IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

SHAWN ALBERT BELLARD,

Defendant-Appellant.

No. A-1-CA-43056

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Efren Cortez, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Thomas J. Lewis, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

ATTREP, Judge.

{1} Defendant appeals his convictions for voluntary manslaughter and tampering with evidence. We issued a notice of proposed summary disposition proposing to affirm, and Defendant has responded with a timely memorandum in opposition. We remain unpersuaded that our initial proposed disposition was incorrect, and we therefore affirm.

{2} Defendant continues to argue that the district court erred in denying his request for an instruction on self-defense. "The propriety of denying a jury instruction is a mixed question of law and fact that we review de novo." *State v. Gaines*, 2001-NMSC-036, ¶ 4, 131 N.M. 347, 36 P.3d 438.

{3} The evidence at trial established that Defendant, who was riding a bicycle, and Victim encountered each other on a street and an exchange of words occurred. Victim apparently charged toward Defendant and Defendant then fired a handgun at Victim multiple times. Defendant then rode away as he continued to fire at Victim. The State introduced a recording of a phone call Defendant made at the jail in which he said, "[Victim] started talking crazy, and came at me. It was him or me." [MIO 1-2, 11] Victim was able to make it to the home of a relative where first responders treated him for multiple gunshot wounds before he died. [MIO 2]

{4} Under the circumstances, an instruction on self-defense was only warranted if evidence was presented tending to establish: (1) Victim's conduct created "an appearance of immediate danger of death or great bodily harm to [D]efendant"; (2) "[D]efendant was in fact put in fear of immediate death or great bodily harm"; and (3) "[t]he apparent danger would have caused a reasonable person in the same circumstances to act as [D]efendant did." *See* UJI 14-5183 NMRA (describing the essential elements of self-defense where deadly force is used by the defendant); *see also State v. Cooper*, 1999-NMCA-159, ¶ 8, 128 N.M. 428, 993 P.2d 745 ("To

justify the use of deadly force in self-defense, there must be some evidence that an objectively reasonable person, put into [the d]efendant's subjective situation, would have thought that [they were] threatened with death or great bodily harm, and that the use of deadly force was necessary to prevent the threatened injury." (internal quotation marks and citation omitted)). "The first two requirements . . . are subjective in that they focus on the perception of the defendant at the time of the incident." *State v. Coffin*, 1999-NMSC-038, ¶ 15, 128 N.M. 192, 991 P.2d 477. "[T]he third requirement is objective in that it focuses on the hypothetical behavior of a reasonable person acting under the same circumstances as the defendant." *Id.*

{5} With respect to the subjective elements, Defendant asserts that his recorded statement in the jail phone call was sufficient to show that he feared great bodily harm or death based on Victim's conduct if he did not use deadly force. [MIO 12] Assuming, without deciding, that Defendant established the first two elements with the statement, we conclude that he failed to establish the third element: that a reasonable person would have reacted in a similar manner. *See State v. Gonzales*, 2007-NMSC-059, ¶ 19, 143 N.M. 25, 172 P.3d 162 (observing that a defendant is only entitled to instruction on self-defense if there is evidence to support every element of that theory). There was no evidence that Victim was armed with any type of weapon, nor was there evidence that Victim committed or attempted to commit a battery on Defendant. And our case law is clear that even in situations in which there

is a struggle or punches are being thrown, a self-defense instruction will not be warranted because these circumstances do not rise to the level of great bodily harm or create a high probability of death. *See State v. Lucero*, 2010-NMSC-011, ¶ 15, 147 N.M. 747, 228 P.3d 1167 (citing the uniform jury instruction for the definition of "great bodily harm" and holding that "[a]lthough a punch to the face is the type of force that may cause bodily injury, it is not the type of force that creates a high probability of death, results in serious disfigurement, results in loss of any member or organ of the body, or results in permanent prolonged impairment of the use of any member or organ of the body"); *State v. Duarte*, 1996-NMCA-038, ¶ 4, 121 N.M. 553, 915 P.2d 309 (noting that "deadly force may not be used in a situation involving simple battery or in a struggle in which there has been no indication that death or great bodily harm could result"); *see also State v. Guerra*, 2012-NMSC-014, ¶¶ 12-18, 278 P.3d 1031 (upholding the denial of a requested self-defense instruction where the defendant repeatedly stabbed her unarmed combatant during a "hair-pulling fight"); *cf. State v. Parish*, 1994-NMSC-073, ¶¶ 2, 5, 22, 118 N.M. 39, 878 P.2d 988 (concluding that a self-defense instruction was appropriate when the defendant was tackled and beaten by multiple assailants, and ultimately ended the fight by pulling a gun and shooting one of them).

{6} For these reasons, the circumstances of this case do not meet the standard of objective reasonableness that is necessary for a self-defense instruction. We

therefore hold that the district court did not err in rejecting the proffered self-defense instruction. *See State v. Sutphin*, 2007-NMSC-045, ¶ 22, 142 N.M. 191, 164 P.3d 72 ("[I]f the defendant's reaction is unreasonable, a self-defense instruction is not appropriate.").

