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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey,

Appellate Division.

STATE of New Jersey, Plaintiff–Respondent,

v.

Darwin RODRIGUEZ–FERREIRA, Defendant–Appellant.

Submitted Jan. 7, 2014. Decided May 7, 2014.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 10–10–1807.

Attorneys and Law Firms

Joseph E. Krakora, Public Defender, attorney for appellant ([Susan Brody](#), Deputy Public Defender II, of counsel and on the brief).

[John J. Hoffman](#), Acting Attorney General, attorney for respondent (Jeffrey P. Mongiello, Deputy Attorney General, of counsel and on the brief).

Before Judges [FISHER](#), [KOBLITZ](#) and [O'CONNOR](#).

Opinion

PER CURIAM.

*1 A jury convicted defendant **Darwin Rodriguez–Ferreira** of knowing and purposeful murder, [N.J.S.A. 2C:11–3a\(1\) and \(2\)](#) (count one); fourth-degree unlawful possession of a weapon, [N.J.S.A. 2C:39–5d](#) (count two); and third-degree possession of a weapon for an unlawful purpose, [N.J.S.A. 2C:39–4d](#) (count three). Defendant was sentenced to a thirty-year term with a thirty-year parole disqualifier on the murder conviction, and to a consecutive eighteen-month term on the unlawful possession of a weapon conviction. The count for possession of a weapon for an unlawful purpose was merged into the count for murder and dismissed.

Defendant appeals the convictions, presenting the following arguments for our consideration:

POINT I—THE COURT ERRED IN PERMITTING THE ADMISSION OF FOUR GRUESOME AUTOPSY PHOTOS AT TRIAL

POINT II—THE COURT ERRED IN IMPOSING A CONSECUTIVE SENTENCE FOR POSSESSION OF THE KNIFE

We affirm the judgment of convictions but remand for the court to articulate its reasons for imposing the consecutive sentence.

At about 5:00 a.m. on August 16, 2009, Kendall left his home in Jersey City to buy cigarettes. Thirty minutes later, Kendall's neighbor heard someone outside say, "what are you doing?" The neighbor peered out the window and saw a man lying in the street. The police were summoned and when they arrived, Kendall was lying in the street with stab wounds on his forearm, neck and torso. Kendall died at the scene.

A review of Kendall's cellular telephone call log revealed an exchange of calls between him and an individual named "**Darwin**" within forty minutes of the time Kendall was discovered wounded on the ground. There were also two numbers for a "**Darwin**" stored on Kendall's cellular telephone contact list. Records from the cellular telephone company uncovered that the contact number for "**Darwin**" was registered to defendant's mother, with whom defendant lived in Jersey City.

About eight hours after Kendall was attacked, a bloody knife wrapped in boxer shorts was found two and a half blocks from his home. The blood on the knife contained Kendall's DNA, and skin cells scraped from the inside of the boxer shorts contained defendant's DNA. The police searched defendant's home and found bloodstains on the floor; Kendall's DNA was found in a swab taken from a stain. The day after Kendall was killed, defendant flew out of the country on a one-way ticket. The medical examiner testified Kendall sustained blunt force trauma and multiple stab wounds, which were either "sharp force" or "cutting" wounds. There were also defensive wounds on Kendall's arms. The medical examiner concluded that the "manner of death was ... a homicide."

Over defendant's objection, four colored photographs of Kendall's body taken during the autopsy were admitted into evidence.¹ One photograph shows a stab wound to the neck and face. Another shows four stab wounds to the torso and one to the forearm, as well as the stab wounds to the neck and face. There is a picture of Kendall's liver, taken after it was

removed from the body, revealing two lacerations. The fourth picture shows another view of the wounds to the neck and face.

*2 Defendant argues the court erred when it denied his motion to exclude the photographs from evidence, claiming they were so gruesome they prejudiced him. He also contends the photographs were not relevant because he did not contest Kendall was stabbed to death; his defense was that he was not the one who stabbed Kendall. Finally, defendant complains the photographs were in color and, if they were to be admitted, they should have been in black and white in order to limit the graphic impact of the wounds.

The trial judge found the probative value of the photographs outweighed any prejudice. When he ruled on defendant's motion to exclude the photographs, the trial judge anticipated charging the jury on not only knowing and purposeful murder, but also aggravated manslaughter, *N.J.S.A. 2C:11-4a*, and reckless manslaughter, *N.J.S.A. 2C:11-4b(1)*.² The judge found the "manner of the death was rather violent and that's reflected in the photos," and that the nature of the wounds was probative of defendant's intent and whether he had committed any of the offenses.

Relevant evidence may be excluded if its probative value is substantially outweighed by the risk of undue prejudice. *N.J.R.E. 403*. The decision to admit or exclude autopsy photographs rests with the sound discretion of the trial judge. *State v. Johnson*, 120 N.J.263, 297 (1990). We reverse only when we discern a palpable abuse of that discretion. *State v. McDougald*, 120 N.J. 523, 582 (1990).

Our Supreme Court has observed that photographs of a murder victim are likely to "cause some emotional stirring," *Johnson, supra*, 120 N.J. at 297 (quoting *State v. Thompson*, 59 N.J. 396, 421 (1971)), but "[t]he presence of blood and gruesome details [in photographs] are not ipso facto grounds for exclusion." *State v. Morton*, 155 N.J. 383, 455-56 (1998) (citation omitted). Photographs that are relevant on an issue in a case are admissible unless "their probative value is so significantly outweighed by their inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation of the basic issue of guilt or innocence." *Thompson, supra*, 59 N.J. at 421. Courts have admitted photographs of murder victims if relevant on the issue whether an act was purposeful and knowing. See *State v. Sanchez*, 224 N.J. Super. 231, 249-51 (App. Div.), cert. denied, 111 N.J. 653 (1988); *McDougald, supra*, 120 N.J. at 580-82. In *Sanchez*, defendant objected to the admission of photographs depicting close-ups of gunshot wounds on the victim's hand, chest cavity and face. *Sanchez, supra*, 224 N.J. Super. at 249. Like defendant here, the defendant in *Sanchez* argued the probative value of the photographs was outweighed by its prejudicial effect, and were irrelevant as the manner of the victim's death was not disputed. *Id.* at 249. He did dispute he was guilty of a knowing or purposeful murder advocating, at best, he was guilty of only one of the forms of manslaughter. *Id.* at 250. We held the photographs were admissible to show the attack evidenced the requisite purpose or knowledge to support the charge of murder as opposed to manslaughter. *Ibid.*

*3 Here, the photographs served the same purpose. It was the State's theory defendant intended to inflict fatal injuries. Once the jury found defendant stabbed Kendall, the jury was required to determine whether or not he committed a knowing and purposeful murder or aggravated manslaughter. The photographs of the stab wounds were highly relevant on the issue of defendant's criminal state of mind and whether, consistent with the State's theory, the nature of the stab wounds evidenced an attack "performed with such convulsive ferocity that it could only have been the product of a knowing purpose to cause death." *State v. Micheliche*, 220 N.J. Super. 532, 545 (App. Div.), cert. denied, 109 N.J. 40 (1987). The evidence enabled the jury to study the nature and extent of the wounds and aid in its assessment of defendant's degree of culpability.

As for whether the admitted photographs should have been in black and white instead of in color, we conclude from our review of the colored photographs that they were not so inflammatory as to outweigh their probative value. We are satisfied from our examination of the record and applicable law that the trial judge did not abuse his discretion by admitting the four colored photographs into evidence.

Defendant contends the trial judge erred when he imposed a consecutive sentence for the conviction of unlawful possession of a weapon, arguing the trial judge failed to examine whether a consecutive sentence was warranted under the factors identified in *State v. Yarbough*, 100 N.J. 627, 643-44 (1985), cert. denied, 475 U.S. 1014, 106 S.Ct. 1193, 89 L. Ed.2d 308 (1986), superseded in part by statute, *N.J.S.A. 2C:44-5*.

The trial judge failed to give any reasons for imposing a consecutive sentence, other than to say "under the law I am permitted to [impose a consecutive sentence]." As a sentencing court is required to articulate why the *Yarbough* factors compel a consecutive sentence, we are constrained to remand this matter so the trial judge can place his reasons on the record for imposing the consecutive sentence. See *State v. Abdullah*, 184 N.J. 497, 514-15 (2005).

Affirmed in part and remanded in part.