

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,  
Appellant/Cross-Respondent,  
vs.  
THE STATE OF NEVADA,  
Respondent/Cross-Appellant.

No. 43493

**FILED**

DEC 22 2005

ORDER SCHEDULING ORAL ARGUMENT

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

Based on our preliminary review of the record and the briefs, we have determined that oral argument would be of assistance in resolving the issues presented by this appeal. Accordingly, oral argument is hereby scheduled before the En Banc Court on February 23, 2006, at the hour of 11:30 a.m., in Carson City. The argument shall be limited to 30 minutes.

In addition to all issues raised in the appeal and cross appeal, counsel shall be prepared to address at oral argument what effect this court's decision in McConnell v. State, 120 Nev. \_\_\_, 102 P.3d 606 (2004) will have on any new penalty hearing to be conducted in this matter, assuming that this court affirms the district court's order granting a new penalty hearing. More specifically, counsel shall be prepared to address how the State's ability to pursue each of the three remaining aggravating circumstances alleged in this case in any new penalty hearing may be affected by the following statement in McConnell:

We further prohibit the State from selecting among multiple felonies that occur during "an indivisible course of conduct having one principle criminal purpose" and using one to establish felony murder and another to support an aggravating circumstance. For example, in a case like this one, the burglary could not be used to

establish first-degree felony murder while the associated robbery was used as an aggravator to support a death sentence. The burglary and robbery both occurred in an indivisible course of conduct whose primary purpose was the murder.

Id. at \_\_\_, 102 P.3d at 624-25 (internal citations and footnotes omitted); see also Bennett v. Dist. Ct., 121 Nev. at \_\_\_, 121 P.3d 603, at 609-10 (2005).

It is so ORDERED.

Becker, C.J.

cc: Special Public Defender David M. Schieck  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger