

# In the Supreme Court of the State of Idaho

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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).<sup>1</sup> 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.

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<sup>1</sup> 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.

2. In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save the defendant from the danger presented.

3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that the defendant was in imminent danger of death or great bodily injury and believed that the action taken was necessary.

4. The defendant must have acted only in response to that danger and not for some other motivation.

5. When there is no longer any reasonable appearance of danger, the right of self-defense ends.

In deciding upon the reasonableness of the defendant's beliefs, you should determine what an ordinary and reasonable person might have concluded from all the facts and circumstances which the evidence shows existed at that time, and not with the benefit of hindsight.

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of death or great bodily injury is not sufficient to justify a homicide. The defendant must have acted under the influence of fears that only a reasonable person would have had in a similar position.

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable. If there is a reasonable doubt whether the homicide was justifiable, you must find the defendant not guilty.

Rob challenges the portion of the jury instruction stating that in order to find that he acted in self-defense, the jury must find that “the defendant must have believed that the action the defendant took was necessary to save the defendant from the danger presented.” It was not error to include this provision in the self-defense instruction. As this Court previously stated with respect to Idaho Code section 18-4009, “Essentially this permits self-defense with a deadly weapon only where the accused has reasonable cause to believe, and does believe, he is in danger of great bodily injury or where the person being defended is in similar danger.” *State v. Rodriguez*, 93 Idaho 286, 291, 460 P.2d 711, 716 (1969).

**b. Instruction No. 34.** Jury Instruction No. 34 informed the jury:

The kind and degree of force which a person may lawfully use in self-defense are limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in self-defense, the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

Rob contends that “Idaho law has no requirement that in order for a homicide to be justifiable, ‘[t]he kind and degree of force which a person may lawfully use . . . are limited by what a reasonable person in the same situation . . . would believe to be necessary.’” He argues that the jury instruction is erroneous because the jury could have found him guilty “if they found he used a little too much force.” It is difficult to imagine what would be a little less force than two fatal gunshots — one to the heart and the other to the head.

Rob has failed to show that the instruction was in error. As this Court stated in *Rodriguez*:

The appellant’s fear alone is not a legally sufficient reason upon which to base an inference that appellant acted in self-defense. Accompanied by the appellant’s perception of the situation, there must be in addition circumstances sufficient to excite the fears of a reasonable man. Thus an objective and not a subjective criterion must be applied when inquiring into the appellant’s state of mind.

*Id.*

As Idaho Code section 18-4009(3) states, a homicide is justified in lawful defense of a person “when there is reasonable ground to apprehend a design . . . to do some great bodily injury, and imminent danger of such design being accomplished.” Likewise, Idaho Code section 18-4010 states that a bare fear is not sufficient to justify the homicide, but “the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.”

Therefore, IT IS HEREBY ORDERED that Appellant’s PETITION FOR REHEARING be, and hereby is, DENIED.

DATED this 19 day of January, 2017.

By Order of the Supreme Court

  
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Stephen W. Kenyon, Clerk

cc: Counsel of Record  
West Publishing  
Lexis/Nexis  
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