IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CHRISTOPHER SCHOELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37909

FILED

SEP 10 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

William Christopher Schoels appeals from his judgment of conviction of voluntary manslaughter with the use of a deadly weapon. On appeal, he challenges the district court's refusal to allow certain cross-examination regarding the victim's violent character and the court's refusal to give Schoels's self-defense instruction.

Schoels first contends that the district court erred by refusing to allow him to cross-examine one of the State's witnesses about specific instances of the victim's conduct, namely, two armed robberies from 1984. On this issue, Schoels asserts that he was entitled to cross-examine a witness regarding the victim's prior conviction because the State had "opened the door" on the issue by eliciting testimony regarding the victim's character for nonviolence.[1] We disagree. After reading the exchange

[1]Schoels also asserts that the proffered evidence should have been admitted under NRS 48.055(2), which allows proof of specific instances of conduct when "character of a person is an essential element of a charge, claim or defense." We have previously held, however, that proof of a victim's character in a self-defense case should "be established by testimony as to reputation or in the form of an opinion" under NRS 48.055(1) unless the defendant knew of the specific acts at the time of the altercation. Burgeon v. State, 102 Nev. 43, 45-46, 714 P.2d 576, 578 (1986). We decline Schoels's invitation to deviate from Burgeon here.

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between the prosecutor and the witness in context, we are convinced that the witness was simply testifying about his impression of the events surrounding the shooting and not particularly about the victim's character. In any event, we also conclude that the district court did not abuse its discretion in precluding the evidence on grounds that it would be substantially more prejudicial than probative.[2] In any event, we conclude that any error on this point was harmless.[3]

Schoels next contends that the district court abused its discretion by refusing to instruct the jury that "[a]ctual danger is not necessary to justify self-defense."[4] We disagree. Schoels's proposed addition to the self-defense instruction given was unnecessarily duplicitous because the district court instructed the jury that "the right of

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[2]See NRS 48.035(1); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985) (noting that the district court has discretion to admit or to exclude evidence after balancing the prejudicial effect against the probative value).

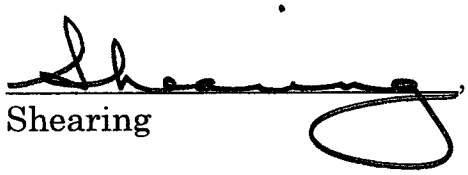
[3]See Parker v. State, 109 Nev. 383, 389, 849 P.2d 1062, 1066 (1993) (noting that evidentiary rulings are subject to harmless-error analysis).

[4]See Castillo v. State, 114 Nev. 271, 282, 956 P.2d 103, 110 (1998) (holding that this court reviews a district court's decision to give or refuse to give a nonstatutory jury instruction for an abuse of discretion).

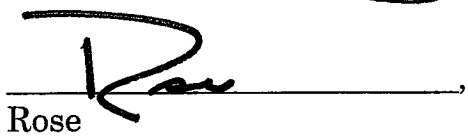
self-defense is the same whether such danger is real or merely apparent."[5] Moreover, we addressed this very contention in Schoels's first appeal.[6]

Having concluded that reversal of Schoels's judgment of conviction is not warranted, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Shearing



_____, J.
Rose

_____, J.
Becker

cc: Hon. Nancy M. Saitta, District Judge
Clark County Public Defender
Attorney General/Carson City
Robert L. Langford & Associates
Clark County Clerk

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[5]See Earl v. State, 111 Nev. 1304, 1308, 904 P.2d 1029, 1031 (1995) (stating that although the defendant is generally entitled to have the jury instructed on his theory of the case, the district court may refuse the defendant's proposed instruction if it is substantially covered by the instructions given).

[6]See Schoels v. State, 114 Nev. 981, 987, 966 P.2d 735, 739 (1998) (concluding "that Schoels's challenge to the jury instruction plainly lacks merit") modified on reh'g on other grounds, Schoels v. State, 115 Nev. 33, 975 P.2d 1275 (1999).