

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

HENRY MARTIN STEIGER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case Number: SC20-1404

DCA Case Number: 1D19-3217

L.T. Case Number:

172018CF004365XXXAX

APPENDIX TO
PETITIONER'S JURISDICTIONAL BRIEF

On Discretionary Review from the District Court of Appeal, Third District

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to the Clerk of Court and Office of the Attorney General via the electronic filing portal this 5th day of October 2020.

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FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3217

HENRY MARTIN STEIGER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Jeffrey Burns, Judge.

August 25, 2020

ROWE, J.

Henry Martin Steiger appeals his judgment and sentence for second-degree murder. He asserts four instances of ineffective assistance of counsel apparent on the face of the record. And he argues that the trial court erred in admitting three autopsy photographs. For the reasons below, we affirm.

Facts

Steiger and the victim met when he was 49 and she was 21, and they began a sexual relationship. In 2017, the victim learned she was pregnant and told Steiger that he might be the father. A week after she gave birth to a daughter, the victim and the child

moved into Steiger's home. A DNA test confirmed that Steiger was the child's father.

On February 1, 2018, the morning of their daughter's first birthday, the victim searched for information about how to add Steiger's name to the child's birth certificate. Steiger and the victim planned a birthday party for the child for later that day. Steiger then left the house to run errands. But he did not return for four hours. While he was gone, something changed. The victim texted Steiger, stating, "This thing between us is OVER nothing left to say or discuss." She also texted that she would "tolerate" Steiger until their child turned three and then she would "leav[e] to get [her] own job and place." The victim's mobile phone records would later show that she began looking for hotels and asked a friend to send her \$300 on PayPal.

But despite her frustration with Steiger, when he returned home, the victim and Steiger celebrated the child's birthday with a cake. Steiger recorded a video of the occasion, which the victim posted to her social media accounts. Then, at 7:15 p.m., the victim checked the balance of her PayPal account. The victim's friend had not sent the requested funds. The victim's mobile phone history showed no further activity. And the last time anyone saw the victim alive was in the video she posted that night at 6:22 p.m.

The victim's family contacted law enforcement to file a missing person's report after the victim did not contact them or post on social media for four months. Investigators questioned Steiger about the victim's disappearance. Steiger told them he had not heard from her and did not know where she was. Steiger claimed that she left the same night as their child's birthday party. He stated that the victim needed a break from caring for their child and planned to take a vacation. Steiger said that the victim refused to tell him where she was going, with whom she was going, and when she would return.

Investigators then questioned Steiger's friend and employee, Julian Measure. It was Measure who drove Steiger around town to run errands on the day the victim disappeared. Measure told investigators that he began working for Steiger when he was 21 years old. He considered Steiger to be a mentor. Steiger treated

Mesure as a confidante. Steiger shared intimate details about his relationship with the victim. But before her disappearance, Steiger told Measure that he no longer found the victim attractive and could barely stand to look at her.

Measure told investigators that Steiger made comments indicating that he contemplated killing the victim, selling her into slavery, or paying her to leave without the child. Steiger told Measure it was in the child's best interest that the victim not be around. Even so, Steiger wanted the victim to remain in the child's life until she finished breastfeeding.

Measure stated that on February 1—the last day anyone saw the victim alive—he drove Steiger around town to run errands. Steiger seemed frustrated with the victim. He told Measure that the only thing he had left to decide was “the where and when.” Measure understood Steiger to mean where and when to kill the victim.

After they finished running errands, Measure dropped Steiger off at his home and did not expect to hear from him again that day. But Steiger called him at 7:42 p.m. and 7:43 p.m. When Measure did not answer, Steiger texted Measure, asking him to call back. The two spoke at 7:47 p.m., and Steiger asked Measure to come to his house.

When Measure arrived, Steiger said that “the where and the when” had been decided. Steiger stated that he told the victim, “It's your time to go.” Steiger told Measure that the victim did not fight back, and Steiger made a choking motion with his hands. Steiger said that the victim was holding the baby when it happened. Steiger then asked Measure to climb inside a large container. When he saw that Measure could fit inside the container, Steiger asked Measure to take the child to another room and to remain there. During the next five or ten minutes, Steiger packed several containers, including the one Measure climbed into. Measure and Steiger then drove to a storage unit where they dropped off some of the containers. They continued on to Steiger's office and moved the remaining containers inside Steiger's trailer. The next morning, they disposed of the victim's iPhone and iPod.

In July 2018, based on information developed during their investigation, police officers searched property owned by one of Steiger's friends where Steiger kept an enclosed trailer. Inside Steiger's trailer were two large barrels. A foul smell emanated from the area near the barrels. When the officers opened one of the barrels, they found the victim's decomposing body inside. Officers also found some of the victim's personal items inside the trailer.

The officers took the barrel containing the victim's body to the medical examiner's office. Dr. Andrea Minyard performed a forensic examination of the victim's remains. Dr. Minyard testified at trial and confirmed that the victim's body arrived at her lab in the barrel. The victim was fully clothed with a plastic grocery bag wrapped around her head. Dr. Minyard ruled out suicide and overdose as possible causes of death. Due to the level of decomposition during the five months before the victim's remains were found, Dr. Minyard could not determine whether the victim died from blunt force trauma or strangulation. Even so, Dr. Minyard concluded that the cause of death was homicidal violence of undetermined means and the manner of death was homicide.

The State charged Steiger with second-degree murder. Steiger's case went to trial, and he testified in his own defense. Steiger admitted that the victim did not leave him the night of the birthday party as he had told police and others. Instead, he "propagated a charade" and told them that the victim could have been sold into slavery, she could be in rehab, she could be dead, or she could have decided that she was not coming back.

At trial, Steiger maintained that he did not kill the victim. Steiger admitted that there was tension in his relationship with the victim. He attributed some of the difficulty between them to the difference in their levels of education. Steiger graduated medical school, but never practiced as a physician, and he also had a degree in philosophy. The victim had little formal education and had been a dancer at a local nightclub. Steiger encouraged her to take a training course to be a certified nursing assistant, even though he described such a CNA position as the "bottom of the barrel" within the nursing profession.

Steiger also testified that the victim suffered from depression and bipolar disorder but could not take her medication while breastfeeding. Steiger and the victim struggled over when and how to ween the child, so the victim could restart her medication. A year of caring for their daughter and not treating her medical conditions had taken a toll on the victim. Steiger claimed that the victim planned to take a vacation after the child's birthday.

On the night of the child's birthday party, Steiger was cleaning up the kitchen while the victim went to the back of the house to pack for vacation. After twenty or thirty minutes passed, Steiger went looking for the victim. He found her in the laundry room. He testified that he pushed the door to the laundry room open and saw the victim lying sideways on the floor. There was a plastic shopping bag over the victim's head and a string of plastic bags knotted together to make a rope. One end of the rope was wrapped loosely around the victim's neck, and the other end was tied to the door handle. Steiger thought that the victim was pulling a stunt to get his attention.

Steiger testified that he removed the plastic bag from the victim's head and checked for vital signs. She was not breathing, and her pulse was "thready" or nonexistent. Steiger tried to clear the victim's airway by removing two plastic bags from her throat. As he was about to start chest compressions, Steiger claimed that he felt a hand on his shoulder and was overcome with a feeling that the victim was with her deceased mother and grandfather and that was where she wanted to be. He ceased efforts to revive the victim. He did not call 911, and Steiger did not seek medical attention for the victim.

Steiger admitted that afterwards he was in a "cover-my-tracks mode like a guilty person." He moved the victim's body and put the body into a barrel. He disposed of the victim's phone and iPod. Steiger confirmed that Measure's timeline of events from that night was accurate. He admitted that he asked Measure to get inside a container to determine if it was large enough to hold the victim's body. But he disputed Measure's testimony about the comments he made to Measure about plans to kill the victim. Steiger explained that sometimes his comments went over Measure's head and that Measure simply misunderstood.

Steiger then explained why he did not come forward and report the victim's death. Steiger claimed he kept silent because he did not want to lose custody of his daughter. He was trying to establish his legal status as the child's father by adding his name to the child's birth certificate. He feared that if anything should happen to him, the State would remove the child from his care and place her with the victim's family as they were the child's next-of-kin. He planned to tell the police what really happened to the victim as soon as he was listed as the father on the child's birth certificate and established as her legal guardian. But the police found the victim's body before Steiger could come forward.

The defense rested. The jury found Steiger guilty of second-degree murder. The trial court sentenced Steiger to life in prison. This timely appeal follows.

Ineffective Assistance of Counsel

In his first claim of error, Steiger asserts that the face of the record shows that his counsel rendered ineffective assistance. To prevail on a claim of ineffective assistance of counsel on direct appeal, the defendant must show "ineffectiveness obvious on the face of the record, indisputable prejudice, and an inconceivable tactical explanation for the conduct." *Morales v. State*, 170 So. 3d 63, 67 (Fla. 1st DCA 2015).

Steiger asserts that his trial counsel was ineffective in four respects: (1) by allowing the jury to hear a recording of a police interview without redacting references to a federal investigation of Steiger, his federal probation, and issues Steiger was having out of state; (2) by not objecting to the admission of an unauthenticated recording of a police interview; (3) by not objecting when the State called Steiger's former counsel to testify about privileged communications; and (4) by causing cumulative error through his failure to properly cross-examine the State's witnesses, to object when the State did not lay a proper predicate for DNA testimony, to object when the latent print examiner failed to explain why seven of nine lifts were of no value and how she linked two prints to Shelby Johnson, to object to the admission of cell phone mapping data, and to object the State's burden-shifting argument during closing.

But Steiger did not preserve any of the errors he advances on appeal and he does not make any claim of fundamental error. See *Latson v. State*, 193 So. 3d 1070, 1072 (Fla. 1st DCA 2016) (Winokur, J., concurring) (observing that “if the defendant does not properly preserve a claimed error, the only statutorily-authorized basis for appellate relief is a showing that the error is fundamental”). Still, Steiger maintains that this Court may address on direct appeal his claims that his counsel was ineffective, even without a claim of fundamental error. But as Judge Winokur explained in his concurring opinion in *Latson*, an appellate court should not allow an appellant to avoid application of the fundamental error standard by asserting that his trial counsel’s “failure to raise issues constitutes ineffective assistance, which entails a different standard that could provide an easier path to reversal, and which deprives trial counsel of the opportunity to defend themselves against allegations of unprofessional conduct.” *Id.* at 1074; see also *Marshall v. State*, 291 So. 3d 614, 616 (Fla. 1st DCA 2020) (holding that an appellant may not claim ineffective assistance of counsel “as a means to avoid application of the fundamental error standard on direct appeal”). We agree. And so, because Steiger makes no claim of fundamental error, we decline to consider his claims of ineffective assistance of counsel in this direct appeal.

Admission of Autopsy Photographs

In his second claim of error, Steiger argues the trial court erred by allowing the admission of three autopsy photographs into evidence over the objection of Steiger’s counsel. We review the trial court’s decision to admit the autopsy photographs for an abuse of discretion. See *Jackson v. State*, 213 So. 3d 754, 777 (Fla. 2017). But that discretion is limited by the Florida Evidence Code and applicable case law. See *Pantoja v. State*, 59 So. 3d 1092, 1095 (Fla. 2011).

A trial court may allow the admission of autopsy photographs if they are relevant and “the shocking nature of the photographs does not outweigh their relevance.” *Jackson*, 213 So. 3d at 777. Autopsy photographs can be relevant “to show the manner of death, location of wounds, and identity of the victim, and to assist the medical examiner.” *Jones v. Moore*, 794 So. 2d 579, 587 (Fla.

2001). But before admitting an autopsy photograph, the trial court must examine the photographs to consider whether the “gruesomeness” of the photograph “is so inflammatory as to create an undue prejudice in the minds of the jur[ors] and [distract] them from a fair and unimpassioned consideration of the evidence.” *Jennings v. State*, 123 So. 3d 1101, 1126 (Fla. 2013) (quoting *Czubak v. State*, 570 So. 2d 925, 928 (Fla. 1990)).

Here, the State sought to admit several photographs taken of the victim’s body during the autopsy. Steiger’s counsel objected to three photographs—exhibits 154, 156, and 158. He argued that the photographs were not relevant, but if relevant, they were too inflammatory. On proffer, the medical examiner, Dr. Minyard, gave a detailed explanation about how the autopsy photographs were relevant to her testimony and the injuries she observed during her examination of the victim’s body.

As for exhibit 154, Dr. Minyard explained that the photograph depicted the condition of the victim’s body after it was removed from the barrel. The photograph showed the amount of the victim’s bodily fluid that came out of the barrel. Because the photograph showed the victim’s body in the deteriorated condition it was found and helped explain why the medical examiner had trouble determining the precise manner of her death, the trial court found the photograph was relevant. *See Douglas v. State*, 878 So. 2d 1246, 1255–56 (Fla. 2004) (affirming the admission of a photograph depicting how a body was found at the crime scene). The trial court did not err in finding that exhibit 154 was relevant.

Next, Dr. Minyard explained that exhibit 156 showed the victim’s body after Dr. Minyard dried the skin. She asserted that the photograph was necessary to show the discoloration of the victim’s skin caused by decomposition. And as to exhibit 158, a photograph of the victim wearing a nursing bra, Dr. Minyard explained that it showed that the victim was actively in the nursing process at the time of her death. Because the photographs helped Dr. Minyard explain to the jury the condition of the victim’s body and how the condition prevented her from determining the exact cause of death, the trial court ruled that both photographs were also relevant. *See Hertz v. State*, 803 So. 2d 629, 642 (Fla. 2001) (explaining that photographs of the burnt bodies of the

victims were relevant to show how damage from the fire hampered the forensic investigation). The trial court did not err in this ruling either.

After finding that the three photographs were relevant, the trial court determined that their relevance outweighed any prejudicial effect. The trial court determined that none of the photographs were more gruesome than the average autopsy photograph or were of such a nature that they would have prevented the jury from fairly considering the evidence. *See Davis v. State*, 207 So. 3d 142, 170 (Fla. 2016) (holding that photographs of a severely burned woman and dead infant were gruesome but admissible to show the nature and extent of the victims' injuries); *see also Arbelaez v. State*, 898 So. 2d 25, 44 (Fla. 2005) ("Those whose work products are murdered human beings should expect to be confronted by photographs of their accomplishments.") (quoting *Henderson v. State*, 463 So. 2d 196, 200 (Fla. 1985)). We agree and hold that the trial court did not abuse its discretion in allowing the admission of the autopsy photographs.

Because we find no error by the trial court and decline to consider Steiger's claims of ineffective assistance of counsel in this direct appeal, we AFFIRM the judgment and sentence.

LEWIS and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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