

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER STEVEN NAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52453

**FILED**

AUG 27 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Christopher Nay to serve a term of life in prison with parole eligibility after 20 years with an equal and consecutive term for the deadly weapon enhancement and ordered Nay's sentence to run consecutive to his prior sentence for robbery.<sup>1</sup>

Nay raises two claims on appeal: (1) there was insufficient evidence to support his conviction for first-degree murder and (2) the district court erred by ordering his sentence to run consecutive to his prior

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<sup>1</sup>Nay was originally convicted by a jury of first-degree murder and robbery in 2005. On direct appeal from the judgment of conviction, this court reversed Nay's conviction for first-degree murder and remanded for a new trial. Nay v. State, 123 Nev. 326, 335, 167 P.3d 430, 436 (2007). The present appeal is from the judgment of conviction for first-degree murder following Nay's second trial.

sentence for robbery. We conclude that both of Nay's claims lack merit and affirm the judgment of conviction.

Sufficiency of the evidence

Nay claims that there was insufficient evidence to support his conviction for first-degree murder with the use of a deadly weapon. The standard of review for a challenge to the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt." McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

Nay admitted that he beat Elijah Ansah to death with an aluminum baseball bat but claimed that the killing was in self defense. However, viewed in a light most favorable to the State, the evidence at trial showed that: (1) Nay knew that Ansah had a large sum of cash and marijuana; (2) Nay borrowed a bat from a friend in order to pull a "lick," or robbery; (3) Nay arranged to be alone with Ansah at Lone Mountain; (4) Nay gave Ansah a toxic amount of painkillers; (5) Nay told a friend that he hit Ansah in the head when Ansah's back was turned and killed him; (6) the brutality of the beating—which severed Ansah's brain stem and "pulpified" his cerebellum—far exceeded that necessary to render Ansah unable to attack him; (7) Nay kicked Ansah's body as it lay on the ground; (8) Nay took Ansah's pants and shoes and tried to burn the body in order to destroy any evidence; (9) Nay showed little emotion when he was told of Ansah's death, was relieved that the police thought the murder was gang related, and sang the words "I bashed him across the head and now he lies dead behind Lone Mountain" to his friends; (10) Nay lied to the police

about the identity of the driver who dropped him and Ansah off at Lone Mountain; and (11) despite claiming that Ansah pulled a gun on him, Nay stated during a police interview that the gun was in Ansah's pocket when he took the pants off Ansah's body.

The jury could reasonably infer from the evidence presented that appellant did not act in self defense and was guilty of first-degree murder. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Therefore, we conclude that there was sufficient evidence to support Nay's conviction.

#### Consecutive sentences

Nay claims that the "implied penumbral meaning" of this court's decision in McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004), compels concurrent sentences for his convictions for murder and robbery. In McConnell, this court concluded that it is unconstitutional "to base an aggravating circumstance in a capital prosecution on the felony upon which a felony murder is predicated." Id. at 1069, 102 P.3d at 624. Nay argues that "implicit in [this] reasoning is the idea that a defendant shall not be twice punished for the same act." He asserts that because both of his convictions arise from the same set of facts, the district court's decision to run his sentence for murder consecutive to his sentence for robbery constituted "additional punishment for the same act." Nay's claim is wholly without merit.

Nay's convictions did not arise from the same act. First-degree murder and robbery are different crimes with different elements.

Compare NRS 200.010 with NRS 200.380. The killing of the victim and the taking of his property were two different acts, each punishable as separate offenses. See Estes v. State, 122 Nev. 1123, 1143, 146 P.3d 1114, 1127 (2006) (“[T]wo offenses are separate if each offense requires proof of a fact that the other does not.”).<sup>2</sup>

Moreover, while this court’s decision in McConnell was based on the Eighth Amendment’s prohibition against cruel and unusual punishment, nothing in that decision implied concern that Nevada’s capital sentencing scheme permitted a defendant to be punished twice for the same act. The sole basis for this court’s decision was our concern that the use of a predicate felony as both the basis for felony murder and an aggravating circumstance failed to meet the constitutional requirement that “a capital sentencing scheme ‘must genuinely narrow the class of persons eligible for the death penalty.’” McConnell, 120 Nev. at 1063, 102 P.3d at 620 (quoting Zant v. Stephens, 462 U.S. 862, 877 (1983)).

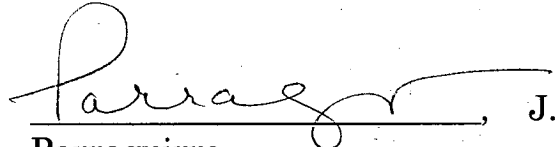
Finally, the discretion to impose sentences concurrently or consecutively lies with the sentencing court. NRS 176.035(1). Nothing in this court’s decision in McConnell limits that discretion. Nay fails to demonstrate that the district court abused its discretion when it ordered his sentences to run consecutively.

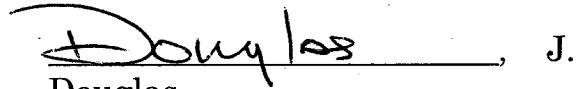
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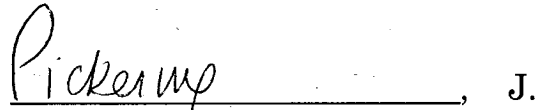
<sup>2</sup>To the extent that Nay claims that his convictions are redundant, his claim is without merit. Convictions are redundant if “the gravamen of the charged offenses is the same such that it can be said that the legislature did not intend multiple convictions.” Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003) (quoting State of Nevada v. Dist. Ct., 116 Nev. 127, 136, 994 P.2d 692, 698 (2000)). Nay offers no persuasive argument that the Legislature did not intend multiple convictions when a robbery results in the death of the victim.

Having considered both of Nay's claims and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Jackie Glass, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk