

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 PATRICK NEWELL,

4 Appellant,

5 v.

6 THE STATE OF NEVADA,

7 Respondent.

 No. 66552

E-File

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Tracie K. Lindeman
Clerk of Supreme Court

8
9 **FAST TRACK REPLY**

10 **1. Legal argument, including authorities:** Respondent goes on at
11 length about what the law should be, but ignores what the law is. Similarly
12 respondent spins a tale in which Teddy Bejarano is an innocent “only asking
13 for a ride home”¹ and “Appellant set Bejarano on fire simply for being
14 obnoxious or annoying”.² Respondent ignores what everyone in the
15 courtroom, including the trial prosecutor recognized during closing argument:
16 Teddy Bejarano was a menacing, threatening and belligerent drunk³ who
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23 ¹ RAB 13. Neither the prosecuting trial attorney nor the judge took this view
of the evidence at trial

24 ² Id citing to” 6 AA 1130”--- Note that it’s difficult to see how the testimony
25 supports the claim in any way shape or form---Newell states repeatedly that
26 he flicked the lighter toward Bejarano to scare him and that got him to
27 leave—there is nothing which says it as “...simply for being obnoxious or
annoying.” The rest of the record likewise dispells this claim.

28 ³ From the state’s closing “...so drunk he doesn’t remember being drunk.” AA
1230

1 would not take no for an answer⁴---a person who pressed toward the
2 defendant multiple times despite being told no and being asked to just leave.
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4 Newell did everything he could think of to avoid the situation including
5 asking store employees to call 911. Newell eventually pushed Bejarano, an
6 act the prosecution admitted during trial was justified⁵, and the situation
7 escalated with Bejarano getting angrier with each passing second. Even when
8 sprayed with gasoline and threatened with fire Bejarano refused to take no for
9 an answer. Reasonable minds might differ as to whether Bejarano's actions
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11 amounted to felony coercion but to focus as the respondent does on
12 whitewashing a single page of testimony does a disservice to the entire
13 process and obfuscates the issue at bar⁶—Does NRS 200.160 mean what the
14 plain language says?
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17 While the respondent opines that the boundaries concerning the use of
18 force in the resistance to a felony should be no different than those of self-
19 defense or stopping a fleeing felon making the defense available only when
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23 ⁴ Also from State's closing "...he insisted that the defendant give him a ride."
24 AA 1230

25 ⁵State's closing AA 1264.

26 ⁶ In the trial courts words when granting instructions over the state's objection
27 ---"If the jury thinks by cornering him, you know, between the gas station and
28 his car is a felony coercion, well that's certainly his argument." AA 1186-7.
Note that the problem wasn't with the factual basis for the argument, but
rather the limitations the court sua sponte placed upon the defense.

1 the felony in question presents “a threat of serious bodily injury” and the
2 force used is both “reasonable and necessary.” Respondent’s opinion is
3 betrayed by the statutes.
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5 NRS 200.160 allows without limitation for the use of deadly force: “1.
6 In lawful defense of the slayer...when there is reasonable ground to
7 apprehend a design on the part of the person slain to commit a felony” or “2.
8 In the actual resistance of an attempt to commit a felony upon the slayer...”
9 Under a plain reading of NRS 200.160 deadly force may be used in the
10 resistance to a felony committed upon the person using said force, even
11 though the person might not be otherwise justified---it applies to any attempt
12 to commit a felony “...upon the slayer...” and does not distinguish between
13 the sorts of felonies which may be defended against, a point made by this
14 court in **Davis v. State**, 130 Nev. Adv. Op. 16, 321 P.3d 867 (2013).⁷
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19 Contrary to the state’s claim, the limitations on the use of deadly force
20 to catch a fleeing felony set forth in NRS 171.1455 and self-defense in NRS
21 200.120 cuts directly against a finding that the same limitations apply to NRS
22 200.160---if the legislature had intended such limits they would have placed
23 them in the text of the statute. Simply put, there are some situations---self-
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27 ⁷ “The plain language of these statutes does not differentiate between the
28 types of felonies from which a person may defend himself.” **Davis** at 873.

1 defense and the apprehension of fleeing felons---which limit the use of deadly
2 force to situations in which the force is “reasonable and necessary” to prevent
3 the threat of “serious bodily harm” others do not. In this instance the use of
4 deadly force was in resistance to the commission of a felony against Patrick
5 Newell---the harm is the felony itself, hence it is immaterial whether the threat
6 of great bodily harm is present.

