

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

No. A-1-CA-40781

5 **MODA JAMES BENTLEY a/k/a**

6 **MODA J. BENTLEY,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

9 **Mary Marlowe Sommer, District Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 Peter James O'Connor, Assistant Solicitor General

13 Albuquerque, NM

14 for Appellee

15 Wadsworth Law, LLC

16 Mathew R. Wadsworth

17 Rio Rancho, NM

18 for Appellant

19 **MEMORANDUM OPINION**

20 **BACA, Judge.**

21 {1} Defendant Moda James Bentley was convicted of one count of aggravated

22 battery with great bodily harm for stabbing Victim. On appeal, Defendant argues

23 that (1) the district court erred by denying his requested self-defense instruction; and

24 (2) trial counsel's failure to secure a medical expert to testify on his behalf

Court of Appeals of New Mexico

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Ramon J. Maestas
Chief Clerk

1 constitutes ineffective assistance of counsel. For the reasons articulated below, we
2 affirm.

3 **BACKGROUND**

4 {2} Defendant and Victim, who had known each other for many years, were at
5 Victim's house drinking and smoking marijuana. After Victim's wife came home
6 from work, the mood changed and Victim perceived that his wife was
7 uncomfortable, so Victim said that it was time to take Defendant home, to which
8 Defendant replied, "Okay, let's go." Defendant first tried to get a ride home from his
9 mother because Victim had been drinking and he did not want to "get fucked up."
10 Ultimately, Victim gave Defendant a ride.

11 {3} On the ride home, as Victim turned out of his driveway, the mood again
12 changed and Defendant got out of Victim's truck. Attempting to get Defendant to
13 follow him back to his truck, Victim grabbed ahold of Defendant by his jacket. As
14 Victim was turning around to walk back to the truck and pulling Defendant by the
15 jacket, Defendant stabbed Victim twice in the back. After being stabbed, Victim
16 returned home and sat in his truck in shock. However, Victim drove back to the side
17 of the road and tried again to get Defendant into his truck to take him home, at which
18 time Defendant stabbed Victim again—this time in the chest.

1 **DISCUSSION**

2 **I. Self-Defense Instruction**

3 **A. The District Court Did Not Err by Denying Defendant’s Requested Self-**
4 **Defense Instruction**

5 {4} Defendant first argues that the district court erred in refusing to give the jury
6 his requested self-defense instruction. The State contends that Defendant failed to
7 preserve this claim of error for appellate review. Even assuming, without deciding,
8 that Defendant’s jury instruction claim was properly preserved, for the reasons that
9 follow, we conclude the district court did not err in refusing to give a self-defense
10 instruction in this case.

11 {5} “The propriety of denying a jury instruction is a mixed question of law and
12 fact that we review de novo.” *State v. Guerra*, 2012-NMSC-014, ¶ 13, 278 P.3d 1031
13 (internal quotation marks and citation omitted); *State v. Hill*, 2001-NMCA-094, ¶ 5,
14 131 N.M. 195, 34 P.3d 139. “When considering a defendant’s requested instructions,
15 [appellate courts] view the evidence in the light most favorable to the giving of the
16 requested instructions.” *State v. Baroz*, 2017-NMSC-030, ¶ 15, 404 P.3d 769
17 (alteration, internal quotation marks, and citation omitted). “A defendant is not
18 entitled to a self-defense instruction unless it is justified by sufficient evidence on
19 every element of self-defense.” *State v. Rudolfo*, 2008-NMSC-036, ¶ 17, 144 N.M.
20 305, 187 P.3d 170. The elements of self-defense are: “(1) an appearance of
21 immediate danger of death or great bodily harm to the defendant; (2) the defendant

1 was in fact put in such fear; and (3) a reasonable person would have reacted in a
2 similar manner.” *State v. Martinez*, 1981-NMSC-016, ¶ 4, 95 N.M. 421, 622 P.2d
3 1041; *see* UJI 14-5183 NMRA. “The first two requirements, the appearance of
4 immediate danger and actual fear, are subjective in that they focus on the perception
5 of the defendant at the time of the incident. By contrast, the third requirement is
6 objective in that it focuses on the hypothetical behavior of a reasonable person acting
7 under the same circumstances as the defendant.” *Rudolfo*, 2008-NMSC-036, ¶ 17
8 (internal quotation marks and citation omitted).

9 {6} Assuming, without deciding, that Defendant established the first two
10 elements, we conclude that he failed to establish the third element—that a reasonable
11 person would have reacted in a similar manner. We explain.

12 {7} We acknowledge that testimony was elicited at trial from Defendant’s mother
13 and designated caregiver providing context as to the nature and extent of
14 Defendant’s previous injuries and his resulting medical fragility. Defendant’s
15 mother testified that Defendant had previously sustained a “major anoxic brain
16 injury” following a suicide attempt and a spinal injury as a result of a fall off a cliff.
17 Consequently, Defendant required ongoing, full-time medical care and assistance
18 with daily tasks like bathing, eating, and dressing.

19 {8} Also, as a consequence of these injuries, the muscles in Defendant’s arms and
20 biceps atrophied, Defendant would lose his balance, his legs would go out, and he

1 would hit the ground. When Defendant would fall, someone would have to help him
2 get back up. As a result of these medical conditions, Defendant’s mother was fearful
3 that any fall at all could paralyze Defendant forever, and she discussed these fears
4 with Defendant often. Additionally, because Defendant had suffered several falls
5 that would leave him in tears, Defendant’s mother stated, “[Defendant] was terrified
6 . . . [and] so, so afraid that he was gonna end up in a wheelchair and never be able to
7 walk again.” Finally, Victim knew of Defendant’s health issues, that Defendant’s
8 back or neck was injured when he fell off of a cliff, and that this was something
9 Victim had to be careful with.

10 {9} We agree that Defendant’s medical fragility is appropriately considered in
11 evaluating the objective reasonableness of Defendant’s actions under the third
12 element of self-defense. *See Baroz*, 2017-NMSC-030, ¶ 14 (“[T]he third requirement
13 is objective in that it focuses on the hypothetical behavior of a reasonable person
14 *acting under the same circumstances as the defendant.*” (emphasis added) (internal
15 quotation marks and citation omitted)). Nevertheless, we conclude that it was
16 objectively unreasonable for Defendant to have used deadly force under the
17 circumstances.

18 {10} This was not a case where a stranger grabbed Defendant and attempted to
19 harm him with a weapon. Here, Defendant’s unarmed, long-time friend grabbed
20 ahold of Defendant’s jacket in an attempt to get Defendant to come back to Victim’s

1 truck. We conclude that Defendant’s response—stabbing his friend multiple times
2 with a knife—constituted a disproportionate and therefore unreasonable amount of
3 force under the circumstances. In such a situation, Defendant could, and should, have
4 used nondeadly force. *See State v. Duarte*, 1996-NMCA-038, ¶ 8, 121 N.M. 553,
5 915 P.2d 309 (stating that under New Mexico law “there must have been some
6 evidence that an objectively reasonable person, put into [the d]efendant’s subjective
7 situation, would have thought that [the individual whom the defendant sought to
8 protect] was threatened with death or great bodily harm, *and that the use of deadly*
9 *force was necessary to prevent the threatened injury*” (emphasis added)). Because
10 the threatened injury in this case could have been prevented by means not involving
11 deadly force, we conclude that the district court did not err by denying Defendant’s
12 requested self-defense instruction.

13 **II. Ineffective Assistance of Counsel**

14 **A. We Decline to Presume Prejudice Under *State v. Schoonmaker***

15 {11} Defendant next argues that his convictions should be reversed because of his
16 trial counsel’s failure to secure a medical expert to testify on his behalf, which, he
17 contends, was ineffective assistance of counsel. In making this argument, Defendant
18 argues that *Schoonmaker*, 2008-NMSC-010, 143 N.M. 373, 176 P.3d 1105,
19 *overruled on other grounds by State v. Consaul*, 2014-NMSC-030, ¶ 38, 332 P.3d

1 850, and abrogated on other grounds by *State v. Montoya*, 2015-NMSC-010, ¶ 36,
2 345 P.3d 1056, controls.

3 {12} In *Schoonmaker*, trial counsel indicated to the district court that his client
4 could not pay for any experts, informed the district court that he would be rendering
5 ineffective assistance if he went to trial without the assistance of experts or the ability
6 to interview the state’s experts, and sought to withdraw so that the Public Defender
7 Department could assume all costs of the defense. *Id.* ¶¶ 36, 40. The district court,
8 however, refused to allow trial counsel to withdraw, thus occasioning ineffective
9 assistance of counsel. *Id.* ¶ 36. In concluding that the defendant was deprived of
10 effective assistance of counsel, our Supreme Court held that “[a] presumption of
11 prejudice . . . applies when counsel’s potential ineffectiveness is expressly brought
12 to the attention of the district court *and is occasioned by the rulings of the court*
13 *itself.*” *Id.* ¶¶ 36, 41 (emphasis added).