{7} Defendant also argues that the evidence was insufficient to support his convictions for either voluntary manslaughter or tampering with evidence. [MIO 4-10]. With respect to his conviction for voluntary manslaughter, Defendant focuses on the sufficiency of the evidence to prove that he did not act in self-defense. However, Defendant's argument is premised on his mistaken assertion that the State was required to prove that he did not act in self-defense as an essential element of the crime. [MIO 5-7] Defendant cites his proposed jury instruction on voluntary manslaughter that required proof that he did not act in self-defense. [MIO 6; RP 174] However, this instruction was not given because Defendant's requested self-defense instruction was refused. *See* UJI 14-220 NMRA (setting out the elements of voluntary manslaughter); *see also* UJI 14-5171 NMRA use note 1 (providing that where the self-defense instruction is given, the essential elements jury instruction should contain language stating that "[t]he defendant did not act in self-defense"). The actual instruction given to the jury mirrored UJI 14-220, and did not contain the lack of self-defense as an element. [RP 116] *See State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 ("The jury instructions become the law of the case against which

the sufficiency of the evidence is to be measured." (alterations, internal quotation marks, and citation omitted)). We therefore reject this assertion of error.

{8} With respect to the conviction for tampering with evidence, we first reject Defendant's argument that the record does not contain a copy of the instruction given to the jury. [MIO 7] Defendant again cites his proposed jury instruction, which was not given to the jury, and contained notations from the district court that it was missing required language. [RP 160] However, contrary to Defendant's assertion, the record does contain a copy of the district court's instruction to the jury, which contains the amended language. [RP 127]

{9} Defendant next argues that the evidence was insufficient to establish: (1) "[D]efendant hid or placed a handgun"; and that (2) "[b]y doing so, [D]efendant intended to prevent the apprehension, prosecution or conviction of himself for the crime of [f]irst [d]egree [m]urder, [s]econd [d]egree [m]urder or [v]oluntary [m]anslaughter." [RP 127] *See* NMSA 1978, § 30-22-5 (2003) (defining tampering with evidence). At trial, evidence was presented that, following the shooting, police searched Defendant's home and found a gun wrapped in a plastic bag inside a cardboard box and placed in a cupboard. [DS 3] Based on our review of the audio recording of the trial, there was also expert witness testimony that ammunition recovered from Victim's body matched the gun recovered from Defendant's home. [FTR 7/8/2025: 2:21-2:25; 07/09/2025: 2:29-2:31] We believe this evidence is

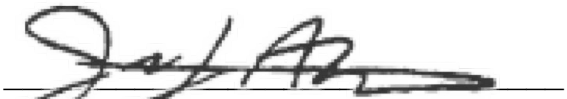
sufficient to support the jury's finding regarding Defendant's intent to tamper with evidence. *See State v. Herrera*, 2014-NMCA-007, ¶ 31, 315 P.3d 343 (holding that the evidence was sufficient to support a conviction for tampering where, after shooting the victim, the defendant placed the gun in a crawl space under his house concealed behind a dog house); *see also State v. Durant*, 2000-NMCA-066, ¶ 15, 129 N.M. 345, 7 P.3d 495 ("Intent can rarely be proved directly and often is proved by circumstantial evidence.").

{10} Defendant argues that the gun could have been stored in the cupboard merely for the safekeeping of firearms, and points to a lack of evidence surrounding whether he was legally required to secure firearms. [MIO 8] However, under our standard of review, we must view and indulge all reasonable inferences in favor of the jury's verdict. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829 (explaining that appellate courts disregard all evidence and inferences that support a different result in examining a sufficiency challenge on appeal); *State v. Montoya*, 2005-NMCA-078, ¶ 3, 137 N.M. 713, 114 P.3d 393 ("When a defendant argues that the evidence and inferences present two equally reasonable hypotheses, one consistent with guilt and another consistent with innocence, our answer is that by its verdict, the jury has necessarily found the hypothesis of guilt more reasonable than the hypothesis of innocence.").

{11} Finally, we observe that under Rule 12-208 NMRA, trial counsel is required to provide this Court with sufficient facts to allow for consideration of the issues raised. Rule 12-208 sets forth the information that must be included in the docketing statement, including "a concise, accurate statement of the case summarizing all facts material to a consideration of the issues presented." Rule 12-208(D)(3). We noted in our notice of proposed summary disposition that trial counsel had failed to comply with this requirement. Appellate counsel now asks that we place this case on the general calendar for that reason. However, there is no information in the memorandum in opposition regarding efforts on the part of appellate counsel to acquire the necessary information, either from trial counsel or from any other sources. Instead, Defendant simply asks for assignment of this case to the general calendar in order to acquire facts that should have been presented to this Court in his docketing statement or the memorandum in opposition. We decline to do so.

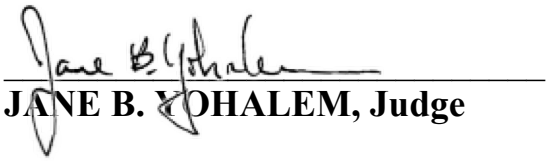
{12} For these reasons, we affirm.

{13} **IT IS SO ORDERED.**



JENNIFER L. ATTREP, Judge

WE CONCUR:



JANE B. YOHALEM, Judge

KATHERINE A. WRAY, Judge