

IN THE SUPREME COURT OF THE STATE OF NEVADA

NELSON GREGORY MALLOCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40213

FILED

JAN 06 2003

ORDER OF AFFIRMANCE

CLERK OF THE COURT
J. Richard
CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of assault with a deadly weapon and one count of failing to stop on the signal of a police officer. The district court sentenced appellant Nelson Malloch to serve three consecutive terms of 24 to 60 months in the Nevada State Prison.


Malloch's sole contention on appeal is that the district court erred by denying his request for a jury instruction on assault. Malloch requested an instruction stating that "In order to convict the Defendant of Assault With a Deadly Weapon, you must find that the Defendant specifically intended to hit the victim(s) with the vehicle he was driving." The district court refused the instruction, and instead gave the State's offered instruction, which stated, "Assault With a Deadly Weapon means to intentionally place another person in reasonable apprehension of immediate bodily harm by or through the use of, or the present ability to use, a deadly weapon." Malloch argues that the instruction given failed to reflect that assault is a specific-intent crime and that the instruction improperly shifted the burden of proof of the intent element from the State to Malloch. We disagree.


The instruction given accurately reflects that assault is a specific-intent crime. Malloch's argument is based on the 1997 case Powell v. State.¹ This interpretation of the assault statute, NRS 200.471(1)(a), is no longer valid because the statute was amended by the Nevada State Legislature in 2001.² The current statute reads that assault is "intentionally placing another person in reasonable apprehension of immediate bodily harm."


We also conclude that the instruction given did not improperly shift the burden of proof of intent from the State to Malloch. Since the statute was amended, the focus of the intent requirement has changed from the attacker's state of mind to the victim's reasonable apprehension of immediate bodily harm. The instruction merely reflected this change.

Having considered Malloch's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

¹113 Nev. 258, 934 P.2d 224 (1997).

²See 2001 Nev. Stat., ch. 216, § 1, at 986-87. We note that Malloch's offenses were committed in January 2002.

cc: Hon. Joseph T. Bonaventure, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk