

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY LEE SHOULDERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54133

**FILED**

**MAY 07 2010**

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

ORDER OF REVERSAL AND REMAND

Appellant Anthony Lee Shoulders appeals from a judgment of conviction, pursuant to a jury verdict, of burglary. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Sufficiency of the evidence

Shoulders contends that insufficient evidence supports his conviction because the victim's credibility was questionable and no evidence supports a finding that he intended to assault and/or batter the victim when he entered her apartment. We disagree because, when viewed in the light most favorable to the State, the evidence is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

The victim testified at trial that Shoulders began banging on her apartment door. When she opened the door, Shoulders shoved his way inside and said, "Bitch, you're going to be mine." The victim told Shoulders to leave but he refused. Shoulders then said, "Bitch I'll Kill you. I have a knife in my sock," and pulled out a knife. We conclude that a rational juror could have inferred from this evidence that Shoulders entered the victim's apartment with the intent to assault and/or batter the

victim. See NRS 205.060(1) (defining burglary); NRS 200.471(1)(a) (defining assault); NRS 200.481(1)(a) (defining battery). 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. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

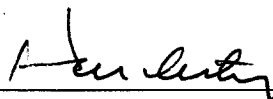
### Jury instructions

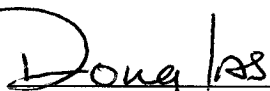
Shoulders challenges the district court's refusal to give three of his proffered jury instructions. We review the district court's decision to give a particular jury instruction for an abuse of discretion. Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

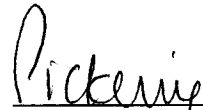
Shoulders contends that the district court erred by refusing to give a negatively phrased instruction relating to the burglary charge. Negatively phrased position or theory instructions should be given upon request, and a "positive instruction as to the elements of the crime does not justify refusing a properly worded negatively phrased" instruction. Crawford v. State, 121 Nev. 744, 753, 121 P.3d 582, 588 (2005) (quoting Brooks v. State, 103 Nev. 611, 614, 747 P.2d 893, 895 (1987)). If a proposed negative instruction to which a defendant is entitled is defective, the district court has an "affirmative obligation" to correct it or incorporate the substance of the instruction into one drafted by the court. See Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005). Here, Shoulders requested a negatively phrased instruction that supported his theory of defense and was not "misleading, inaccurate, or duplicitous." See id. Accordingly, we conclude that the district court abused its discretion by refusing the proffered instruction. See Margetts v. State, 107 Nev. 616, 619-620, 818 P.2d 392, 395 (1991) (concluding that, in a prosecution for

swindling and obtaining money by false pretenses, the district court erred by refusing to give a negatively worded instruction regarding the lack of specific intent to defraud). We further conclude that the error was not harmless beyond a reasonable doubt, see Carter, 121 Nev. at 767 n.23, 121 P.3d at 598 n.23 (applying harmless error analysis to the failure to give a negatively phrased instruction), because the case against Shoulders depended largely on the alleged victim's credibility and the jury returned inconsistent verdicts. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Kathy A. Hardcastle, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>Because we reverse the judgment of conviction on this basis we need not address Shoulders' additional claims.