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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1246**

State of Minnesota,
Respondent,

vs.

Troy James Bonkowske,
Appellant.

**Filed June 10, 2013
Affirmed
Peterson, Judge**

Ramsey County District Court
File No. 62-CR-11-6883

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter Reed Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Maria Villalva Lijo,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Peterson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of felony domestic assault, appellant argues that
because inflammatory photographs of the complainant were not relevant and had minimal

probative value, the district court erred by allowing the state to present the photographs to the jury. We affirm.

FACTS

Appellant Troy James Bonkowske was unemployed and had been living in his car when he moved in with his brother in July 2011. Friction developed between the two, and the brother told appellant that he had to move out by that evening. Appellant was still there the next morning. The brother left for the day, and, when he returned home that night, he started an argument with appellant. The brother admitted drinking two or three beers during the day and two or three mixed drinks with dinner.

The brother testified that the argument escalated, appellant grabbed him, threw him on the couch, climbed on top of him, held down his arms, and began punching him in the face. Appellant punched his brother in the face at least six times. The brother covered his face and kicked at appellant and punched him a couple of times in an effort to get appellant off of him. The brother testified that appellant choked him by putting “his arms around my neck and squeez[ing] me real hard,” causing the brother to be unable to breathe for about ten seconds. Appellant then stopped and got up, and the fight ended.

The brother then threatened to kill appellant and went into the bedroom to get a gun. By the time the brother loaded the gun and came out of the bedroom, appellant had left. The brother went back into the bedroom and put the gun under the bed. Appellant called 911 and hid in the building’s parking lot until police arrived.

Ramsey County Sheriff’s Deputy John Eastham responded to the 911 call. Appellant told Eastham that the brother had started a fight, appellant had gotten away,

and the brother had gone to get a gun and would be coming outside. Eastham testified that, after seeing the extent of the brother's injuries, he knew that appellant's description of events was inaccurate. Eastham described the brother as having blood "all the way across his face and down," "marks all over his face," and bleeding from the mouth. Eastham testified, "It was obvious somebody had beat [the brother] pretty well." Appellant appeared fine and had only minor injuries.

The brother told Eastham that, after he told appellant that appellant needed to leave, appellant began beating him. The brother stated that he felt like appellant was going "to squeeze him to death" and that appellant "kept beating him on the face." The brother stated that, when he was able to get free, he told appellant that he was going to get his gun and went into the bedroom and got the gun and loaded it. The brother was five feet, eight inches tall and weighed about 175 pounds, and he estimated that appellant was six feet, one inch tall and weighed between 230 and 250 pounds.

Appellant was tried on one count of felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2010). Appellant testified at trial that, after the brother started the argument with him, the brother threatened to kill appellant, said he was going to get a gun, and hit appellant. Appellant claimed that the brother moved toward a table with two knives lying on it, so appellant hit the brother to prevent him from getting the knives. Appellant had not told Eastham about any knives on the table. Appellant testified that the two wrestled for a while, hit each other a few times, and appellant released the brother when the brother agreed to leave appellant alone. According to appellant, when the brother got up, he saw blood on the couch and became upset and said he was going to get

his gun. Appellant went outside when he heard what sounded like the brother loading his gun.

The district court admitted into evidence seven photographs that showed the brother's injuries. One showed the brother's bloody face shortly after the assault. The others were taken two days later and showed injuries, including two black eyes and cuts and bruises on the brother's arms, neck, and face.

The jury found appellant guilty of felony domestic assault. The district court stayed imposition of sentence for five years, referred appellant to supervised probation, issued a no-contact order, and ordered a Rule 25 evaluation. This appeal followed.

D E C I S I O N

I.

