

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL ANGEL HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49294

FILED

FEB 08 2008

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of two counts of assault with a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Miguel Angel Hernandez to serve two concurrent prison terms of 16 to 48 months and awarded him credit for 211 days time served.

Hernandez contends that insufficient evidence was presented at trial to support his convictions for assault with a deadly weapon. Hernandez specifically claims that the State did not demonstrate that either victim was placed in reasonable apprehension of immediate bodily harm. Our review of the record reveals sufficient evidence to establish Hernandez's guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

¹See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (citing Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

In particular, we note that the jury heard testimony that Hernandez left a convenience store after arguing with victims Michael and Carrie Jones. Hernandez removed a handgun from beneath the passenger seat of his car and shot at the Joneses as they walked away from the store. Upon hearing the shots, Michael hid behind a pillar and Carrie ran across the street toward some police officers. Later, when police officers stopped Hernandez's car, Hernandez was found sitting in the passenger seat, a revolver was found beneath the passenger seat, and one live cartridge and one spent cartridge were found in the revolver.

We conclude that a rational juror could reasonably infer that Hernandez intentionally placed the victims in reasonable apprehension of immediate bodily harm by firing a handgun at them.² It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.³

To the extent that Hernandez relies on Powell v. State⁴ for the proposition that he could only be convicted of one count of assault with a deadly weapon because he only fired one shot, we conclude that his

²See NRS 200.471(1)(a).

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

⁴113 Nev. 258, 934 P.2d 224 (1997) (providing that the State has to prove that the defendant had the specific intent to commit a violent injury on each of the victims in order to obtain multiple assault convictions pursuant to NRS 200.471).


reliance is misplaced. Powell's interpretation of the assault statute is no longer valid because the statute has since been amended by the Nevada State Legislature.⁵ The current statute defines assault as "intentionally placing another person in reasonable apprehension of immediate bodily harm."⁶ As discussed above, we conclude that the State met its burden to prove both counts of assault with a deadly weapon.

Having considered Hernandez's contentions and concluded that they are without merit, we


ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

cc: Hon. Jackie Glass, District Judge
Kajioka & Associates
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵See 2001 Nev. Stat., ch. 216, § 1, at 986-87.

⁶NRS 200.471(1)(a).