

IN THE SUPREME COURT OF THE STATE OF NEVADA

TEODORO MARTINEZ,

No. 37182

Appellant,

FILED

vs.

APR 12 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

Respondent.

ORDER OF REVERSAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of discharge of a bodily fluid. The district court sentenced appellant to a prison term of 36 to 96 months.

Appellant contends that there was insufficient evidence to support his conviction. The State concedes that appellant's contention is correct. We agree.

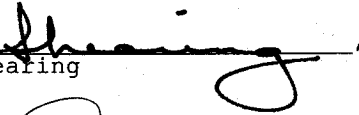
NRS 212.189(1)(d) prohibits the discharge of any bodily fluid by a "prisoner" in lawful custody or confinement, with the intent to have the fluid come into contact with another person. At the time of the incident in question, appellant was in civil protective custody pursuant to NRS 458.270.¹ This court recently held that such custody does not render a person a "prisoner" for purposes of NRS 200.481(2)(f), which prohibits battery by a prisoner.² Similarly, we conclude that a person is

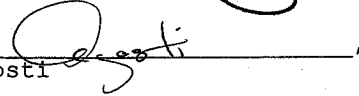
¹NRS 458.270(1) states that "a person who is found in any public place under the influence of alcohol, in such a condition that he is unable to exercise care for his own health or safety or the health or safety of others, must be placed under civil protective custody by a peace officer."

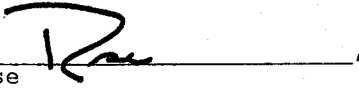
²Robinson v. State, 117 Nev. ___, 17 P.3d 420 (Adv. Op. No. 9, February 5, 2001). qcr

not a "prisoner" for purposes of NRS 212.189 when that person is being held in civil protective custody. Accordingly, we

ORDER the judgment of conviction REVERSED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk