IN THE SUPREME COURT OF THE STATE OF NEVADA

MONICA LYNETTE SPANN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39185

FILED

APR 30 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of assault with the use of a deadly weapon (count I) and three counts of battery by a prisoner (counts II-IV). The district court sentenced appellant Monica Lynette Spann to serve a prison term of 12 to 30 months for count I and three concurrent prison terms of 12 to 48 months for counts II-IV, to run consecutively to count I. The district court then suspended execution of the sentence and placed Spann on probation for a period not to exceed 5 years.

Spann's sole contention is that the district court erred in refusing to admit evidence of Spann's state of mind at the time of the attack. Particularly, Spann contends that the district court should have allowed her to present evidence that her son had recently been killed by police officers in Wisconsin, which Spann alleges was relevant to whether she acted willfully when she battered the police officers after being placed under arrest. We disagree.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the

action more or less probable than it would be without the evidence."[1] Although generally admissible, relevant evidence is inadmissible if its probative value is substantially outweighed by unfair prejudice, confuses the issues, or amounts to the needless presentation of cumulative evidence.[2] District courts are vested with "considerable discretion in determining the relevance and admissibility of evidence."[3]

We conclude that the district court did not abuse its discretion in excluding the evidence concerning Spann's son's recent death. Although the evidence that Spann's son had recently been killed could have been presented in mitigation at sentencing, it did not tend to make the existence of any fact that is of consequence to the charge of battery by a prisoner more or less probable. At trial, Spann's theory of the case was that she did not act unlawfully because she only kicked or bit the police officers in self-defense.[4] To prove self-defense, Spann had to show that when she kicked or bit the police officers, after her arrest for assaulting her boyfriend in Clark County, she had a reasonable belief of imminent

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[1]NRS 48. 015.

[2]NRS 48.025; NRS 48.035.

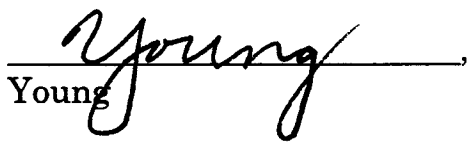
[3]Atkins v. State, 112 Nev. 1122, 1127, 923 P.2d 1119, 1123 (1996) (citation omitted).

[4]See Barone v. State, 109 Nev. 778, 781, 858 P.2d 27, 29 (1993) (holding that, in proving a case of battery, the State has the burden of showing the defendant did not act in self-defense).

harm.[5] The recent death of Spann's son in Wisconsin at the hands of police officers was irrelevant to whether Spann's fear was objectively reasonable at the time of her arrest.

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

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[5]See NRS 200.275; see also Culverson v. State, 106 Nev. 484, 797 P.2d 238 (1990) (recognizing that self-defense is a defense where person reasonably believes that he or she is in danger of being seriously killed or injured); Hill v. State, 98 Nev. 295, 647 P.2d 370 (1982) (to assert theory of self-defense, fear must be reasonable).