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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0023**

Eliseo Nmn Hernandez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 8, 2020
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19HA-CR-17-2678

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

After a court trial, the district court found appellant guilty of two counts of assault and entered judgments of conviction. Appellant petitioned for postconviction relief, arguing that the district court had failed to consider his self-defense claim. The postconviction court summarily denied his petition. We affirm.

FACTS

In 2017, appellant Eliseo Hernandez went to a bar with friends and became intoxicated.¹ The bar's night manager, D.H., told Hernandez that he was "cut-off." D.H. attempted to escort Hernandez out of the bar and was walking next to him when Hernandez turned and punched D.H. in the eye. The punch caused swelling and bruising. The bar's general manager, J.G., saw the unprovoked punch and rushed to help. J.G. wrestled Hernandez to the ground and held him until he calmed down and agreed to leave. When J.G. released Hernandez, Hernandez punched the bar's security guard, A.C., chipping his tooth. J.G. restrained Hernandez until police arrived. The state charged Hernandez with third-degree and fifth-degree assault.

The district court held a court trial, and Hernandez represented himself. Although the prosecutor requested notice of any self-defense claim and Hernandez failed to provide such notice, Hernandez mentioned self-defense in his opening statement and provided testimony suggesting that he acted in self-defense. See Minn. R. Crim. P. 9.02, subd. 1(5)

¹ Our description of the historical facts is based on the district court's posttrial findings.

(requiring a defendant to inform the prosecutor in writing of a self-defense claim upon request of the prosecutor). Hernandez testified that someone grabbed him from behind and dragged him to the bar's exit. He was "pretty sure" it was D.H. According to Hernandez's testimony, J.G. then joined the fray and choked Hernandez until he was unconscious. When Hernandez woke, he was surrounded by five people who were "encroaching," so he "threw a punch." On cross-examination, Hernandez admitted that he was "pretty drunk" and did not know whom he punched or why he punched that person. The district court found Hernandez guilty of both counts of assault, without expressly discussing self-defense in its verdict order.

Hernandez petitioned for postconviction relief, arguing that the district court had erred by failing to consider his self-defense claim. The postconviction court ruled that Hernandez was not entitled to consideration of his self-defense claim because: (1) the district court was "not required to provide *sua sponte* a self-defense instruction," (2) Hernandez did not provide the district court or state with written notice of the defense, and (3) Hernandez was the aggressor and therefore "disqualified from receiving a self-defense instruction." The postconviction court noted that "[e]yewitness testimony established the aggressive—even unprovoked—assaultive behavior of [Hernandez]," as set forth in the district court's findings of fact. This appeal followed.

D E C I S I O N

I.

"[Appellate courts] review a postconviction court's summary denial of a petition for postconviction relief for an abuse of discretion." *Andersen v. State*, 913 N.W.2d 417, 422

(Minn. 2018). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted).

In Minnesota, a person may use reasonable force to defend himself against an assault. Minn. Stat. § 609.06, subd. 1(3) (2016). The supreme court has read section 609.06, subdivision 1(3), to include four elements:

(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant’s actual and honest belief that he or she was in imminent danger of bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

State v. Devens, 852 N.W.2d 255, 258 (Minn. 2014) (quotation omitted). If a defendant asserts that his actions were in self-defense and presents evidence supporting that assertion, the state must disprove, beyond a reasonable doubt, at least one of the aforementioned elements. *Id.*

Hernandez contends that the district court committed reversible error by failing to consider his self-defense claim. We disagree. The district court’s findings show that it accepted testimony that Hernandez was the aggressor and rejected Hernandez’s self-defense testimony. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (stating that the trier of fact is best positioned to determine credibility and weigh the evidence). For example, the district court found that D.H. “attempted to escort [Hernandez] out of the premises and was walking side by side with [him]” when Hernandez “turned and struck [D.H.] with his right fist.” D.H. testified consistently with this finding, as did J.G., who

did not see D.H. do anything to provoke Hernandez's attack. The district court also found that after Hernandez was released by J.G., promised to leave, and walked toward the door, Hernandez turned and punched the security guard, A.C., in the face. A.C.'s testimony supports this finding. And D.H. described Hernandez's act of striking A.C. as a "sucker punch."

In addition, at trial, the district court acknowledged that Hernandez had "raised an issue of self-defense." Although the district court questioned whether Hernandez had properly preserved the issue, the court discussed trial testimony refuting a self-defense claim, specifically, testimony showing that Hernandez was the aggressor. The court stated that "in one case [Hernandez's act] was described as a sucker punch, and in the other case it was described as a cold-cock." The district court's verdict and findings reflect its acceptance of those descriptions, as well as an implicit finding rejecting Hernandez's self-defense claim. See *State v. Oanes*, 543 N.W.2d 658, 663 (Minn. App. 1996) (holding that district court's failure, following a court trial, to specifically address entrapment defense was not fatal, but rather required an implicit finding consistent with the guilty verdict).

