

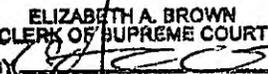
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN CAVER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 90490

FILED

FEB 12 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART, AND  
REMANDING*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit murder, second-degree murder with the use of a deadly weapon, two counts of attempted murder with the use of a deadly weapon, and two counts of battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Appellant John Caver was convicted of offenses arising from a shooting during which Caver and an associate opened fire outside an apartment complex. Mehki Clark was killed, and two others were injured. At trial, the State argued that the motive for the shooting was retaliation by members of the Hustlers Taking Over (HTO) gang for the recent murder of the group's co-founder. Caver raises four arguments on appeal.

*Admission of body-worn camera video*

Caver first argues that the district court abused its discretion by admitting video recorded on a responding patrol officer's body-worn camera, which included audio of Clark gasping for air in the immediate aftermath of the shooting. Caver asserts that the video lacked probative

value and was unduly prejudicial because the sound of Clark dying was disturbing and served only to arouse jurors' sympathies. "We review a district court's decision to admit or exclude evidence for an abuse of discretion." *Ramet v. State*, 125 Nev. 195, 198, 209 P.3d 268, 269 (2009). Even relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice. NRS 48.035(1). Unfair prejudice results from "an appeal to the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence." *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 933-34, 267 P.3d 777, 781 (2011) (citation modified). Evidence must be assessed on a case-by-case basis, including consideration of "the actual need for the evidence in light of the issues at trial and other evidence available to the State." *Harris v. State*, 134 Nev. 877, 881, 432 P.3d 207, 211 (2018) (citation modified).

Here, the nearly 27-minute body-worn camera video is undoubtedly upsetting. The video shows Clark lying on the ground, repeatedly moaning until he stops breathing. It also contains numerous other exchanges that could cause jurors to evaluate the evidence through the lens of emotion and sympathy, including a woman's screams as she learns her son has been shot and a toddler discovering a crime scene in his living room. The State argues that the video was nonetheless necessary to counter Caver's challenges to the adequacy of the investigation by showing the chaotic scene to which police arrived. But Caver never contended that responding officers improperly assessed or secured the scene directly after the shooting. Rather, Caver argued at trial that detectives who were later assigned to the case produced inaccurate documentation and failed to investigate alternate suspects. Caver further claimed that Det. Marcus

Cook misrepresented his ability to accurately identify Caver as one of the shooters captured on surveillance video. The challenged detectives were not yet assigned to the case when the body-worn camera video was recorded, making the video minimally relevant to any disputed issue at trial. Because the video's limited probative value was substantially outweighed by the danger of unfair prejudice, we conclude that the district court abused its discretion by admitting the video over Caver's objection.

We review erroneous admission of evidence under the harmless-error standard. *See id.* at 882-83, 432 P.3d at 212. In cases of nonconstitutional error, reversal is warranted "only if the error substantially affects the jury's verdict." *Valdez v. State*, 124 Nev. 1172, 1188-89, 196 P.3d 465, 476 (2008).

The body-worn camera video was played once during a seven-day trial and was accompanied by a limiting instruction. The State's argument did not otherwise appear to be directed toward inflaming jurors' emotions. Furthermore, there was considerable evidence of Caver's guilt. Det. Cook testified that he was familiar with Caver from gang surveillance spanning multiple years and was "a hundred percent certain" that Caver was one of two men recorded surveilling the scene on the afternoon of the shooting. Video evidence showed a black Volkswagen sedan circling the apartment complex and Caver exiting the car and motioning toward the apartment in front of which the shooting occurred.<sup>1</sup> Later surveillance video showed a man wearing the same clothing emerging from the front passenger side of the same Volkswagen and firing at the victims. The

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<sup>1</sup>We are limited to assessing witness descriptions of the surveillance videos because Caver did not ask that the videos be transmitted and included in the record on appeal.

Volkswagen was ultimately linked to HTO member Dean Coleman, and Caver's DNA was located on the outer handle and inner door of the front passenger side. The State also presented records showing that Caver purchased two .40-caliber firearms one week before the shooting, and shell casings consistent with .40-caliber ammunition were recovered at the scene. In light of the overwhelming evidence supporting his guilt, Caver has failed to demonstrate that the erroneously admitted video substantially influenced the verdict. Accordingly, we conclude that no relief is warranted.

*Admission of gang "constitution"*

Caver next argues that the district court abused its discretion in admitting photographs of a handwritten document identified as HTO's founding "constitution." Caver asserts that the document should have been excluded because it constituted inadmissible hearsay and was substantially more prejudicial than probative.

