

In the Supreme Court of the State of Idaho

STATE OF IDAHO,)	
)	ORDER DENYING PETITION FOR
Plaintiff-Respondent,)	REHEARING
)	
v.)	Supreme Court Docket No. 43874-2016
)	Ada County No. CR-2011-3976
ROBERT DEAN HALL,)	
)	Ref. No. 16-44
Defendant-Appellant.)	

The Defendant (“Rob”) filed a petition for rehearing, raising two issues. We deny the petition for rehearing because those issues have no merit.

A. A reasonable view of the evidence did not support giving a jury instruction on Idaho Code section 18-4009(1).

Idaho Code section 18-4009(1) states that a homicide is justifiable “[w]hen resisting any attempt to murder any person . . . or to do some great bodily injury upon any person.” As we held in the opinion, for the statute to apply the defendant must have been resisting an actual, ongoing attack.

Rob contends that a reasonable view of the evidence noted in the opinion along with two other items of evidence was sufficient to entitle him to a jury instruction based upon section 18-4009(1).¹ The additional facts were:

(a) evidence that due to steroid and amphetamine use, Emmett was hyperirritable, had mood lability, was impulsive, and had an explosive temper; and

(b) evidence that about two hours before arriving at the pharmacy parking lot, Emmett texted the sister of Kandi Hall, stating, “I am about ready to drive oover [sic] and beat his ass.”

These additional facts along with the facts noted in the opinion are insufficient to show what Emmett was doing when Rob shot him.

¹ In his brief supporting his petition for rehearing, Rob also lists as an asserted additional fact not mentioned in the opinion Emmett’s threat to crack Rob’s head. That fact was mentioned in the opinion.

Rob argues that the Court is requiring direct evidence of what Emmett was doing, rather than permitting the applicability of the statute to be shown by circumstantial evidence.

Circumstantial evidence is the proof of certain facts and circumstances in a given case, from which the jury may infer other connected facts which usually and reasonably follow according to the common experience of mankind. To render evidence of collateral facts competent, there must be some natural, necessary, or logical connection between them and the inference or result which they are designed to establish.

State v. McLennan, 40 Idaho 286, 303, 231 P. 718, 723 (1925).

Inferences from circumstantial evidence must be reasonable. Based upon the evidence at the trial, a reasonable jury could not have concluded that Rob was resisting an actual, ongoing attack when he shot Emmett. That conclusion could not be reasonably inferred from the evidence. The argument that Rob was doing so when he shot and killed Emmett would be based simply upon unfounded speculation.

B. Rob has not shown that there was fundamental error in giving the self-defense instructions.

Rob contends that the opinion failed to address an issue of fundamental error that he raised regarding the self-defense instructions. Although not listed as an issue on appeal, Rob did assert that Jury Instructions Nos. 33 and 34 incorrectly stated the law of self-defense. In addressing the arguments regarding the self-defense instructions, we express no opinion as to whether a reasonable view of the evidence supported the giving of an instruction on self-defense.

Because there was no objection to the instructions, Rob must show that the giving of the instructions constituted fundamental error. To do so, he must show that the alleged error: “(1) violates one or more of the defendant’s unwaived constitutional rights; (2) plainly exists (without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision); and (3) was not harmless.” *State v. Perry*, 150 Idaho 209, 228, 245 P.3d 961, 980 (2010).

a. Instruction No. 33. Jury Instruction No. 33 stated:

A homicide is justifiable if the defendant was acting in self-defense. In order to find that the defendant acted in self-defense, all of the following conditions must be found to have been in existence at the time of the killing:

1. The defendant must have believed that the defendant was in imminent danger of death or great bodily harm.