

Extended Case Summary for:

A-23-0561, State of Nebraska v. Brian K. Adams (Appellant)

Following a jury trial, appellant was convicted of second degree murder and use of a deadly weapon to commit a felony. The charges against appellant stem from an altercation that occurred on October 18, 2021. Adams was in the parking lot of an apartment complex when he and the victim (Trevious Clark) became involved in a physical altercation. At some point, Adams struck the victim on the head with a tire jack handle, the victim fell to the ground, Adams stepped on some part of the victim, and the victim later died from his injuries. At trial, Adams requested a self-defense jury instruction, arguing that when he struck the victim, he was acting in self-defense. The district court declined to give the instruction, finding that the testimony at trial had shown that Adams could have safely retreated into his van that was in the parking lot, and that at one point later in the altercation, Adams could have driven away in his van but declined to do so. Thus, the district court concluded, the evidence did not support a self-defense jury instruction.

Appellant has filed an appeal from his convictions. On appeal, he makes two main arguments, one with several subparts. First, he argues that the district court erred in declining to instruct the jury on self-defense. He argues that he was subjectively in fear for his life and that he believed action was immediately necessary to protect himself, especially because the victim threatened to kill him multiple times, which he took seriously, and which made him scared for his life. Appellant argues that the incident happened very quickly and that he did not have time to think about how to safely retreat.

Appellant's second argument is that he received ineffective assistance of trial counsel. To show ineffective assistance of trial counsel, the appellant must show that his counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law. He also must show that he was prejudiced by the deficient performance; that is, he must show a reasonable probability that but for his counsel's deficient performance, the result of the proceeding would have been different. In a direct appeal, an appellate court will determine whether the record presented is adequate to review the claim of deficient performance and prejudice. Appellant lists several instances in which he believes his trial counsel's performance fell below that of a lawyer with ordinary training and skill in criminal law.

First, appellant argues that trial counsel was ineffective when he failed to object to the lack of self-defense jury instruction at the formal jury instruction conference, which led to the error not being preserved for appellate review. Second, he argues that trial counsel was ineffective in failing to offer a proposed jury instruction on self-defense at the formal jury instruction conference, and that caselaw states that a party must offer a proposed jury instruction to be able to argue on appeal the failure to give a requested instruction was error. Appellant's third argument is that trial counsel was ineffective for failing to offer evidence using photographs from the autopsy and information from the forensic pathologist conducting the autopsy that the victim did not have debris such as gravel or dirt in his head. This, appellant argues, would support appellant's testimony at trial that he did not stomp on the victim's head after the victim fell to the ground. Fourth, appellant argues that trial counsel was ineffective by not introducing evidence that appellant's car was blocked in the parking lot, which prevented him from retreating during the altercation.

Appellant's fifth instance of deficient performance is his argument that trial counsel was ineffective in failing to present evidence that the victim's companion did not stay with the victim after the altercation, nor did he come back to the scene or contact the police, which would support appellant's theory that the victim had a weapon of some kind that the companion removed from the scene. Sixth, appellant argues that trial counsel was ineffective in failing to introduce evidence or argue that the victim had something in his hand, and that the appellant could not see what it was, which would have supported appellant's belief that the victim may have had a weapon and that use of force was thus reasonable and necessary. Finally, appellant argues that trial counsel was ineffective in failing to pursue evidence of the victim's character and reputation, including that he had a nickname that would have supported the idea that the victim had a propensity for violence and thus in this situation the victim was the initial aggressor.