Hearsay statements are generally inadmissible unless an exception applies. NRS 51.065(1). The State nevertheless maintains that the district court properly admitted the HTO constitution because the State's gang expert, Det. Joshua Costello, used the document to develop various opinions about the group's founding and culture. But while an expert witness may generally rely on hearsay statements to form an opinion presented at trial, NRS 50.285(2), the expert testimony cannot be used as a conduit to introduce otherwise inadmissible evidence, *Flowers v. State*, 136 Nev. 1, 9, 456 P.3d 1037, 1046 (2020). The State further contends that the HTO constitution was admissible under NRS 51.035(3)(b), as a statement offered against a party "of which [that] party has manifested adoption or belief in its truth." Even if membership in an organization may constitute evidence of adoption of the group's core tenets, there is no indication in the

record that Caver ever read, much less espoused, the rules set forth in the document offered at trial. Det. Costello testified that photographs of the constitution were found on an HTO founder's cell phone in 2019, during an unrelated investigation. Det. Costello was unable to provide further information about when the document was written, whether it had been disseminated, or whether the statements therein were ratified by the gang. Therefore, the adoptive-admission exception did not apply, and the district court abused its discretion by admitting the constitution on this basis. *Cf. Talley v. State*, 141 Nev., Adv. Op. 61, 580 P.3d 101, 109 (2025) (concluding that adoptive-admission hearsay exception was inapplicable where there was no evidence that defendant "received, understood, and intended to act upon" text messages).

Regardless, any error in admitting the HTO constitution was harmless. *See id.* (concluding improperly admitted evidence was harmless error where it had no "substantial and injurious effect or influence" on the jury's verdict). Det. Costello testified from his own training and experience, independent of the constitution, about the founding of HTO and the rules gang members typically follow, including retaliation against other gangs. Furthermore, as discussed above, the evidence of Caver's guilt was overwhelming. We thus conclude that reversal is unwarranted.

*Testimony about violence at gang members' funerals*

Additionally, Caver argues that the State committed prosecutorial misconduct by eliciting testimony from Det. Costello that shootings have occurred at funerals and vigils for murdered gang members, thereby justifying police presence at these events. Caver contends that the prosecutor's actions violated an agreement that the State would not offer evidence of specific incidents of gang violence in exchange for Caver's

stipulation to membership in HTO. Even if failure to uphold an evidentiary stipulation agreement might amount to prosecutorial misconduct, it is not clear that the prosecutor's question here was intended to elicit testimony about a specific event. Thus, Caver has not established violation of the parties' agreement. Furthermore, any improper conduct was harmless as the district court sustained Caver's objection and struck Det. Costello's response. *See Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476 (setting forth two-step analysis for identifying reversible prosecutorial misconduct). We therefore conclude that this claim does not warrant relief.

*Sufficiency of the evidence as to battery with a deadly weapon resulting in substantial bodily harm*

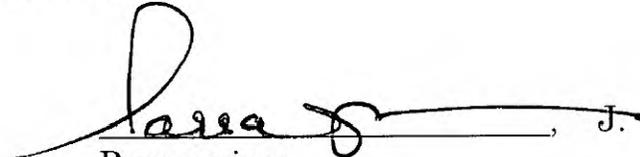
Lastly, Caver argues that insufficient evidence was presented at trial to prove that Caver battered victim Tevin Hines with a deadly weapon, resulting in substantial bodily harm. When reviewing a challenge to the sufficiency of evidence, we consider the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

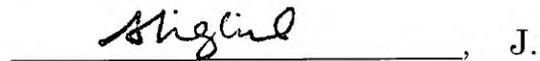
For battery offenses, substantial bodily harm includes "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or . . . [p]rolonged physical pain." NRS 0.060; *see also* NRS 200.481(2)(e)(2). "Prolonged physical pain" necessarily involves "some physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act." *LaChance v. State*, 130 Nev. 263, 271, 321 P.3d 919, 925 (2014) (citation modified).

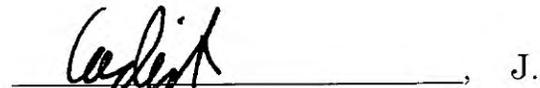
Notably, Hines did not testify at trial. Rather, the State called a patrol officer who stated that Hines approached the officer and advised he had been shot. Video from the officer's body-worn camera showed police referring to Hines having been shot in a "lower extremity," but there was no discussion of the severity of the injury. The State also offered testimony of a second officer who later identified Hines at the hospital, but this witness did not describe Hines's condition or any specific treatment he received. Therefore, the totality of the evidence established only that Hines had been shot.

While a gunshot wound is often a severe injury, the fact that a victim was shot does not, without more, establish that the victim suffered substantial bodily harm. *Cf. People v. Jones*, 752 N.E.2d 511, 518-19 (Ill. App. Ct. 2001) (determining that imposition of consecutive sentences for severe bodily injury was improper where victim testified that a bullet "grazed" his cheek, requiring only a band-aid); *Nixon v. United States*, 730 A.2d 145, 151 (D.C. 1999) (concluding that the government presented insufficient evidence to prove serious bodily injury where shooting victims did not testify and no medical evidence was offered); *Collins v. State*, 508 So. 2d 295, 300 (Ala. Crim. App. 1987) (stating that "[t]here was no evidence presented from which the jury could possibly have concluded that the abrasion [victim] received from the bullet that grazed the top of his head amounted to 'serious physical injury'"). Here, a rational juror could not have determined from the available evidence whether any disfigurement, impairment of function, or prolonged pain resulted from Hines's injury. We therefore reverse the judgment of conviction as to the substantial bodily harm enhancement applied to Caver's conviction for count 6, battery of Tevin Hines with a deadly weapon. Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

  
Parraguirre, J.

  
Stiglich, J.

  
Cadish, J.

cc: Hon. Carli Lynn Kierny, District Judge  
Law Office of Betsy Allen  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk