Filed 8/1/12 P. v. Duncan CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. HENRY EARL DUNCAN, Defendant and Appellant.	B230459 (Los Angeles County Super. Ct. No. A910836)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark S. Arnold, Judge. Affirmed.

Richard C. Neuhoff, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

Henry Earl Duncan appeals from the trial court's judgment sentencing him to state prison for life without the possibility of parole for special-circumstance murder following a retrial limited to the special circumstance allegation. We affirm.

FACTS AND PROCEEDINGS

During the evening of November 13, 1984, appellant Henry Earl Duncan worked as a cashier at a restaurant inside the international terminal at Los Angeles International Airport. Josephine E. DeBaun was the restaurant supervisor for the evening. DeBaun's tasks when she closed the restaurant that night included collecting cash from the restaurant's registers and depositing the cash in a safe in the restaurant's "money room," a two-foot by eight-foot enclosed cage inside the restaurant's back office. Appellant was at the restaurant at 11:00 p.m. that night when it closed, and after closing time was seen sitting alone on a bench near the restaurant.

The following morning, the restaurant's morning shift supervisor arrived at around 4:45 a.m. The supervisor discovered DeBaun's body in the money room. DeBaun had suffered two fatal stab wounds, one to her abdomen and one to her neck which almost decapitated her. The neck wound severed DeBaun's carotid artery, causing arterial spurting which splattered the countertop, filing cabinet, walls, and floor with her blood. She also had nonfatal defensive wounds to her hands, indicating she had resisted her attacker. About $2,100 had been stolen from the money room.

Appellant was scheduled to work the night following the murder, but he did not show up for his shift. Two days after the murder, he returned to work. Police interviewed him but noticed no injuries on him.

In February 1985 three months after the murder, appellant stole $2,070 from the restaurant. Police arrested him a month later. Police found under appellant's bed when they arrested him shoes with soles displaying a herringbone pattern "similar in class characteristics" to shoe prints left in blood on the money room floor. Police also found inside appellant's car a key to the restaurant's cash box.

The People charged appellant with robbing and murdering DeBaun. The People alleged appellant personally used a knife, and alleged as a special circumstance that appellant murdered DeBaun during commission of the robbery. (Pen. Code, §§ 12022, subd. (b), 190.2, subd. (a)(17).) Appellant pleaded not guilty.[1]

At his trial in 1986, appellant claimed someone else robbed and killed DeBaun. (*People v. Duncan* (1991) 53 Cal.3d 955, 965 (*Duncan*); *Duncan v. Ornoski* (9th Cir. 2008) 528 F.3d 1222, 1229.) The jury rejected appellant's defense and convicted him of first degree murder and found true the special circumstance that he murdered DeBaun during the robbery. The court fixed the penalty as death. On direct appeal, our Supreme Court affirmed the judgment and sentence. (*Duncan*, *supra*, at p. 955.)

In postconviction habeas proceedings, the Ninth Circuit Court of Appeals affirmed the robbery and murder convictions because sufficient evidence showed appellant was present during DeBaun's murder. (*Duncan v. Ornoski*, *supra*, 528 F.3d at p. 1247.) But the Ninth Circuit overturned the special circumstance finding because of ineffective assistance of trial counsel. The Ninth Circuit found trial counsel incompetently did not investigate blood at the murder scene which came neither from appellant nor DeBaun. The presence of a third person's blood indicated an accomplice may have participated in DeBaun's killing. (*Id.* at pp. 1225-1226.) An accomplice's participation in the murder undermined the special circumstance finding, which required that appellant be the actual killer, or if he was an aider and abettor, that he had intended the killing. (*Duncan, supra,* 53 Cal.3d 955 at p. 973 ["At the time of the murder and the time of the trial, intent to kill was a required element of the felony-murder special circumstance for an actual perpetrator as well as for an aider and abettor"].) The Ninth Circuit therefore vacated the special circumstance finding and remanded the matter to state court for retrial of the special circumstance allegation.

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1 The People also charged, and appellant pleaded guilty to, grand theft for stealing $2,070 from the restaurant in February 1985, a second theft unrelated to the robbery of DeBaun the night she was murdered.

The People retried the special circumstance allegation in 2010. The jury found true the special circumstance that appellant murdered DeBaun during commission of the robbery. The court sentenced appellant to life without possibility of parole plus four years. This appeal followed.

DISCUSSION

1. *Instructions Regarding Appellant's Undisturbed Convictions for Robbery and First-Degree Felony Murder*

The Ninth Circuit affirmed appellant's convictions for robbery and first-degree felony murder. It remanded for retrial only the special circumstance allegation. During voir dire, the court told prospective jurors that appellant had already been convicted of robbery and felony murder and the jury's task was to decide only whether the special circumstance allegation was true. The court told the prospective jurors, "This is a criminal case, but your job will not be to determine whether [appellant] is guilty of something or not guilty [of] something. [¶] It has already been established that [appellant] is responsible for the murder and robbery of Ms. Josephine DeBaun . . . . [¶] The issue in this case will be that the jury will have to decide whether the alleged special circumstance is true or not true. The special circumstance alleged is that Ms. DeBaun was intentionally killed during a robbery."

At the close of evidence, the court instructed the jury that appellant stood convicted of first-degree felony murder and robbery. "The defendant has been convicted of 1st degree felony murder and robbery against victim Josephine Eileen DeBaun. Your job is to determine if murder was committed under the following special circumstance: [¶] That the murder was committed by defendant . . . while he was engaged in the commission of robbery . . . . [¶] If defendant . . . was an aider and abettor but not the actual killer, it must be proved beyond a reasonable doubt that he intended to aid in the killing of a human being before you are permitted to find the alleged special circumstance . . . ." Elaborating on the special circumstance allegation, the court instructed the jury: "To find that the special circumstance, referred to in these

instructions as murder in the commission of robbery is true, it must be proved: [¶] 1. That the murder was committed while the defendant was engaged in the commission of a robbery. [¶] 2. That the defendant intended to kill a human being or intended to aid another in the killing of a human being. [¶] 3. That the murder was committed in order to carry out or advance the commission of the crime of robbery or to facilitate the escape therefrom or to avoid detection. In other words, the special circumstance referred to in these instructions is not established if the robbery was merely incidental to the commission of the murder."

Appellant contends the court's instructions wrongly applied principles of issue preclusion against him to enter a directed verdict on some elements of the special circumstance allegation. We note as an initial matter that appellant did not object to the court's voir dire introduction or jury instructions. Thus, appellant has waived the point on appeal. (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1185; *People v. Gillard* (1997) 57 Cal.App.4th 136; *People v. Asbury* (1985) 173 Cal.App.3d 362, 365 ["Defendant's counsel . . . did not object to the felony murder instructions on the grounds of collateral estoppel, and it is conceded by all parties that in the absence of such an objection, any argument on appeal is waived"].) But to forestall a claim of ineffective assistance of counsel for not objecting, we reach the merits of appellant's contention.

Appellant accepts that were his retrial a civil proceeding, issue preclusion would govern because the issues at hand – did he rob and kill DeBaun – were identical to those issues necessarily decided against him in his first trial. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 (*Lucido*).) He contends, however, that the court's instruction permitting the prosecution to rely on issue preclusion in the retrial of the special circumstance violated constitutional rights guaranteed uniquely to *criminal defendants*. According to appellant, the court's instructions denied him his constitutional right to a jury trial and the presumption of innocence because the instructions took from the jury the jury's prerogative to decide all facts needed to find the special circumstance true.

Our Supreme Court's decision in *People v. Ford* (1966) 65 Cal.2d 41 (*Ford II*) (overruled on another point by *People v. Satchell* (1971) 6 Cal.3d 28, 37, overruled on