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9 Similarly, Respondent’s “chicken little” approach of claiming that the
10 sky will fall and the world will end if a plain reading of the statute is adopted
11 must fail. Contrary to respondent’s claims⁸ even under a plain reading of
12 NRS 200.160, deadly force could not be used to prevent such felonies as
13 Bribery of a Judicial Officer, Forgery or Obtaining Money under False
14 Pretenses because none of the complained of felonies fall under the rubric of
15 being committed either “1. In defense of the slayer...” or “2. ...upon the
16 slayer...” The statute, consistent with the common law⁹, allows citizens to
17 defend themselves with deadly force against felonies upon their person.
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23 ⁸ RAB 9.

24 ⁹ Respondent’s reliance upon the common law self-defense is of no moment—
25 the question at bar doesn’t involve self-defense. Further, respondent’s brief
26 virtually concedes the common law underpinnings of NRS 200.160 when it
27 pleads for this court to legislate from the bench because “Society can no
28 longer tolerate the use of deadly force to prevent the commission of non-
violent felonies” noting “These cases demonstrate that felonies are now vastly
different than they were at common law.” RAB 11.

1 Left without help from the text of NRS 200.160, Respondent invites
2 the court to move beyond the plain reading of the statute and in essence asks
3 this court to limit the use of force to prevent a felony to those situations which
4 would justify self-defense---a proposition which would render NRS 200.160
5 meaningless. The very title of NRS 200.160, "Additional cases of justifiable
6 homicide," gives indication that the legislature didn't intend for the statute to
7 be meaningless and/or restate what had already been set forth elsewhere. So
8 does the text of NRS 200.160 which reads "a design...to commit a felony or
9 to do some great personal injury..." Obviously from the legislature's
10 perspective self-defense and defense against a felony to the person are distinct
11 concepts and the limitations of one ought not to control the limitations of the
12 other.

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17 Respondent seems dumbfounded by the notion that stopping the
18 commission of a felony might allow for the use of deadly force which would
19 not otherwise be justified but the notion makes perfect sense to the common
20 person---once the felony has already happened the use of force is less urgent.
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1 **CONCLUSION**

2 Newell's appeal should be granted.

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4 Respectfully submitted,

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6 PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

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8 By /s/ Scott L. Coffee
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12 **VERIFICATION**

13 1. I hereby certify that this fast track reply complies with the
14 formatting requirements of NRAP 32(a)(4), the typeface requirements of
15 NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

16 This fast track reply has been prepared in a proportionally spaced
17 typeface using Times New Roman in 14 font size;

18 2. I further certify that this fast track reply complies with the
19 page or type-volume limitations of NRAP 3C(h)(2) because it is either:

20 [XX] Proportionately spaced, has a typeface of 14 points or
21 more, and contains 1,151 words and 105 lines of text.

22 3. Finally, I recognize that pursuant to NRAP 3C I am
23 responsible for filing a timely fast track reply and that the Supreme Court of
24 Nevada may sanction an attorney for failing to file a timely fast track reply, or
25 failing to raise material issues or arguments in the fast track reply, or failing to
26 cooperate fully with appellate counsel during the course of an appeal. I
27
28

1 therefore certify that the information provided in this fast track reply is true
2 and complete to the best of my knowledge, information and belief.

3 DATED this 28th day of January, 2015.

4 PHILIP J. KOHN
5 CLARK COUNTY PUBLIC DEFENDER

6 By /s/ Scott L. Coffee
7 SCOTT L. COFFEE, #5607
8 Deputy Public Defender
9

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that this document was filed electronically with
12 the Nevada Supreme Court on the 28th day of January, 2015. Electronic
13 Service of the foregoing document shall be made in accordance with the
14 Master Service List as follows:

15 CATHERINE CORTEZ MASTO SCOTT L. COFFEE
16 STEVEN S. OWENS HOWARD S. BROOKS

17 I further certify that I served a copy of this document by mailing
18 a true and correct copy thereof, postage pre-paid, addressed to:

19 PATRICK NEWELL
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24 BY /s/ Carrie M. Connolly
25 Employee, Clark County Public
26 Defender's Office
27
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