14 {13} In the case before us, the district court ruled that Defendant could call his
15 treating physician as an expert witness if the defense provided him for a pretrial
16 interview by a certain date, but that no other defense expert would be permitted. The
17 record is devoid of any other efforts to secure testimony by Defendant’s treating
18 physician. Thus, unlike in *Schoonmaker*, it was not the ruling of the district court
19 that occasioned any alleged ineffective assistance; indeed, the district court’s ruling

1 permitted counsel to call a treating physician. Thus, we decline to presume prejudice
2 under *Schoonmaker*.

3 **B. Trial Counsel’s Failure to Secure a Medical Expert to Testify on**
4 **Defendant’s Behalf Does Not Constitute Ineffective Assistance of Counsel**

5 {14} “Defendant has the burden of showing ineffective assistance of counsel” and
6 “[a]ssistance of counsel is presumed effective unless . . . [D]efendant demonstrates
7 both that counsel was not reasonably competent and that counsel’s incompetence
8 caused the defendant prejudice.” See *State v. Trujillo*, 2002-NMSC-005, ¶ 38, 131
9 N.M. 709, 42 P.3d 814 (emphasis added) (internal quotation marks and citation
10 omitted). Here, even if trial counsel was not reasonably competent, we conclude for
11 the following reasons that Defendant has not proved the requisite prejudice. See
12 *State v. Hernandez*, 1993-NMSC-007, ¶ 27, 115 N.M. 6, 846 P.2d 312 (explaining
13 that “[a] court need not determine whether counsel’s performance was deficient
14 before examining the prejudice suffered by the defendant as a result of the alleged
15 deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of
16 lack of sufficient prejudice, . . . that course should be followed” (omission, internal
17 quotation marks, and citation omitted)).

18 {15} In order to prove the requisite prejudice, “the defendant must show that there
19 is a reasonable probability that, but for counsel’s unprofessional errors, the result of
20 the proceeding would have been different.” *Trujillo*, 2002-NMSC-005, ¶ 38
21 (alteration, internal quotation marks, and citation omitted). “We consider the entire

1 proceeding as a whole and judge any claim of ineffectiveness on whether counsel’s
2 conduct so undermined the proper functioning of the adversarial process that the trial
3 cannot be relied on as having produced a just result.” *Id.* ¶ 47 (internal quotation
4 marks and citation omitted).

5 {16} Defendant argues on appeal that expert testimony was vital in his case because
6 “the exact nature of [Defendant’s] physical condition was critical for the jury and
7 the [d]istrict [c]ourt to understand to appreciate why self-defense was warranted
8 under these circumstances.” As an initial matter, Defendant did not advance this
9 argument at trial. Instead, before the district court, Defendant consistently asserted
10 that the expert he sought was a physical therapist who could testify that Defendant
11 was incapable of chasing and stabbing Victim.

12 {17} Nonetheless, even if, as he argues on appeal, Defendant sought expert
13 testimony to describe the exact nature of his physical condition and to explain to the
14 jury and the district court why self-defense was warranted under these
15 circumstances, we are not persuaded that Defendant has shown a reasonable
16 probability that but for the failure to hire such an expert the result of the proceeding
17 would have been different. Defendant’s mother and primary caretaker testified at
18 length as to the nature and extent of Defendant’s medical fragility. While the
19 corroborating testimony of a medical expert may have bolstered Defendant’s
20 argument that he was in fear of death or great bodily harm under the circumstances,

1 the absence of such testimony did not render the results of Defendant’s trial unjust.
2 *See State v. Sloan*, 2019-NMSC-019, ¶ 56, 453 P.3d 401 (“[Our Supreme Court] has
3 expressly rejected the contention that the failure to introduce the testimony of an
4 expert witness constitutes ineffective assistance of counsel per se.” (internal
5 quotation marks and citation omitted)). We therefore conclude that any failure to
6 secure a medical expert to testify on Defendant’s behalf did not amount to ineffective
7 assistance of counsel, given the record before us.

8 **CONCLUSION**

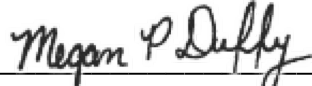
9 {18} For the reasons stated above, we affirm.

10 {19} **IT IS SO ORDERED.**

11 
12 **GERALD E. BACA, Judge**

13 **WE CONCUR:**

14 
15 **JENNIFER L. ATTREP, Chief Judge**

16 
17 **MEGAN P. DUFFY, Judge**