another point in *People v Flood* (1998) 18 Cal.4th 470) defeats appellant's contention because it permits issue preclusion against a criminal defendant. In *People v. Ford* (1964) 60 Cal.2d 772 (*Ford*), overruled on another ground by *People v. Satchell, supra,* at page 28, which was overruled on another ground in *People v. Flood, supra,* at page 470, the defendant was convicted of multiple offenses, including capital murder based on felony murder. At trial, the defendant argued his diminished capacity from voluntary intoxication negated his ability to form an intent to kill, but the trial court refused to instruct the jury on diminished capacity. On review, the Supreme Court affirmed the defendant's nonhomicide convictions, but reversed the murder conviction and remanded for retrial because the trial court had erred in refusing to instruct on diminished capacity. (*Ford,* at pp. 775, 795-796; *Ford II,* at pp. 44-45.) In the retrial of the murder charge, the court told the jury when instructing on felony-murder that appellant stood convicted of the underlying felonies. (*Ford II,* at p. 50.) On appeal from his conviction in the retrial, Ford contended the court erred during the retrial in telling the jury about his being convicted of the underlying felonies. Echoing the argument appellant makes here, Ford asserted the court's instruction improperly limited the jury to "the questions whether the homicide was perpetrated during the commission of any or all of these felonies, and whether he possessed the intent requisite to the various felonies at the time of the commission of the homicide." (*Ibid*.)

Our Supreme Court expressly rejected Ford's argument. (*Ford II, supra,* 65 Cal.2d at pp. 50-51.) The Supreme Court found res judicata permitted the prosecution to use Ford's felony convictions from the first trial as elements of the prosecution's case against him in his retrial. The Supreme Court explained: "The doctrine of res judicata applies to criminal as well as civil proceedings and operates to conclude those matters in issue which the verdict determined though the offenses be different. [Citations.] Thus where a defendant is tried on multiple counts of a single information, each count being considered as a separate and distinct offense, the doctrine of res judicata operates to preclude the relitigation of issues finally determined upon retrial of only one count. It follows that the doctrine of res judicata justifies instructions . . . that a defendant has been

found guilty of crimes finally adjudicated which are charged as elements in another charge . . . then in the process of being retried. Accordingly, it was not error for the trial court to give appropriate instructions that defendant had been convicted of the various felonies, and that if they found that defendant's commission of such felonies was conjoined with his commission of the homicide, they might predicate their verdict on the felony-murder rule." (*Ibid.*)

Appellant acknowledges that *Ford* defeats his contention, but urges that we not apply it here because it does not discuss his right to jury trial and the presumption of innocence. He also notes that *Ford* predates the United States Supreme Court's decision in *Ashe v. Swenson* (1970) 397 U.S. 436 (*Ashe*) and two later Supreme Court decisions that rely on *Ashe*, which he reads as prohibiting the prosecution from using issue preclusion against a criminal defendant. The United States Supreme Court language that appellant cites is from Chief Justice Burger's dissent, however, and thus cannot overcome our obligation to follow *Ford*, which is binding on us unless, and until, our Supreme Court overrules it. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clarita County* (1962) 57 Cal.2d 450, 455; *People v. Medina* (2007) 158 Cal.App.4th 1571, 1580.)[2]

Appellant's principal United States Supreme Court decision is *Ashe, supra*, 397 U.S. 436. In that case, the prosecution charged the defendant with six counts of robbery at a six-man poker game, but initially tried the defendant on only one of the counts. (*Id.* at pp. 437-438.) After the jury acquitted the defendant in a trial in which the only truly contested issue was the robber's identity, the prosecution put the defendant on

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[2] Besides United States Supreme Court decisions, appellant also cites federal decisions by circuit courts of appeals and state decisions by non-California courts. These other decisions cannot overcome our obligation to follow the binding authority of our state Supreme Court. (*In re Bettencourt* (2007) 156 Cal.App.4th 780, 801 ["while the decisions of the federal appellate courts may be persuasive, we do not find them so where, as here, they are contrary to California Supreme Court authority"]; *Lebrilla v. Farmers Group, Inc.* (2004) 119 Cal.App.4th 1070, 1077; but see *Episcopal Church Cases* (2009) 45 Cal.4th 467, 490 ["out-of-state decisions are not binding on this court, but we find them persuasive, especially in the aggregate when they with 'near unanimity' reach same conclusion"].)

trial for robbing one of the other six poker players. (*Id.* at pp. 439-440.) On review, the Supreme Court found collateral estoppel prohibited the prosecution from attempting to relitigate in the second trial the issue of the robber's identity, an issue the first jury had decided against the prosecution when it acquitted the defendant in the first trial. (*Id.* at pp. 445-446.) In dissent Chief Justice Burger wrote language which appellant cites to argue *Ford* was wrongly decided: "courts that have applied the collateral-estoppel concept to criminal actions would certainly not apply it to *both* parties, as is true in civil cases, i.e., here, if [the defendant] had been convicted at the first trial, presumably no court would then hold that he was thereby foreclosed from litigating the identification issue at the second trial." (*Ashe,* at pp. 464-465.) As Chief Justice Burger was in dissent, his observation is not the Supreme Court's holding.

Appellant also cites two United States Supreme Court decisions which rested on *Ashe*. The first is *Simpson v. Florida* (1971) 403 U.S. 384. There, the prosecution wanted to use a robbery conviction overturned on appeal to bar the defendant from relitigating in a retrial his identity as the robber. (*Simpson,* at pp. 384-385.) Citing *Ashe*, the *Simpson* court forbade the prosecution from doing so, but *Simpson*'s facts are distinguishable because here appellant's convictions for robbery and murder were affirmed on appeal. (*Simpson*, at pp. 385-386.) In *Simpson*, the appellate court had *reversed* the conviction. Appellant's remaining decision resting on *Ashe* is *U.S. v. Dixon* (1993) 509 U.S. 688. *Dixon* contains language favorable to appellant's contention, but the language is in a footnote and not the court's holding. (See *Dixon*, at p. 710, fn. 15, italics added ["Under *Ashe*[, *supra*,] 397 U.S. 436, an acquittal in the first prosecution might well bar litigation of certain facts essential to the second one—*though a conviction in the first prosecution would not excuse the Government from proving the same facts the second time*"].)

Appellant contends we ought to follow *Gutierrez v. Superior Court* (1994) 24 Cal.App.4th 153 (*Gutierrez*), instead of *Ford*.[3] *Gutierrez* declined to follow *Ford* on the ground that *Ford* did not attempt to square its holding with a defendant's right to jury trial and the due process right to the presumption of innocence.[4] (*Gutierrez* at p. 168.) That may be so, but our Supreme Court has not overruled *Ford* and it thus continues to bind us. And in any case, *Gutierrez* is distinguishable from the present case, a distinction that permits us to harmonize *Gutierrez* with *Ford*. In *Gutierrez,* a defendant accused of attempted murder claimed mistaken identity. (*Id.* at p. 156.) Rejecting the defense, a jury convicted the defendant of having attempted to kill the victim. When the victim later died from the lingering effects of the gunshot wounds from the attempted killing, the prosecution tried the defendant for murder. (*Ibid.*) At the murder trial, the prosecution sought a res judicata jury instruction telling the jury that the defendant was conclusively presumed to be the person who had shot the victim. (*Ibid.*) Because the defense was mistaken identity, the instruction effectively prevented the defendant from putting on any

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[3] Interestingly, *Gutierrez*, *supra*, 24 Cal.App.4th at page 161 notes that *Ashe*'s condemnation of applying issue preclusion against a criminal defendant was dicta. *Gutierrez* states: "Despite this seemingly absolute language barring the prosecution from asserting the collateral estoppel doctrine against the defendant on a subsequent prosecution, the language remains dictum. Apparently, the United States Supreme Court has not yet squarely addressed the issue or offered any theoretical underpinning for such a rule."

[4] The *Ford II* court nevertheless seemed mindful of the due process implications involving the presumption of innocence when it acknowledged that barring a defendant from relitigating a previously resolved issue tended to put a thumb on the prosecution's side of the scales. *Ford II* stated: "It is obvious that the felony convictions obtained at the first trial substantially affected the prosecution and defense upon retrial of the murder charge. The burden upon the prosecution was lessened to the extent that it was permitted the benefit of the felony-murder rule without the necessity of having to prove the elements of the respective felonies. Nor was the defense permitted to dispute the fact that the necessary elements of the felonies had been conclusively found. These facts do not, however, compel the conclusion urged upon us by defendant." (*Ford II*, *supra*, 65 Cal.2d at p. 50.)

defense against the murder charge. (*Id.* at pp. 169-170.) *Gutierrez* found such an instruction was error.