In sum, the district court's findings and statements at trial indicate that it considered and rejected Hernandez's self-defense claim, reasoning that Hernandez was the aggressor. Thus, the postconviction court did not abuse its discretion by denying Hernandez's postconviction petition based upon its determination that Hernandez was the aggressor and therefore not entitled to claim self-defense. If a defendant is not entitled to a defense, failing to submit that defense for the fact-finder's consideration is not erroneous. *State v. Pendleton*, 567 N.W.2d 265, 270 (Minn. 1997).

Hernandez relies on jury-instruction caselaw and argues that the district court was obligated to view the evidence of self-defense in a light most favorable to him. “In evaluating whether a rational basis exists in the evidence for a jury instruction, the evidence is viewed in the light most favorable to the party requesting the instruction.” *State v. Edwards*, 717 N.W.2d 405, 410 (Minn. 2006). Reliance on caselaw regarding jury instructions is illogical because the charges here were tried to the court, and not to a jury. Thus, the district court was required to decide both whether Hernandez was entitled to raise a self-defense claim and if so, whether the state had disproved the claim beyond a reasonable doubt. The district court’s findings and the postconviction court’s explanation establish their consideration and rejection of Hernandez’s self-defense claim on the merits.

Because we conclude that the postconviction court did not err by rejecting Hernandez’s self-defense claim on the merits, we do not analyze the postconviction court’s alternative determination that Hernandez failed to provide adequate notice of that defense.

II.

In a pro se supplemental brief, Hernandez raises additional arguments. He asserts that the judge failed to “respond within a time limit,” apparently referencing the timing of the postconviction court’s order. Hernandez suggests that the order must be “withdrawn.” The record indicates that the postconviction court did not timely receive the postconviction petition due to an administrative error, but once the petition was received, the court immediately addressed it. Hernandez cites certain articles and rules to support his argument that the postconviction court’s order must be withdrawn, but he does not identify the legal origins of those purported authorities, and he fails to identify the time limit to

which he refers. We will not consider pro se claims that are unsupported by argument or citation to legal authority, unless prejudicial error is obvious. *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008). We discern no obvious prejudicial error.

Hernandez also asserts that “the charges were not proven to be true beyond a reasonable doubt,” and he attacks the credibility of certain trial witnesses. We construe this as a challenge to the sufficiency of the evidence. When direct evidence supports the convictions, as is the case here, our review is limited “to a painstaking analysis of the record” to determine whether that evidence, viewed in a light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Horst*, 880 N.W.2d 24, 39-40 (Minn. 2016) (quotation omitted). We assume that the fact-finder believed the state’s witnesses and did not credit any testimony to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Thus, Hernandez’s challenges to the credibility of the state’s witnesses are unavailing.

To obtain a conviction for third-degree assault, the state had to prove that Hernandez assaulted A.C. and inflicted substantial bodily harm. Minn. Stat. § 609.223, subd. 1 (2016). An “assault” is defined to include the intentional infliction of bodily harm upon another. Minn. Stat. § 609.02, subd. 10(2) (2016). Trial testimony, including Hernandez’s own testimony, established that Hernandez assaulted A.C. by intentionally punching him in the face. As previously discussed, Hernandez’s actions were not justified as self-defense because he was the aggressor.

“Substantial bodily harm” is defined as “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or

impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” Minn. Stat. § 609.02, subd. 7a (2016). Whether an injury constitutes a particular degree of bodily harm is a question for the fact-finder. *See State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005) (holding that the question of whether an injury constitutes great bodily harm is a question for the jury). Testimony at trial established that A.C. was temporarily stunned by the punch and that he suffered a visibly chipped tooth and bloody nose. That testimony supported a finding of substantial bodily harm. *See State v. Bridgeforth*, 357 N.W.2d 393, 394 (Minn. App. 1984) (indicating that a tooth is a bodily member), *review denied* (Minn. Feb. 6, 1985); *see also State v. Harlin*, 771 N.W.2d 46, 51 (Minn. App. 2009) (indicating that a chipped tooth may qualify as substantial bodily harm), *review denied* (Minn. Nov. 17, 2009). In sum, the evidence was sufficient to prove the offense of third-degree assault beyond a reasonable doubt.

To obtain a conviction for fifth-degree assault, the state had to prove that Hernandez intentionally inflicted bodily harm upon D.H. Minn. Stat. § 609.224, subd. 1(2) (2016). Trial testimony established that Hernandez intentionally punched D.H. in the face without provocation and that the punch caused swelling and bruising. The evidence was sufficient to prove the offense of fifth-degree assault beyond a reasonable doubt.

Lastly, Hernandez broadly asserts that there was fraud, perjury, and other injustices in the criminal proceedings against him. Hernandez does not provide legal argument or

authority in support of that assertion. We therefore decline to address it further. See *Bartylla*, 755 N.W.2d at 23 (declining to address unsupported pro se arguments because prejudicial error was not obvious).

Affirmed.