

IN THE SUPREME COURT OF THE STATE OF NEVADA

REX R. ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41091

FILED

JUN 02 2004

ANNE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree murder with use of a deadly weapon, discharging a firearm at or into an occupied structure, and discharging a weapon where a person might be endangered. Appellant Rex R. Adams makes several challenges to jury instructions given at his trial. We conclude that Adams' arguments lack merit with the exception of his challenge to a jury instruction, given without objection, concerning self-defense. Regarding this instruction, we conclude that the instruction was erroneous and constitutes plain error warranting a new trial for Adams.

Adams contends that jury instruction no. 32, instructing the jury as to the issue of self-defense, misstated the law. More particularly, the instruction erroneously stated under which circumstances a belief in the necessity of self-defense negates malice and reduces the offense from murder to manslaughter. Adams failed to object to the jury instruction.

Generally, failure to clearly object on the record to a jury instruction precludes our review of the instruction.¹ However, despite counsel's failure to object, we have the discretion to address an error if it

¹Green v. State, 119 Nev. ___, ___, 80 P.3d 93, 95 (2003).

was plain and affected the defendant's substantial rights.² "To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record."³ Normally, the defendant must show that an error was prejudicial to meet the requirement that it affected his substantial rights.⁴

In the instant case, instruction no. 32 read as follows:

The killing or attempted killing of another person in self-defense is justified and not unlawful when the person who kills or attempts to kill actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use, in self-defense, force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

²Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001); see also NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

³Richmond v. State, 118 Nev. 924, 935, 59 P.3d 1249, 1256 (2002) (internal citations and quotations omitted).

⁴United States v. Olano, 507 U.S. 725, 734-35 (1993).


An honest but reasonable belief in the necessity of self-defense does not negate malice and does not reduce the offense from murder to manslaughter. (emphasis added).


As presented, this instruction informed the jury that even if they found that Adams had an honest and reasonable belief that he needed to act in self-defense, his belief would not negate malice or reduce the offense from murder to manslaughter. In order to be an accurate statement of the law, the last paragraph of the instruction should have read: "An honest but unreasonable belief in the necessity of self-defense does not negate malice and does not reduce the offense from murder to manslaughter."⁵

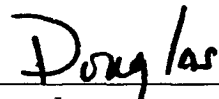
Thus, we conclude that there was error in the instruction that was apparent from a casual inspection of the record. Additionally, we conclude that the error prejudiced Adams' right to a fair trial and affected his substantial rights. Adams presented evidence at trial on the theory of self-defense. If the jury followed instruction no. 32 as given, even if Adams had been able to convince the jury based on the evidence presented that he had an honest and reasonable belief in his need to shoot in self-defense, the jury still would not have been able to reduce his offense from murder to manslaughter. Thus, any evidence of self-defense presented by Adams was rendered meaningless by the instruction. Because the district court erred in giving instruction no. 32, we

⁵Runion v. State, 116 Nev. 1041, 1051, 13 P.3d 52, 59 (2000).

ORDER the judgment of conviction REVERSED AND
REMAND this matter to the district court for a new trial.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Joseph T. Bonaventure, District Judge
Special Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk