

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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STATE OF ARIZONA, *Appellee*,

*v.*

JAMES ETHAN CALDERON, *Appellant*.

No. 1 CA-CR 16-0379  
FILED 6-1-2017

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Appeal from the Superior Court in Maricopa County  
No. CR2014-119686-002  
The Honorable Alfred M. Fenzel, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Gracynthia Claw  
*Counsel for Appellee*

The Law Office of Kyle T. Green, P.L.L.C., Tempe  
By Kyle T. Green  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge James P. Beene joined.

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**T H U M M A**, Judge:

¶1 A jury convicted James Ethan Calderon of manslaughter, a dangerous non-repetitive Class 2 felony, after he shot and killed the victim. *See* Ariz. Rev. Stat. (A.R.S.) §§ 13-1103, -404 and -704 (2017).<sup>1</sup> The superior court sentenced Calderon to a 10.5-year prison term. On appeal, Calderon argues the court erred in precluding evidence at trial that the victim had methamphetamine in her system at the time of her death. Because Calderon has shown no error, his conviction and resulting sentence are affirmed.

**FACTS<sup>2</sup> AND PROCEDURAL HISTORY**

¶2 In April 2014, after a series of verbal disagreements, Calderon shot and killed the victim. Calderon was charged by indictment with second degree murder. The State moved in limine to preclude any evidence that the victim had methamphetamine in her system at the time of her death, arguing such evidence was irrelevant and unfairly prejudicial. *See* Ariz. R. Evid. 401, 402 and 403. Calderon objected, arguing his self-defense assertion meant he should have “free reign to discuss the things that [Calderon] perceived, that he was aware of, that ultimately led him to believe” that physical force was necessary to protect him from the victim’s “attempted use of unlawful physical force.” *See* A.R.S. § 13-404(A). The court reserved ruling, noting it could not be determined when the victim used methamphetamine, meaning her usage “in and of itself” was not admissible.

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<sup>1</sup> Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

<sup>2</sup> On appeal, this court views the evidence in the light most favorable to sustaining the conviction and resolves all reasonable inferences against defendant. *State v. Karr*, 221 Ariz. 319, 320 ¶ 2 (App. 2008).

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¶3 During trial, Calderon twice revisited the issue. First, when cross-examining a crime laboratory technician, Calderon’s counsel asked “How is your familiarity with drugs especially methamphetamine[]?” The State objected and after hearing argument the court found that, unless evidence showed the victim used methamphetamine that night, evidence the drug was in her system when she was killed was inadmissible. Second, outside of the presence of the jury and in response to a question by Calderon’s counsel, the medical examiner testified that, although the methamphetamine likely would have “some effect on” the victim, she was unable to “say how the methamphetamine would have affected [the victim’s] behavior” the night she was killed. The medical examiner added: “I cannot say when [the victim] used” methamphetamine, noting “it was present in her blood and serum, which means that it would be recent, but I cannot give a specific time frame.” The court found the medical examiner was “not competent to testify that this deceased did anything that evening, as far as methamphetamine is concerned, and is not competent to testify what effect methamphetamine would have had on her.” Moreover, the court concluded that “the probative value [was] outweighed by prejudice” therefore, concluding that evidence of methamphetamine in the victim’s body could not come in through the medical examiner.

¶4 At trial, it was undisputed that Calderon shot and killed the victim. Calderon elected to testify in his own defense. He testified he was forced to use deadly force because of the victim’s impulsive behavior, thereby causing him to fear that she would cause him physical or deadly harm. Calderon testified the victim brandished what appeared to be a knife. Calderon also testified that, upon arriving at the victim’s home, she and her friends began “loading up a little pipe” to smoke methamphetamine.

¶5 During deliberations, the jury submitted a question asking “were there any drugs found in [the victim’s] body?” The court provided a response stating: “[y]ou must rely on your collective memory of the evidence presented at trial. And then if it wasn’t presented, it wasn’t presented.” The jury then returned a verdict finding Calderon not guilty of second degree murder, but guilty of the lesser included offense of manslaughter. The court sentenced Calderon to 10.5 years in prison with 754 days of presentence incarceration credit. This court has jurisdiction over Calderon’s timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21 (A)(1), 13-4031, and -4033(A)(1).

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DISCUSSION

¶6 Calderon argues the superior court abused its discretion when it precluded evidence that the victim had methamphetamine in her system when she was shot. *See State v. McGill*, 213 Ariz. 147, 154 ¶ 30 (2006) (reviewing rulings on the admissibility of evidence for an abuse of discretion). Evidence is relevant if it “has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.” Ariz. R. Evid. 401(a). Although relevant evidence generally is admissible, Ariz. R. Evid. 402, relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of,” among other things, “unfair prejudice, confusing the issues [or] misleading the jury,” Ariz. R. Evid. 403. “Unfair prejudice exists ‘if the evidence has an undue tendency to suggest decision on an improper basis, such as emotion, sympathy, or horror.’” *State v. Damper*, 223 Ariz. 572, 577 ¶ 20 (App. 2010) (quoting *State v. Mott*, 187 Ariz. 536, 545 (1997)).

¶7 As applied, there is no evidence that the presence of methamphetamine in the victim’s system at the time of her death had any impact on her behavior relevant to the charge. At trial, Calderon offered no evidence that the victim used methamphetamine the night she was killed. Additionally, the medical examiner testified that she was not able to testify to the exact time or time frame of when the victim used methamphetamine or its impact on the victim. On this record, the superior court did not abuse its discretion in concluding that evidence the victim had a detectible amount of methamphetamine in her system at the time of her death did not make a disputed material issue of fact “more or less probable.” Ariz. R. Evid. 401. Accordingly, the court did not err in finding the evidence was not relevant. *See State v. Krantz*, 174 Ariz. 211, 213 (App. 1992) (evidence of methamphetamine in victim’s system was irrelevant in manslaughter case absent any evidence of how drug affected victim). For this same reason, the court properly could have concluded the evidence offered was unfairly prejudicial. *See Ariz. R. Evid. 403.*

¶8 Calderon argues, without any supporting authority, that the superior court’s ruling may have undercut his due process rights. Even presuming such a reference preserves the issue for appellate review, “[t]he touchstone of due process . . . is fundamental fairness.” *State v. Youngblood*, 173 Ariz. 502, 508 (1993) (quoting *State v. Melendez*, 172 Ariz. 68, 71 (1992)). The superior court properly gave Calderon notice of the issue, allowed him the opportunity to provide relevant evidence on the point more than once and, after following the applicable procedural rules, found the evidence

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tendered was not relevant and, therefore, inadmissible. On this record, Calderon has shown no due process violation. *See Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (noting, in exercising the right to a complete defense, “the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence”).

¶9 Finally, in his reply brief on appeal, Calderon argues the jury was not able to make reasonable inferences from the evidence because “the issue of drugs affecting the [v]ictim’s behavior was at issue for the jury and the jury should have been able to consider evidence that corroborated the Defendant’s testimony.” To the extent Calderon did not waive this argument by raising it for the first time on appeal in his reply, he has shown no error. Calderon had an opportunity to provide evidence regarding the victim’s behavior, including his own testimony. As to methamphetamine in the victim’s system at the time of her death, the medical examiner could not testify that the methamphetamine had any impact on the victim’s behavior, a topic on which expert evidence was necessary on the record presented. *See State v. Plew*, 155 Ariz. 44, 47 (1987) (“Expert testimony in the behavioral sciences is admitted to educate and assist the jury in understanding the evidence which will determine the facts in issue,” unless the subject is “one of common knowledge,” in which case expert testimony is not necessary”). Thus, Calderon has shown no error.

**CONCLUSION**

¶10 Because Calderon has shown no error, his conviction and sentence are affirmed.



AMY M. WOOD • Clerk of the Court  
FILED: AA