

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

STATE OF ARIZONA, *Appellee*,

v.

DARRYL ROBERT CURLEY, JR., *Appellant*.

No. 1 CA-CR 18-0061
FILED 11-20-18

Appeal from the Superior Court in Navajo County
No. S0900CR201500379
The Honorable Ralph E. Hatch, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michelle L. Hogan
Counsel for Appellee

Emery K. La Barge, Attorney at Law, Snowflake
By Emery K. La Barge
Counsel for Appellant

STATE v. CURLEY
Decision of the Court

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Kenton D. Jones and Judge David D. Weinzwieg joined.

S W A N N, Judge:

¶1 Darryl Robert Curley, Jr., appeals his conviction and sentence for second-degree murder. He contends the superior court committed reversible error by (1) denying admission of the victim's prior bad acts, (2) incorrectly admitting a photo of the victim's wounds from an earlier altercation between the men, and (3) failing to submit one verdict form to the jury asking whether he was guilty or not guilty of first-degree murder. For reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶2 Curley and the victim, D.C., were brothers with a long and troubled history of domestic violence against each other. In 2015, Curley mortally stabbed D.C. in the neck during a fight. The state charged Curley with first-degree murder, and a jury convicted him of the lesser-included offense of second-degree murder. The court sentenced Curley to 16 years' imprisonment. Curley appeals.

DISCUSSION

I. THE COURT DID NOT ERR BY DENYING ADMISSION OF THE VICTIM'S PRIOR BAD ACTS.

¶3 Curley notified the superior court that he intended to introduce evidence of D.C.'s prior bad acts. The state stipulated to the admission of twelve prior acts, all consisting of D.C.'s threatening and initiating violence against Curley. The state objected, however, to the admission of D.C.'s prior bad acts against other family members as cumulative. The court agreed and excluded admission of four such acts.

¶4 Curley argues that the excluded evidence should have been admitted. We review the superior court's determination on the

¹ We view the facts in the light most favorable to sustaining the verdict. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013).

STATE v. CURLEY
Decision of the Court

admissibility of evidence for an abuse of discretion. *State v. Rose*, 231 Ariz. 500, 513, ¶ 62 (2013).

¶5 Curley argued that he acted in self-defense. Arizona’s self-defense statute provides that “a person is justified in . . . using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other’s use or attempted use of unlawful physical force.” A.R.S. § 13-404(A). In determining whether the defendant had a reasonable person’s state of mind, a fact-finder is permitted to consider evidence of past violent acts by the deceased toward other persons if the defendant was aware of those acts before the homicide. *State v. Taylor*, 169 Ariz. 121, 124 (1991). However, the admissibility of other-act evidence is still subject to Ariz. R. Evid. 403, *State v. Fish*, 222 Ariz. 109, 117–18, ¶¶ 20–24 (App. 2009), which gives the court discretion to “exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . needlessly presenting cumulative evidence,” Ariz. R. Evid. 403.

¶6 Curley sought to introduce the additional prior bad acts evidence to show that D.C. had a “long history of . . . violence and abuse” when he was intoxicated. But the court admitted evidence of twelve prior bad acts for the same purpose, and Curley and D.C.’s sister testified that the entire family was a victim of D.C.’s aggression. Accordingly, the court acted within its discretion by finding that the four additional acts against family members were needlessly cumulative and would have minimal probative value.

II. THE COURT DID NOT ERR BY ADMITTING A PHOTO OF THE VICTIM’S WOUND.

¶7 Curley testified about an altercation with D.C. that occurred more than one year before the murder, in which he struck D.C. in the head with a vase. During cross-examination, the state moved to admit a photo depicting D.C.’s injury from that earlier altercation, and the court admitted the photo over Curley’s objection.

¶8 Curley argues that the court erred because the photo constituted inadmissible extrinsic evidence, was irrelevant, and caused unfair prejudice. Reviewing the admission of evidence for an abuse of discretion, we find none. *See Rose*, 231 Ariz. at 513, ¶ 62.

¶9 Curley’s argument that the photo was inadmissible extrinsic evidence relies on Ariz. R. Evid. 608(b), which provides, in pertinent part, that “extrinsic evidence is not admissible to prove specific instances of a

STATE v. CURLEY
Decision of the Court

witness's conduct." The photo, however, was not admitted to prove that Curley had struck D.C. with the vase because Curley had already conceded during direct examination that the act had occurred. *Cf. State v. Hill*, 174 Ariz. 313, 325 (1993) (prohibiting defendant from introducing evidence meant to disprove a witness's claim when the truth or falsity of that claim was unresolved and collateral to the case).

¶10 The photo was also relevant for the purpose of impeachment and was not unfairly prejudicial. Curley testified that he was always too afraid to retaliate against D.C. Impeaching that testimony, the photo showed Curley had caused a deep laceration in D.C.'s head during the earlier altercation. While a party generally may not produce extrinsic evidence to "impeach[] a witness regarding an inconsistent fact *collateral* to the trial issues," *State v. Lopez*, 234 Ariz. 465, 470, ¶ 25 (App. 2014) (emphasis added), the photo here was not collateral to the trial issues because it bore directly on Curley's justification defense. Further, while Curley argues the photo's gruesome nature caused unfair prejudice, gruesome photos may be admissible if the purpose of the evidence is to assist the jury in understanding the testimony. *State v. Salazar*, 173 Ariz. 399, 406–07 (1992). The photo added detail to Curley's testimony regarding the injury that he caused. Accordingly, the superior court acted within its discretion.

III. THE COURT DID NOT ERR BY PROVIDING VERDICT FORMS
FOR EACH LESSER-INCLUDED OFFENSE.

¶11 At the end of the presentation of evidence, the court instructed the jury that if it could not find Curley guilty of first-degree murder, it could find him guilty of lesser-included offenses. Although the jury could not unanimously agree whether Curley had the requisite intent for first-degree murder, it found he did have the requisite intent for second-degree murder.

¶12 Curley argues the court erred by providing multiple verdict forms to the jury. In his view, the court should have provided one verdict form to the jury to determine solely whether his justification defense applied to first-degree murder. We review the superior court's decisions regarding verdict forms for an abuse of discretion. *State v. O'Laughlin*, 239 Ariz. 398, 400, ¶ 4 (App. 2016).

¶13 A superior court must submit verdict forms containing every choice of verdict the jury could return. *State v. Knorr*, 186 Ariz. 300, 303 (App. 1996). Here, in compliance with the rule, the court submitted guilty and not-guilty options for first-degree murder and all lesser-included

STATE v. CURLEY
Decision of the Court

offenses. The verdict forms properly allowed the jury to find Curley not guilty of first-degree murder or any of the lesser-included offenses based on his justification defense. *See State v. Hernandez*, 191 Ariz. 553, 561, ¶¶ 38–39 (App. 1998). There was no error in the forms of verdict.

CONCLUSION

¶14 Curley’s conviction and sentence are affirmed.



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