The district court has broad discretion to admit photographs into evidence and will not be reversed absent a clear abuse of discretion. *State v. Dame*, 670 N.W.2d 261, 264 (Minn. 2003). Photographs are admissible when they “accurately portray anything which is competent for a witness to describe in words and are not rendered inadmissible merely because they incidentally tend to arouse passion or prejudice.” *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005) (quotation omitted). “When a photograph is not misleading and is properly illustrative, the rule is liberally construed in favor of admission” *Id.* But relevant photographs may be excluded if their probative value is substantially outweighed by the danger of unfair prejudice. *State v. Stewart*, 514 N.W.2d 559, 565 (Minn. 1994).

An element of felony domestic assault is that the defendant intentionally inflicted bodily harm on the victim. Minn. Stat. § 609.2242, subd. 4. Appellant argues that the photographs were not relevant because the level or type of bodily harm inflicted was not an element of the offense. But the level or type of bodily harm inflicted was relevant because appellant claimed that he acted in self-defense.

The State must prove beyond a reasonable doubt that the defendant did not act in self-defense, once the defense is raised. To do so, the State must disprove at least one of the following elements of self-defense: (1) the absence of aggression or provocation on the part of the defendant; (2) the actual and honest belief of the defendant that he was in imminent danger of death or great bodily harm and that *it was necessary to take the action he did*; and (3) the existence of reasonable grounds for such belief.

State v. Spaulding, 296 N.W.2d 870, 875 (Minn. 1980) (emphasis added) (citations omitted). The photographs showing the extent of the brother's injuries were probative with respect to whether it was reasonable for appellant to believe that the action that he took against his brother was necessary to defend himself. The photographs were also relevant because they corroborated the brother's account of the altercation.

Appellant also argues that "the photographs' potential for unfair prejudice was great because the photograph of [the brother's] bloody face and of his black eyes were alarming and suggested the infliction of grave or permanent injuries, which were not the type of injuries that were inflicted here." But the photographs accurately portrayed the brother's injuries, and the brother testified that the bruising to his eyes lasted nine days and that his other injuries healed faster. "It is within the [district] court's discretion to admit photographs, even ghastly ones, so long as they show something that a witness

could describe and are material to some relevant issue.” *Stewart*, 514 N.W.2d at 564-65 (quotation omitted).

Finally, appellant argues that the photographs were a “needles presentation of cumulative evidence” because the brother and Eastham testified about the brother’s injuries and appearance. But the test for admissibility of photographs is relevance, not necessity. *State v. Walen*, 563 N.W.2d 742, 748 (Minn. 1997). The district court did not abuse its discretion in admitting the photographs into evidence.

II.

The state argues that appellant’s pro se brief should not be considered by this court because it contains no citation to legal authority. An appellate court will not consider issues raised in a pro se brief that are not supported by argument or legal authority. *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). Although appellant cites no legal authority, his pro se brief does contain argument.

Appellant argues that his trial attorney, who took over the case shortly before trial, was unprepared and ineffective because she failed to present evidence that appellant was not intoxicated and that police officers initially indicated that appellant would only be charged with misdemeanor assault. “What evidence to present to the jury, including . . . what witnesses to call, represent an attorney’s decision regarding trial tactics which lie within the proper discretion of trial counsel and will not be reviewed later for competence.” *Reed v. State*, 793 N.W.2d 725, 733 (Minn. 2010) (quotation omitted).

Without providing a citation to the record, appellant claims that the district court commented that appellant had been overcharged, which appellant argues indicated to the

jury that appellant was “guilty of something” and influenced the jury to convict. But the district court instructed the jury to decide the case based on the evidence and to not let sympathy, prejudice, or emotion influence its verdict. A jury is presumed to follow the court’s instructions. *State v. Vang*, 774 N.W.2d 568, 578 (Minn. 2009).

Appellant argues that the prosecutor coached the brother to say that he did not hit appellant first, claiming that this testimony was suspect because the brother’s memory was otherwise faulty. But the brother testified that, when he met with the prosecutor before trial, the prosecutor instructed him to testify truthfully. And the brother’s testimony about the assault was consistent with his injuries and his statement to Eastham.

Appellant presents no evidence to support his claim that his attorney instructed him to not cooperate with the presentence investigation.

Affirmed.