and the intent

[2] The State must prove the defendant had the specific intent to cause serious injury in a willful injury case. See Iowa Code § 708.4 (1997). The defense presented evidence that Patton was psychotic at the time of the incident, due to his schizophrenia and high usage of alcohol and illegal drugs, and thus unable to form specific intent.

of the assailant."). Clearly, the pictures are probative of the state of mind and intent of the defendant to inflict serious injury.

Having found the photographs were probative of two issues at trial, we must still determine what, if any, danger of unfair prejudice the pictures caused in order to complete the balancing required by of Iowa Rule of Evidence 403. Patton makes a bald assertion that the "graphic depiction of bloody facial and neck wounds aroused the passions of the jury . . . lur[ing] the jury into declaring guilt based on a ground different from the proof specific to the defendant's ability to form the required specific intent." We find no merit to this assertion.

Our supreme court has previously held that photographs, more graphic than at issue here, do not put unfairly prejudicial evidence before the jury. *See, e.g., Brown*, 397 N.W.2d at 700 (holding "[t]hat the autopsy photographs were themselves somewhat gruesome does not render them inadmissible. Murder is often a gruesome affair giving rise to equally gruesome evidence. That alone is not sufficient reason to exclude that evidence.") (internal citations omitted). Only three photographs of the victim's wounds were admitted. Two show only part of the wounds. The three color photographs are included in the appendix. We have viewed them. Objectively, there is nothing particularly gruesome or gory about any of them. Their admission carried little or no danger of unfair prejudice. The trial court did not abuse its discretion in admitting them.

AFFIRMED.