

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEREMY JAMES DORAN,

No. 38110

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**SEP 12 2001**

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery on a police officer. The district court sentenced appellant to a prison term of 12 to 36 months. The district court further ordered appellant to pay restitution in the amount of \$1,333.23.

Appellant first contends that the district court erred by refusing to allow appellant to present his theory of the case. Specifically, appellant argues that the district court did not allow appellant to present evidence that appellant lacked the intent to batter the police officer and that appellant's actions were the result of a claustrophobic panic attack. Appellant's contention is belied by the record.

A review of the trial transcript reveals that appellant was allowed to present evidence that his actions were the result of a panic attack, and that appellant had suffered from an irrational fear of enclosed spaces for nearly his entire life. Additionally, an expert witness was allowed to testify that an individual who suffered from claustrophobia could be expected to exhibit "gross agitation to the point even of a panic attack." We therefore conclude that appellant was allowed to present evidence supporting his theory of the case.

To the extent that appellant is challenging the district court's ruling that the expert witness could not testify that appellant suffered from claustrophobia, we conclude that appellant's argument is without merit. Trial courts have considerable discretion in determining relevance and admissibility of evidence.<sup>1</sup> Accordingly, we will not disturb the trial court's decision to admit or exclude evidence absent a clear abuse of discretion.<sup>2</sup>

In the instant case, the trial court found that the witness was qualified to testify as to the nature of claustrophobia generally, but that he was not qualified to testify that appellant suffered from claustrophobia. The expert witness testified that he had been a practicing psychologist for more than 25 years, but that he had never diagnosed or treated a case of claustrophobia prior to examining appellant. Under the circumstances, we cannot conclude that the district court's decision to limit the expert witness's testimony was a clear abuse of discretion.

Appellant next contends that the jury returned inconsistent verdicts by finding appellant guilty of one count of battery on a police officer, but finding him not guilty of a second count of battery on a police officer. Appellant argues that the two batteries were "identical to each other in that they both occurred in the same place against the same person and within seconds of each other." The first count, however, alleged that appellant struck the officer with both hands. The second count involved appellant kicking the door to the booking room and causing the door to hit the officer.

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<sup>1</sup>See Sterling v. State, 108 Nev. 391, 395, 834 P.2d 400, 403 (1992).

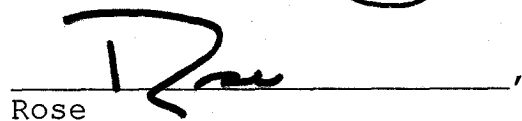
<sup>2</sup>See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980).

Although the two acts occurred in the booking room in a short period of time, they are two distinct acts, and returning a guilty verdict on one is not inconsistent with returning a not guilty verdict on the other.

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

ORDER the judgment of conviction AFFIRMED.<sup>3</sup>

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Steve L. Dobrescu, District Judge  
Attorney General  
Lincoln County District Attorney  
Peter L. Flangas  
Lincoln County Clerk

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<sup>3</sup>On August 17, 2001, appellant filed a motion for a stay, pending this appeal. On August 24, 2001, the State filed an opposition to the motion. The motion is denied as moot.