

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MITCHELL KEITH GOODRUM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78636-COA

FILED

APR 27 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Mitchell Keith Goodrum appeals from a judgment of conviction entered pursuant to a jury verdict of first-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon causing substantial bodily harm, and assault with a deadly weapon. Tenth Judicial District Court, Churchill County; Robert E. Estes, Senior Judge.

Goodrum claims that “[p]unishing [him] for attempted murder, battery, and assault, all for the exact same sequential series of actions which all occurred within a short period of time at the same location, is duplicative and unnecessarily punitive, and violates [his] rights against double jeopardy.”

“A claim that a conviction violates the Double Jeopardy Clause generally is subject to de novo review.” *Davidson v. State*, 124 Nev. 892, 896, 192 P.3d 1185, 1189 (2008). “The Double Jeopardy Clause protects against three abuses: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense.” *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012).

“[W]e presume that where two statutory provisions proscribe the same offense, a legislature does not intend to impose two punishments for that offense.” *Rutledge v. United States*, 517 U.S. 292, 297 (1996) (internal quotation marks omitted). To determine whether separate statutory provisions proscribe the same offense, we use the *Blockburger* test. See *Blockburger v. United States*, 284 U.S. 299 (1932). “The *Blockburger* test inquires whether each offense contains an element not contained in the other; if not, they are the same offense and double jeopardy bars additional punishment and successive prosecution.” *Jackson*, 128 Nev. at 604, 291 P.3d at 1278 (internal quotation marks omitted).

Each of Goodrum’s offenses required proof of an element that the others did not. “Attempted murder requires intent to kill, malice aforethought, and failure to complete the crime of murder, none of which are elements of battery or assault.” *Id.* at 607, 291 P.3d at 1280 (citing NRS 193.330 and NRS 200.010). “Battery requires the unlawful use of force or violence upon the person of another, i.e., physical contact,” which is not an element of either attempted murder or assault. *Id.* (citing NRS 200.481). (internal quotation marks omitted). And, as charged in this case, assault requires “intentionally placing another person in reasonable apprehension of immediate bodily harm,” which is not an element of either attempted murder or battery. NRS 200.471(1)(a)(2).¹

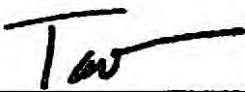
Because the statutes for attempted murder, battery, and assault do not proscribe the same offense, we conclude Goodrum’s

¹To the extent that Goodrum claims he was accused of committing battery by “unlawfully attempting to use physical force against another person,” his claim is belied by the record.

convictions and sentences for these crimes do not violate the Double Jeopardy Clause. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert E. Estes, Senior Judge
Charles B. Woodman
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk