IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
CURTIS HELT, JR.,
Respondent.

No. 44841

FILED

OCT 25 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent's motion to dismiss a charge of battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Respondent Curtis Helt, Jr., was charged by way of a criminal complaint with one count of battery with substantial bodily harm, a felony, and one count of battery constituting domestic violence, a misdemeanor. The justice's court conducted a preliminary hearing on July 7, 2004. At the conclusion of the hearing, the justice's court ordered Helt to answer to the felony battery charge in district court and adjudged him guilty of the misdemeanor battery charge. The justice's court later sentenced Helt to serve a term of six months in the county jail.

On July 20, 2004, the State filed an information in the district court charging Helt with the felony battery. Helt filed a motion to dismiss the case, the State opposed the motion, and on January 20, 2005, the district court heard argument and granted the motion. The district court stated:

> Unfortunately in this particular case, as was plead in the Complaint and as was plead in the Information, the allegations after to-wit are identical. It's the same act, course and conduct,

> manner and means are identical in the two charging documents. . . .
>
> I agree it's not a lesser included, however, the to-wit: by striking in the face with the fist numerous times and/or choking and/or throwing to the ground resulting is all the same.
>
> And for that reason I believe that – that Mr. Phillips referencing or citing the Ebeling[1] decision is controlling here, and I'm going to grant the motion to dismiss for double jeopardy on the basis of the new Nevada Supreme Court decision and ask Mr. Phillips to prepare the order.

The district court entered its order on February 4, 2005. This appeal follows.

The State claims the district court abused its discretion by granting Helt's motion to dismiss. Specifically, the State contends that the crimes of battery constituting domestic violence and battery with substantial bodily harm are not the same for purposes of double jeopardy, and that the district court erred by applying a transactional test rather than an elements test to determine whether double jeopardy existed. We conclude that the district court reached the correct result, albeit for the wrong reason.[2]

"The Double Jeopardy Clause of the United States Constitution protects defendants from multiple punishments for the same

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[1]Ebeling v. State, 120 Nev. 401, 91 P.3d 599 (2004).

[2]See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm judgment of district court if it reached the correct result for the wrong reason).

offense."[3] "This court utilizes the test set forth in Blockburger v. United States to determine whether multiple convictions for the same act or transaction are permissible."[4] "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not."[5] The crime of battery constituting domestic violence requires proof that the victim is one of the designated persons protected under NRS 33.018.[6] The crime of battery with substantial bodily harm requires proof of substantial bodily harm.[7] Because each of these crimes requires proof of an additional fact that the other does not, the Double Jeopardy Clause is not implicated under Blockburger.

However, even if multiple convictions for the same act are permitted under Blockburger, this court "'will reverse redundant convictions that do not comport with legislative intent.'"[8] Convictions are

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[3]Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003) (citing Williams v. State, 118 Nev. 536, 548, 50 P.3d 1116, 1124 (2002).

[4]Id. (footnote omitted).

[5]Blockburger v. United States, 284 U.S. 299, 304 (1932).

[6]NRS 200.485(1); see also English v. State, 116 Nev. 828, 839, 9 P.3d 60, 66-67 (2000).

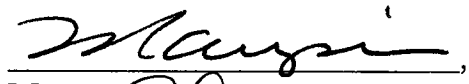
[7]NRS 200.481(2)(b).

[8]Salazar at 119 Nev. at 227, 70 P.2d at 751 (quoting State v. Koseck, 113 Nev. 477, 479, 936 P.2d 836, 837 (1997); see also State of Nevada v. Dist. Ct., 116 Nev. 127, 136 n.7, 994 P.2d 692, 697 n.7 (2000) (noting that the Blockburger "same offense analysis" is distinct from the "redundant convictions analysis" first utilized in Albitre v. State, 103 Nev. 281, 738 P.2d 1307 (1987)).

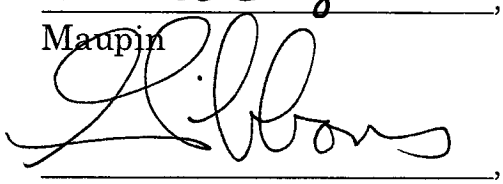
redundant if "the material or significant part of each charge is the same even if the offenses are not the same. Thus, where a defendant is convicted of two offenses that, as charged, punish the identical illegal act, the convictions are redundant."[9] Here, as noted by the district court, both charges arise from and punish the same illegal act. Accordingly, we conclude that they are redundant.

Having determined that the charges against Helt were redundant and noting that he has already been convicted of one of these charges, we conclude that the district court did not abuse its discretion by dismissing the remaining charge.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons

_____, J.
Hardesty

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[9]State of Nevada, 116 Nev. at 136, 994 P.2d at 698.

[10]See Jenkins v. District Court, 109 Nev. 337, 341, 849 P.2d 1055, 1057 (1993) (providing that the district court is precluded from entering redundant convictions against a defendant).

cc: Hon. Valorie Vega, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
David Lee Phillips
Clark County Clerk