IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMIE LYNN HOFHINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84584-COA

FILED

OCT 07 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jamie Lynn Hofhine appeals from a judgment of conviction, entered pursuant to a jury verdict, of battery resulting in substantial bodily harm. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Hofhine argues that the district court abused its discretion by allowing pictures of the victim's injuries to be admitted into evidence. Specifically, Hofhine argues that the probative value of these pictures was substantially outweighed by the danger of unfair prejudice because the pictures were graphic or gross, the victim was able to testify as to her injuries, and Hofhine stipulated that the victim suffered substantial bodily harm.

Generally, photographs of a victim's injuries are admissible in a criminal case even if they are gruesome in nature, and the State is "entitled to present its case in the manner it believes will be most effective." *Harris v. State*, 134 Nev. 877, 882, 432 P.3d 207, 212 (2018). However, photographs of a victim's injuries are not admissible if their probative value is substantially outweighed by the danger of unfair prejudice, *see* NRS

48.035(1), and the need for such evidence must be assessed on a case-by-case basis, *Harris*, 134 Nev. at 880, 432 P.3d at 210-11. We review a district court's decision to admit photographic evidence for an abuse of discretion. *Id.* at 879, 432 P.3d at 210.

The district court admitted a photograph of the victim's injuries taken immediately after the incident, as well as a photograph of the victim taken shortly after the incident showing her with stitches and in a hospital gown. The district court found that the photographs were not gruesome in nature and had "tremendous" probative value. The district court also stated that the photographs were critical visual evidence of what had occurred and were relevant to Hofhine's claim of self-defense. After reviewing these photographs, we conclude the district court did not abuse its discretion by permitting their admission.[1]

Next, Hofhine asks this court to hold that a jury must determine whether a defendant acted in self-defense before it hears evidence regarding whether the defendant's actions resulted in substantial bodily harm. Hofhine contends that the Nevada Supreme Court's rationale

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[1]To the extent Hofhine challenges the admission of other photographs of the victim's injuries, Hofhine did not include copies of these photographs in the record on appeal, and Hofhine did not present any cogent argument as to how the district court abused its discretion by admitting them. Therefore, we conclude Hofhine is not entitled to relief. *See Johnson v. State*, 113 Nev. 772, 776, 942 P.2d 167, 170 (1997) ("It is appellant's responsibility to make an adequate appellate record."); *see also Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

in *Brown v.* State, 114 Nev. 1118, 967 P.2d 1126 (1998), should extend to the present matter. In *Brown*, the supreme court recognized that the State "must generally introduce evidence of a defendant's prior felony convictions in order to establish the elements of" possession of a firearm by an ex-felon and that such evidence exposes the defendant to prejudice where he or she is also charged with other offenses. 114 Nev. at 1126, 967 P.2d at 1131. As a result, the supreme court held that "where the State seeks convictions on multiple counts, including a count of possession of a firearm by an ex-felon," severance of the counts is required. *Id.*

Unlike in *Brown*, which concerns severing counts that require proof of a prior felony conviction from counts that do not, Hofhine seeks to partition the jury's consideration of essential elements within a single charge. *See Barone v. State*, 109 Nev. 778, 780, 858 P.2d 27, 28 (1993) ("One of the elements incumbent upon the State to prove [a battery under NRS 200.481] is that the defendant acted unlawfully. Because self-defense is justifiable, it negates the unlawfulness element."). As such, *Brown* is not analogous to the present matter. *See, e.g., United States v. Barker*, 1 F.3d 957, 958 (9th Cir. 1993) ("We hold that the district court may not bifurcate the single offense of being a felon in possession of a firearm into multiple proceedings."), *opinion amended on denial of reh'g*, 20 F.3d 365 (9th Cir. 1994).

Moreover, the district court correctly determined that the nature and extent of the victim's injuries are relevant in assessing Hofhine's claim of self-defense. *See Newell v. State*, 131 Nev. 974, 980, 364 P.3d 602, 605 (2015) (stating "the amount of force used in a battery must also be

reasonable and necessary in order to be justified"); *see also State v. Anthony*, 860 N.W.2d 10, 31 (Wis. 2015) (stating the nature and extent of the victim's injuries "completely undermine[d] [the petitioner's] claim of self-defense"). Therefore, we conclude Hofhine is not entitled to relief on this claim.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Alvin R. Kacin, District Judge
Hillewaert Law Firm
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk