NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
***See* Ariz.R.Sup.Ct. 111(c); ARCAP 28(c); Ariz.R.Crim.P. 31.24**

DIVISION ONE
FILED: 08/27/2013
RUTH A. WILLINGHAM, CLERK
BY: GH

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA, Appellee,	1 CA-CR 12-0280
v.	DEPARTMENT B
DAVID ROY EIDSON, Appellant.	**MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-144129-001

The Honorable Susanna C. Pineda, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Joseph T. Maziarz, Section Chief Counsel
Criminal Appeals Section
And Linley Wilson, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

K E S S L E R, Judge

¶1 David Roy Eidson ("Eidson") appeals from his convictions of second degree murder, under Arizona Revised

Statutes ("A.R.S.") section 13-1104 (2010),[1] and concealment of a dead body, under A.R.S. § 13-2926 (2010), and resulting sentences, arguing that the superior court erred by allowing an odorous handcart into evidence. For reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL HISTORY[2]

¶2 Eidson met the victim ("D.W.") in 2007. The two became romantically involved and moved in together. Their relationship was not smooth; Eidson testified at trial that D.W. physically attacked and threatened to kill him on four separate occasions. D.W. finally decided to end the relationship. A mutual acquaintance testified that Eidson was "very upset" about losing D.W. In the end, both men were evicted from the shared residence, and they began moving out at the same time to separate locations.

¶3 Eidson testified that during the move he did as little lifting as possible because of back issues from past spinal surgeries. When asked how much weight Eidson could lift, however, one witness testified that it depended on the day; some

---

[1] We cite the current version of the applicable statute when no revisions material to this decision have since occurred.

[2] We review the evidence "in the light most favorable to the proponent, maximizing its probative value and minimizing its prejudicial effect." *State v. Kiper*, 181 Ariz. 62, 66, 887 P.2d 592, 596 (App. 1994) (using this standard to review a trial court's Rule 403 ruling).

days "[Eidson] had to pull himself up with boxes" and others "he was out there helping [others] be able to move furniture."

¶4 On the morning of D.W.'s death, Eidson and D.W. argued over a piece of property. Eidson testified that D.W. threw him against the wall and threatened him with a knife. The two wrestled with the knife, and the trial evidence showed Eidson ultimately stabbed D.W. nine times, killing D.W.

¶5 Eidson then wrapped D.W.'s body in a shower curtain, sheet, and comforter, and tied the whole bundle onto a handcart. Eidson is 6'4" and 210 pounds, and D.W. was 5'8" and 190 pounds. When asked how Eidson, with a bad back, rolled all "190 pounds" of D.W.'s body onto the handcart, Eidson commented that it was "very easy" and that he moves such weight "all the time." Eidson then rolled the handcart into a storage trailer.

¶6 Ten days later, Eidson began driving the trailer to a storage lot. A couple driving behind Eidson's trailer noticed an odor like "something that was dead" emanating from the trailer. Suspicious, the couple dialed 9-1-1 to report the smell and the license plate number of Eidson's trailer. Police stopped Eidson's vehicle, opened the trailer, and found D.W.'s bundled, decomposing body on the handcart. Eidson's DNA was found on the handcart.

¶7 At trial, Eidson admitted to killing D.W. but claimed self-defense as a justification.[3] Without objection, a photograph of the handcart was admitted into evidence. The State offered the handcart into evidence, arguing that it was "the best evidence to show . . . how large it is," and thus constituted the best rebuttal to Eidson's self-defense claim. The handcart's size was particularly relevant because of the various testimonies about Eidson avoiding lifting because of his bad back. In response to the court's query why photographs could not suffice to show dimensions, the State responded: "[t]he photos do not do it justice in regard to what it took for the defendant to place [D.W.] on that handcart."

¶8 In response to the superior court's question, the State admitted that the handcart had "an odor to it," adding that the handcart was "completely wrapped" in a biohazard bag. Eidson objected, arguing that admission of the handcart would be "highly inappropriate" because the odor would "perhaps inflame the jury" and "create some unfair prejudice." The superior court overruled the objection, reasoning that "anything that had some bodily fluid of one nature or another, which has been testified to, would possibly have some form of odor . . . . I can't do anything about that. That's the nature of the exhibit." In doing so, however, the superior court allowed

[3] *See* A.R.S. §§ 13-404 (2010), -405 (Supp. 2012).

Eidson to make a record as to what odor (if any) was present when the handcart was admitted, that the handcart would not be removed from its plastic wrapping and that the handcart "would not go in with the jurors" during deliberations (but, instead, a photograph would go to the jurors).

¶9 When introduced, the handcart was completely bagged in biohazard material. The State elicited testimony about its dimensions, and requested the jury to stand if necessary to better observe the handcart in the bag. Following this testimony, a juror asked Eidson: "Explain how you rolled the body on the cart and the knot was on top." There was no record made of any odor during the period that the handcart was in the courtroom.

¶10 The jury convicted Eidson of second degree murder, Count 1, and concealment of a dead body, Count 2. The jury further found that Eidson's offenses had caused emotional or financial harm to the victim's immediate family. The superior court sentenced Eidson to consecutive aggravated prison terms of twenty-two years on Count 1, with 611 days of presentence incarceration credit, and 2.5 years on Count 2. Eidson filed a timely notice of appeal. This Court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and -4033(A)(3) (2010).

DISCUSSION

¶11 Eidson argues that the superior court erred in allowing the State, over objection, to introduce the handcart that still had an "obnoxious odor" from storing the victim's body, when this evidence was needlessly cumulative, unfairly prejudicial, and "tended to inflame the passions of the jury." *See* Ariz. R. Evid. 403.[4] "A determination of the admissibility of evidence under Rule 403 is within the sound discretion of the trial court." *State v. Kiper*, 181 Ariz. 62, 66, 887 P.2d 592, 596 (App. 1994). This Court uses an abuse of discretion standard to review such determinations. *State v. Spencer*, 176 Ariz. 36, 41, 859 P.2d 146, 151 (1993).

¶12 Before admitting gruesome evidence that might inflame the passions of the jury, the trial court must consider: (1) the exhibit's relevance, (2) its tendency to incite passion or inflame the jury, and (3) its probative versus prejudicial value. *State v. Murray*, 184 Ariz. 9, 28, 906 P.2d 542, 561 (1995) (discussing the admission of gruesome photographs on a Rule 403 review). As applied, the superior court did not err in allowing the handcart into evidence over Eidson's Rule 403 objection.

---

[4] Rule 403 states: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

¶13 First, the court did not err in finding the handcart was relevant. Eidson conceded as much in not objecting to pictures that included the handcart. Moreover, the handcart was where the victim's body was located, was the source of Eidson's DNA, and was an integral part of the State's concealment of a dead body charge. For the second degree murder charge, the fact that Eidson, immediately after killing D.W., wrapped up D.W.'s body and tied the whole bundle onto a handcart and rolled the handcart to a trailer where it remained for days was relevant to Eidson's intent in stabbing D.W. This is particularly true given that Eidson asserted a self-defense justification. *See* A.R.S. §§ 13-404, -405. The superior court properly found the handcart was relevant. *See* Ariz. R. Evid. 401; *State v. Anderson*, 210 Ariz. 327, 339-40, ¶ 39, 111 P.3d 369, 381-82 (2005) ("Evidence is relevant if it corroborates the State's theory of how and why the crime was committed." (citation omitted)).

¶14 Although the jury already had sufficient evidence to find Eidson guilty on both counts against him, the handcart was the only real evidence other than testimony, that the State had to rebut Eidson's self-defense claim. While it was in the courtroom, the State elicited testimony that corroborated its theory of the case and bolstered its rebuttal to Eidson's self-defense claim.

¶15 Second, the handcart itself did not have any impermissible tendency to incite passion or inflame the jury. *See Murray*, 184 Ariz. at 28, 906 P.2d at 561. The handcart was in a biohazard material bag when it was in the courtroom, and there was no record made of any odor while the handcart was in the courtroom. Moreover, to the extent that the odor may have done so, the superior court took measures to ensure that did not occur. The superior court directed that the handcart was not included in the exhibits the jury had during deliberations. As noted above, while the cart was in the courtroom, the State used it to corroborate its rebuttal of the self-defense claim. *See State v. Bocharski*, 200 Ariz. 50, 56, ¶ 26, 22 P.3d 43, 49 (2001) (concluding that evidence was "introduced primarily to inflame the jury" when it had little tendency to establish any contested issue in the case).

¶16 Third, and for these same reasons, the superior court did not abuse its discretion in reasoning that any odor naturally emanating from the handcart was not so unduly prejudicial or inflammatory as to substantially outweigh the probative and evidential value to the State's rebuttal. *See State v. Morris*, 215 Ariz. 324, 338, ¶ 64, 160 P.3d 203, 218 (2007) (holding that an exhibit's evidentiary value is undiminished by odor, especially when "overwhelming evidence established that the strong odor associated with the [exhibit]

resulted from its close proximity to [the victim's] badly decomposed body."). Given the measures taken by the superior court after listening to Eidson's concerns, it is unsurprising that there is no evidence on record of any odor while the handcart was in the courtroom.

CONCLUSION

¶17 For the foregoing reasons, we affirm.

/s/
DONN KESSLER, Presiding Judge

CONCURRING:

/s/
ANDREW W. GOULD, Judge

/s/
SAMUEL A. THUMMA, Judge