We note that, in contrast, the res judicata jury instruction in *Ford* did not prevent the accused from putting on a defense. Ford's defense to felony murder was diminished capacity to form the intent to kill. The *Ford* trial court's instruction that Ford had been convicted of the underlying felonies did not prevent Ford from offering evidence of his mental capacity upon which his defense hinged. (*Gutierrez*, *supra*, 24 Cal.App.4th at p. 168; *Ford II, supra,* 65 Cal.2d at pp. 51-55.) Here, likewise, the jury instruction informing the jury that appellant had been convicted of felony murder and robbery did not prevent him from putting on a defense to the special circumstance allegation. Appellant offered evidence that someone else was the actual killer, which would have defeated the special circumstance allegation. For example, he noted a blood stain resembling a shoe print was on the office floor. He asserted the stain's pattern did not match the markings on the soles of his or victim DeBaun's shoes, which suggested someone besides appellant was in the room with DeBaun when she was killed. He also offered evidence that someone wearing gloves had left bloody smears in the money room, again suggesting the presence of someone besides appellant, whose ungloved prints were found in the room, was DeBaun's actual killer. And finally, appellant offered evidence from witnesses who saw people besides appellant in the vicinity of the restaurant after it closed the night of DeBaun's murder who could have been DeBaun's assailants. Because appellant was permitted to put on his defense that he had not actually killed DeBaun, the effect of the court's issue preclusion jury instruction regarding his felony murder and robbery convictions was closer to the instructions in *Ford*, which also permitted the accused to mount a defense, than they were to *Gutierrez*, where the instructions defeated the accused's efforts to assert any defense. (Accord, *People v. Hogue* (1991) 228 Cal.App.3d 1500, 1506 [defendant convicted of four factually related offenses, only one of which was reversed on appeal; upon retrial of the reversed conviction, defendant was permitted to relitigate his identity and alibi despite those issues having been resolved against him by the three affirmed convictions because to bar relitigation would have

denied him any defense].) We find *Ford* applied here to support the trial court's issue preclusion instructions.

2. *Appellant's Policy Arguments Against Issue Preclusion*

Appellant notes that even when the elements of issue preclusion are satisfied (see *Lucido, supra,* 51 Cal.3d. at p. 341), courts refrain from applying issue preclusion if certain policies weigh against its application. (*Id.* at p. 343; *Gutierrez, supra,* 24 Cal.App.4th at p. 169.) Appellant contends three such policies apply here. We are unpersuaded.

The first policy is "preservation of the integrity of the judicial system." (*Lucido, supra,* 51 Cal.3d. at pp. 344, 347.) Appellant contends issue preclusion denies him his right to a fair trial, which undermines the integrity of the judicial system. Appellant's contention overlooks, however, that he has already had a fair trial of the robbery and murder charges during his first trial in 1986. Our Supreme Court and the Ninth Circuit affirmed appellant's convictions from that trial in all respects other than the Ninth Circuit's reversal of the special circumstance finding. Indeed, the policy of preserving the integrity of the judicial system weighs in favor of applying issue preclusion. Permitting the second jury here to reconsider – or not telling that jury about – appellant's murder and robbery convictions creates the risk of inconsistent verdicts, an outcome which itself undermines the integrity of the judicial system. (See *People v. Gephart* (1979) 93 Cal.App.3d 989, 997 ["The doctrine [of collateral estoppel] is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy"]; but see *Gutierrez, supra,* 24 Cal.App.4th at p. 170 [defendants "interest in a trial de novo is consistent with maintaining integrity and public confidence in the judicial system, while the application of collateral estoppel threatens those policies"].)

The second policy is "promotion of judicial economy." (*Lucido, supra,* 51 Cal.3d at p. 350.) Appellant notes that the special circumstance retrial took about as much time as his first trial, his point being that issue preclusion did not save any judicial resources.

But we perceive the policy argument cutting the other way because expanding the retrial to include matters beyond the special circumstance would have almost certainly lengthened, not shortened, the retrial.

The third policy is "protection of litigants from harassment by vexatious litigation." (*Lucido, supra,* 51 Cal.3d at p. 351.) This policy has little, if any, application here where neither appellant nor the prosecution is vexatious in exercising, respectively, the right to appeal and the right to retrial. But to the extent it does apply, it weighs in favor of issue preclusion because it prevents needlessly rehashing appellant's murder and robbery convictions which stand in good stead.

3. *Sufficiency of Evidence*

Appellant contends there was insufficient evidence to place him inside the money room where DeBaun was murdered. We disagree.

Two forensic print experts relied on four sets of photographs of the crime scene. Three of the sets (Exhibits 33(a)-(e), 34(a)-(d), and 36(a)-(d)) showed bloody palm prints. One set (Exhibit 35(a)-(d)) showed a bloody fingerprint. Both experts compared the prints in the photographs with appellant's finger and palm prints and concluded they matched.

A bloodstain pattern analyst also testified. He opined that bloody shoeprints on the money room's floor were consistent with one pair of shoes. The pattern of those shoeprints was consistent with the shoes police seized from appellant when they arrested him. The expert also opined that only one person attacked DeBaun because the 2-foot by 8-foot money room was too small to hold more than DeBaun and her assailant.

Appellant contends the foregoing evidence was insufficient because the photographs of the bloody palm and fingerprint were not authenticated as being of the actual crime scene. Purportedly lacking authentication, the photographs, according to appellant, deserved no weight. Absent those photographs, no evidence other than the shoe evidence placed him inside the money room. And according to appellant, the shoe

evidence was too insubstantial to support finding true the special circumstance that he was DeBaun's actual killer.

Appellant's contention is not well-taken factually, and the legal authorities he cites miss the mark. First, the authorities he relies upon involve authentication of evidence as it relates to *admissibility*. (See *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 525 ["documents must be authenticated in some fashion before they are admissible in evidence"]; *Fakhoury v. Magner* (1972) 25 Cal.App.3d 58, 65 [same]; *McGarry v. Sax* (2008) 158 Cal.App.4th 983, 990 ["Authentication of a writing is required before it may be received in evidence"]; *People v. Beckley* (2010) 185 Cal.App.4th 509, 514-515 [lack of authentication went to admissibility and court erred in admitting over defendant's objection]; *People v. Bowley* (1963) 59 Cal.2d 855, 862 [absence of authentication of film admitted into evidence meant film could not corroborate an accomplice's testimony; lack of authentication affected weight of evidence].) But arguments about authentication, none of which appellant appears to have raised at trial, became moot when the trial court admitted the photographs into evidence without any objection from appellant.

The photographs having been admitted into evidence, questions about how accurately they depicted the crime scene went to their weight for the jury's consideration. As a reviewing court, we do not reweigh the evidence. (*People v. Young* (2005) 34 Cal.4th 1149, 1181; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Here, there was sufficient evidence for the jury to conclude the photographs accurately depicted appellant's palm and finger prints in the money room. Police Detective Paul Tippin, who was one of the original investigators in 1984, testified he saw a police photographer take pictures of the murder scene. Forensic print specialist George Herrera was a police department employee during the investigation of DeBaun's murder. He testified that he examined photographic Exhibits 33 through 36 as part of his original investigation. Under questioning by the prosecutor, Herrera explained to the jury that Exhibit 132, an approximately 3 foot by 2.5 foot photographic enlargement of the area in the money room in which the bloody prints were found, identified the locations where those prints were found. Printer's bubbles with arrows on the margin of Exhibit 132 pointed to those

locations with the identifying notation of "P-33 Defendant's Left Palm Print," "P-34 Defendant's Left Palm Print," "P-35 Defendant's Left Index Finger", and "P-36 Defendant's Left Palm Print." Answering the prosecutor, Herrera linked Exhibits 33 through 36 to the original crime scene as follows: "Q. Now, sir, putting up what has just been marked People's Exhibit 132 . . . it lists People's 33 through 36. And it's labeled as defendant's three areas that are left palm print and one says left index finger. [¶] Are you familiar with this photo and the prints depicted on People's 132? A. Yes. Q. How so? A. I examined back in 1985 black and white photographs, close-ups of those palm prints, those latent prints, the latent palm prints and the latent fingerprints. I looked at the black and white close-ups of those prints relative to this photograph." The foregoing evidence was sufficient for the jury to conclude the photographs accurately represented the bloody finger and palm prints left by appellant at the crime scene.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.