

SUPREME COURT OF NEVADA

Malcolm Mendell Aubry v. State

142 Nev. Adv. Op. No. 14 (2026) · No. 89095 · Decided February 26, 2026

SUMMARY

The Nevada Supreme Court reversed Malcolm Mendell Aubry’s convictions for first-degree murder of an older victim and abuse of an older or vulnerable person, holding that the jury was improperly instructed regarding voluntary intoxication and a not-guilty-by-reason-of-insanity defense. The court clarified that a jury may consider voluntary intoxication together with a disease or defect of the mind, provided that voluntary intoxication alone is not the cause of the disease or defect. The court also held that the State violated expert-disclosure requirements by presenting materially expanded testimony concerning the victim’s cause of death, although Aubry failed to show prejudice from that violation.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Lee, J.; Pickering, J.; Cadish, J.
JURISDICTION	Supreme Court of Nevada
DECIDED	February 26, 2026
DOCKET	89095
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Aubry appealed from a judgment of conviction entered after a jury found him guilty of first-degree murder of a victim aged sixty or older and abuse of an older or vulnerable person resulting in substantial bodily or mental harm or death.
STANDARD OF REVIEW	The court reviews the giving or refusal of a specific jury instruction for abuse of discretion or judicial error, but reviews de novo whether an instruction correctly states the law. Defective-instruction claims are reviewed for harmless error; nonconstitutional error requires reversal if it had a substantial effect on the verdict. Unpreserved disclosure-error claims are reviewed for plain error, and the defendant must show prejudice affecting substantial rights.
PRECEDENTIAL VALUE	published
PARTIES	Malcolm Mendell Aubry v. State of Nevada

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QUESTIONS PRESENTED

1. Whether jury instruction 17 incorrectly barred the jury from considering voluntary intoxication as a contributing factor to a mental disease or defect supporting a not-guilty-by-reason-of-insanity defense.
2. Whether the instructional error was harmless.
3. Whether the State violated NRS 174.234 by presenting trial expert testimony expanding the possible causes of death beyond the preliminary-hearing testimony without notifying the defense.
4. Whether the disclosure violation constituted reversible plain error.

HOLDINGS

1. A jury may consider whether a combination of voluntary intoxication and a disease or defect of the mind resulted in legal insanity, but voluntary intoxication alone may not be the cause of the disease or defect. Jury instruction 17, which barred consideration of voluntary intoxication if it contributed to the defendant's insanity, misstated Nevada law.
2. The instructional error was not harmless because it could have foreclosed the jury from finding that Aubry proved insanity based on the combination of traumatic brain injury and voluntary intoxication, and the State emphasized the erroneous instruction during closing argument.
3. Presenting trial expert testimony that substantially differed from the previously disclosed preliminary-hearing testimony, by expanding the possible causes of death to include strangulation and asphyxia, violated the notice requirements of NRS 174.234.
4. The disclosure violation did not constitute reversible plain error because Aubry failed to demonstrate prejudice affecting his substantial rights.

KEY QUOTATIONS

“The jury may consider whether a combination of voluntary intoxication and a disease or defect of the mind resulted in insanity, but voluntary intoxication alone may not be the cause of the disease or defect of the mind.” (at 7)

“Accordingly, we hold that jury instruction 17 misstates the law.” (at 8)

“The State thus presented expert testimony at trial that substantially differed from what it provided at the preliminary hearing without properly disclosing it to Aubry, in violation of the notice requirements of the statute.” (at 11)

FACTUAL BACKGROUND

Aubry was found in his apartment with blood on his face, neck, and clothing, and the victim, Debra Shirron, was found dead in bed with blood and bruises on her face. The preliminary-hearing medical examiner attributed the death to blunt-force head trauma, but a replacement medical examiner testified at trial that strangulation or asphyxia could also have contributed. Aubry testified that a prior brick attack caused a traumatic brain injury and that, after he and Shirron consumed cannabis brownies, he blacked out and later found Shirron motionless. His expert opined that a combination of traumatic brain injury and cannabis intoxication caused a delusional state supporting legal insanity, while the State's expert attributed any delusions to cannabis alone.

PROCEDURAL HISTORY

Aubry was charged in the Eighth Judicial District Court of Clark County and proceeded to trial representing himself while asserting legal insanity and self-defense. The jury returned guilty verdicts on both counts. The Nevada Supreme Court held that the jury was improperly instructed concerning voluntary intoxication and insanity, that the error was not harmless, and reversed and remanded. The court also held that the State violated expert-disclosure requirements by presenting changed cause-of-death testimony without notice, but found no reversible plain error because Aubry failed to show prejudice.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of conviction is reversed and the case is remanded for further proceedings consistent with the opinion, including proceedings under a properly framed insanity instruction.

CASES CITED

- Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)
- Newson v. State, 136 Nev. 181, 185, 462 P.3d 246, 249 (2020)
- Cortinas v. State, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008)
- Kassa v. State, 137 Nev. 150, 485 P.3d 750 (2021)
- Love v. State, No. 52403, 2010 WL 3295682 (Nev. May 28, 2010) (Order of Affirmance)
- Tavares v. State, 117 Nev. 725, 732-33, 30 P.3d 1128, 1132-33 (2001)
- Mathews v. State, 134 Nev. 512, 517-18, 424 P.3d 634, 639-40 (2018)
- Belcher v. State, 136 Nev. 261, 262, 464 P.3d 1013, 1019 (2020)
- Newman v. State, 132 Nev. 340, 344, 373 P.3d 855, 858 (2016)
- Moore v. State, 122 Nev. 27, 37, 126 P.3d 508, 514 (2006)
- Khoury v. Seastrand, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016)