COUNT 17 – BURGLARY

(please check the appropriate box, select only one)

☑ Guilty of Buglary

☐ Not Guilty

DATED this 9th day of September, 2013.

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. WILBURT HICKMAN, aka, WILLIAM HICKS, Defendant.	CASE NO. C278699 DEPT. NO. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 18, 2013

RECORDER'S TRANSCRIPT RE: SENTENCING

APPEARANCES:

For the Plaintiff: CHRISTOPHER S. HAMNER
Deputy District Attorney

For the Defendant: MITCHELL L. POSIN, ESQ.

RECORDED BY: LARA CORCORAN, COURT RECORDER

LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 18, 2013, 9:23 A.M.

* * * * *

THE COURT: Case Number C278699, State of Nevada versus Wilburt Hickman.

THE DEFENDANT: Here, Your Honor.

THE COURT: I show Mr. Hickman in custody with his counsel, Mr. Posin.

THE COURT: Good morning.

MR. POSIN: Good morning, Your Honor.

THE COURT: This is the time set for sentencing. Is there any legal cause or reason we cannot proceed?

MR. POSIN: No, there is not.

THE COURT: Thank you. And, of course, Mr. Hickman was found guilty by virtue of a jury verdict as to Counts 9, 10, 11, 12, 13, 14, 15, 16, and 17. And the jury hung on Counts 1 through 8, which – and they were then dismissed by the State with prejudice.

So by virtue of the guilty verdicts as to Counts 9 through 17, I hereby adjudge you guilty of those offenses.

And State.

MR. HAMNER: Thank you, Your Honor.

So, Your Honor, today is December 18th, 2013. That's not – the State's position is that it's interesting that it's this date because this is the three-year anniversary of when the defendant took his Cadillac and drove through a church on the Sunday before Christmas. It's the exact same day. So it's fitting that he should be sentenced on this day.

This case in a lot of ways encapsulates – actually – and, Your Honor, before I begin I apologize, but I need to approach with just the certified judgments of convictions.

THE COURT: All right. Thank you.

MR. HAMNER: Can I approach, Your Honor?

THE COURT: Yes.

MR. HAMNER: Thanks.

THE COURT: Thank you.

And has defense counsel seen these?

MR. POSIN: No, Your Honor, but if they're just certified –

THE COURT: Would you like to review them? Make sure that –

MR. POSIN: I don't really need to if they're just certified judgments of convictions.

THE COURT: I want to make sure that you feel they're in order.

MR. POSIN: They seem in order, Your Honor.

THE COURT: Thank you.

MR. HAMNER: Your Honor, as I was saying, this case in a lot of ways essentially encapsulates his entire criminal history, what he's done. He's 60 years old, but in a lot of ways it reflects kind of a history of the crimes that he has. This defendant in this case, when he is angry and he is upset, he lets his anger and his rage get the best of him, and that's what happened here.

If you look at his record, he's got three felony convictions, four gross misdemeanor convictions, 17 misdemeanor convictions. They involve things like violence and anger, which is evidenced by the fact that he has multiple battery domestic violence. He attacks his loved ones. So much so that it rose to a felony

offense at one point.

He has issues with authority. In this case, as we know, the church very politely, multiple times, told him, sir, you need to leave but he wasn't – essentially wasn't having that. That's also reflected in the fact that he has been arrested for evading a police officer in the past.

He has issues with substance abuse and alcohol. We know that even though it didn't come out at trial it became clear that he had been drinking. He has multiple convictions, felonies and otherwise, for using drugs. I'm sure alcohol's played a part in all this throughout his life.

But the bottom line is, Your Honor, when this gentleman is told something he's not happy with it manifests itself in the worst way possible. And you would think at 60 years of age that maybe if he does lash out and commit crimes that it would tail off, but this is essentially the penultimate of what he did. I mean, of all his crimes this is by far the worst.

Now I know the jury in this case hung, but there were essentially just a couple of holdouts. And if – and you listen to the facts in this case, the State is confident, even though we decided not to retry him on the attempt murder counts, there's no question he tried to kill these people on that day, because he deliberately got in his car, he turned his wheels, not just towards one person individually, which is the first person he turned his wheels to, which was Allen Burse, the security guard, who, upon asking him a second time, you need to leave, he cut his wheels at him and he gunned that car, and you heard that from witness after witness after witness.

He wanted Allen Burse dead. There's no other reason to take off in a 2,000 pound vehicle at an unarmed human being. There's simply no point, other

than to severely hurt them and try to kill them, and that's what he wanted to do. But he didn't stop there. There was a crowd of people. Everyone talked about five to seven people standing outside of this church. He then continued to drive through there. He didn't honk, he didn't brake, he didn't swerve to get out of the way.

I mean, their testimony, witness after witness after witness was uniform as to the path that he took. Why? Because he was angry at the church. He didn't care who he injured at that point. And he succeeds at hitting a little girl and her mother. He hit the little girl so hard he knocked her out of her shoes, causing a panic. You heard multiple people saying things like they thought the child was stuck underneath the car.

He blew open the doors that were made of metal and lodged his Cadillac halfway through the church. And the crazy part about this was is that when he went through the church he didn't stop. He didn't apologize. In fact, everyone heard the wheels were continually being spun as if he's gunning the engine. They had to physically climb in and pry him off the steering wheel of the car as he's saying things like, I'm gonna kill all of you. You remember Washington Thompson, who had never even met the man up to this point, who was one of the security guards, he said you're next.

It is unequivocally clear that he wanted to harm these people and harm this church community, and he did it at a time when, frankly, you shouldn't even be thinking of things like that. They were there to worship, they were there for the Christmas season, and he ruined it. He simply ruined it because he didn't want to see – he wanted to see his daughter, who wanted nothing to do with him, was actually so afraid of seeing him show up at her church that she left and told security, I'm afraid I have to leave. And they said no, we'll let her leave, you can go – no, no,

I can't even be here. That's how terrified she was of her own father. And his reaction when they just did their job was to torment and try to commit – kill members of their community. And that's simply unacceptable.

He certainly qualifies for habitual criminal treatment. And the State would be asking for that. You can decide, Your Honor, whether you want it adjudicated as the large or the small. I know that essentially he meets the bare minimum for a large habitual criminal treatment.

But I think what's more important is that he has a history of violence. He has a history of lashing out at authority. He has problems, obviously, with drugs, apparently alcohol in this case.

But the terrifying thing about this is that at 60 years of age this is by far the worst thing he's ever done. And it's simply because he let the – his anger get the best of him, something that he may have to deal with for the rest of his life.

There's going to be plenty of times where things – people tell you things that you don't want to hear or tell you you need to do something you don't like. And this is without question a horrific, horrific way to deal with your anger. You don't take cars, drive them into churches at people trying to kill them just because they didn't let you in to see a daughter who wasn't even on the church premises.

And that's why when you look at all of his crimes, and you look at his behavior in this crime, this Court should have no confidence that this anger issue that he has is going to subside. We even saw it through the course of the trial.

I've been with this case from the beginning. He lashed out at the preliminary hearing, which came out during trial.

When the security guard, Allen Burse, talked about how I was so afraid

of the guy that when I asked him to get in his car I walked backwards because I thought something bad was going to happen, he literally yelled out in the middle of court, that's because you almost broke my damn arm, and he was admonished not to. Why? Because his anger was at such a peak at a preliminary hearing he couldn't even contain himself.

I think Your Honor probably noticed him during trial constantly fittering – fidgeting, muttering under his breath at different points in time because his anger was getting the best of him. And I think we've even seen post trial his frustrations and his behavior came out here just as recently as the last court appearance.

So we have evidence here, Your Honor, that this is not really going to change. This is who Mr. Hickman is. When he is angry and he is upset it manifests itself, and that should give the Court great pause.

Now, Parole and Probation here has recommended that only two of the counts be run consecutive to each other. They wanted the count of the little girl, Anyla Hoye, and her mother, Anneesah Franklin, the two people who were hit and sent airborne by the defendant, to be run consecutive.

The State would ask that that doesn't really encapsulate all the things that happened here. The defendant didn't just hit one singular group of people or aim at one singular group of people. The testimony is abundantly clear that Allen Burse, the first security guard, was nowhere near Anneesah Franklin and Anyla Hoye, but that was his original target.

And with that in mind the State would ask that he be adjudicated under the habitual statute but that be the first sentence that's pronounced and it be run consecutive to Anneesah Franklin, who was actually hit and sent airborne, and Anyla Hoye, who also was hit and had her foot broken. Those should all be run

consecutive.

But that doesn't even address the other people who were standing outside of the church that fall under these assault statutes, people like Washington Thompson, Marquetta Jenkins. It also doesn't address the people inside the church, like Sharon Powell, Tiffany Trass, Rahmeka Adams. And it also doesn't address all the other people who were there that experienced this.

For example, Your Honor, Rahmeka Adams told us that when she sat inside the church and that car blew open those metal doors, she couldn't find her daughter, and when she heard everyone screaming, the child is under there, Ms. Adams actually thought it was her daughter. We didn't charge – we didn't bring her daughter into this case, but certainly she was affected as well. She testified about the fear that her own daughter went through as well.

You heard the testimony of Ms. Sharon Powell, who talked about how she was standing in front of that metal door that was blown open, and she heard the Lord say, step out of the way, and she took one step over and that car went through. Ms. Powell, even though she didn't testify to it, and I can't remember, but at least I know from my conversations with her, told me that she was so terrified in the aftermath of all this she didn't go to Christmas services. And this church community is very important to her, but she couldn't bring herself to go because she was afraid he was out there and in the community, because what he did had a lasting effect.

So the State also thinks it would be appropriate that all the other people that he assaulted, and we believe tried to kill but somehow succeeded, fortunately, in not hitting them, they should be run consecutive as well, at least to one of the victims.

And lastly we haven't even addressed the church. You didn't hear an

official church official, but he did a ton of damage monetarily to the church. And I would imagine, even though we don't have a ton of speakers from the church speaking here, I would imagine it did a pretty significant damage to that community as well.

I can only imagine what the New Antioch Church had to go through, knowing that their church, in a lot of ways, had been severely damaged and destroyed the Sunday before Christmas. He damaged their ability, this community, to worship the way they wanted to, and that's inexcusable, especially when it's something as trivial over, your daughter's not here, you need to go.

Now I know there's been – there was some evidence of alcohol, Your Honor, and I wanted to at least address that to a certain extent. You know, it didn't come out at trial, but he was twice the legal limit. But being twice the legal limit is not somebody who's fall-down drunk where they don't what they're doing.

And I think when you heard the testimony of his behavior it became abundantly clear that alcohol really wasn't an issue here. He was able to go in the church under his own power, talk with no issue, walk out, park, re-park, when he was kicked out the first time move his car closer, walk under his own power, come in, very clearly announce what his intentions were as he reentered the church.

The issue here is Mr. Hickman's rage. This is not about drinking. And that shouldn't give him a free pass or lessen his sentence, because the only driving force had nothing to do with the bottle; it had to do with the fact that he was really, really angry because he doesn't like it when he's told things he's not supposed to do.

When he wants to do something he's going to do it, and if it doesn't happen and he doesn't get his way, well, then people are going to pay. And a lot of

people, for no good reason whatsoever had to suffer because he didn't get his way.

So with that, Your Honor, the State would respectfully submit this to your discretion. We'd ask that it be – he be sentenced under the habitual statute, and we'd ask that at least four of the counts be run consecutive. And with that the State would submit.

THE COURT: All right. I want to put on the record what these judgments of conviction are that are the basis for your seeking habitual offender treatment.

And so the first one is case number C156759, a conviction filed February 19th, 1999, battery with substantial bodily harm, battery constituting domestic violence and invasion of the home, appears. The second – that was the information that was originally filed. And –

MR. HAMNER: Your Honor, I can read them out.

THE COURT: Okay. Thank you.

MR. HAMNER: I have them –

THE COURT: The judgment of conviction –

MR. HAMNER: – listed.

THE COURT: – was July 15th, 1999.

MR. HAMNER: That's –

THE COURT: Do you have the others? If you'd put them on the record.

MR. HAMNER: I – sure, Your Honor.

THE COURT: I'd like to have a complete record.

MR. HAMNER: In 1985, in California, the defendant was convicted of sale of a controlled substance under case number A772219. In 2000, here in

Nevada, the defendant was convicted of stop required on a police officer in case number C159356. And in 1999, in Nevada, the defendant was convicted for battery domestic violence, third offense, in case number C156759.

THE COURT: Thank you.

And, Mr. Hickman, before Mr. Posin argues on your behalf, would you like to address the Court?

THE DEFENDANT: Yes, Your Honor. He really made me look like a bad guy, Your Honor, but it's – I'm really not. Your Honor, I've lost a lot. I lost a car, my home, family, jewelry, clothes, money. I lost my freedom. I even lost my cat, Your Honor. I've been in custody for two years, Your Honor. I think I've paid my debt to society, Your Honor. I'm very sorry about what happened.

You read my letters – I hope you read my letters that I've sent you. And it really was a problem, Your Honor. And you read the story. And that's what it is, Your Honor. I'm not a loose cannon going around trying to ruin people's Christmas, like he said. Your Honor, he spoke a lot of things, Your Honor, that were untrue, but he had the floor, and, you know, he painted his picture. You read my story. And I'm throwing myself at the mercy of the Court, Your Honor.

THE COURT: All right. Thank you.

Mr. Posin.

MR. POSIN: Thank you, Your Honor.

You know, much of Mr. Hamner's discussions seem to be really addressing the counts that did not result in a conviction and had to do with what he perceives as the defendant's intention to harm and kill these people. The – Your Honor, you heard all the testimony, you heard the evidence, and you saw all the pictures. And this was a car that went, in a relatively short period of time, directly

into these double doors of the church.

The – Mr. Hickman had gone in, had asked for his daughter. He'd been told to leave. He came back in a second time, was escorted out, this time with his hand behind his back. And he came in a third time, and that third entry into the church is the basis for every count in this case, because he took his car and he went into the church with that car.

Now, Mr. Hamner says there is absolutely no point, other than his anger and his attempt to kill these people and harm these people, no point why he would be doing that. Seems to me there's a very obvious and direct point that he was – he had, which is he'd been sent out of the church, the second time with a hand behind his back, and, yes, his anger came – got the better of him. I would agree with Mr. Hamner on that; his anger got the better of him and he wanted to see his daughter.

Now, once he's been escorted by security out of the church with an arm behind his back, if he decides he's going to go see his daughter, the only way he's going to get in now is he's going to go in with his vehicle, which he did. And you'll remember the pictures, Your Honor, the pictures of his car wedged right into the entryway of that church. He was trying to get into that church.

If his sole aim there had been that I'm trying to hurt people, well, he could have done that without getting his car right so perfectly into the – into the church. What he was aiming for, and what he got into, was the church. Why did he want to get into the church, is because his daughter was there.

Now, Mr. Hamner says his daughter wasn't there. Maybe by the time that happened she had left, but she was certainly there. The testimony was that she had been there earlier, that she in fact had discussed with somebody from the church the fact that he was there asking for her. So she was there, he knew that

she was there, and he had some very important family matters that he – in his mind, that he wanted to talk to her about.

Mr. Hamner says that the alcohol should not lessen his sentence. And I would agree it's not a matter of lessening the sentence. It's not saying, okay, well, he should get this sentence, but, you know, because of the alcohol, well, we'll drop that down. It's that Your Honor has a range of sentences and is that an appropriate factor to consider that, you know, this is from the discovery, that about three hours later he had a .168 blood alcohol level? And remember this all happened early in the morning, so we can presume that most of his alcohol consumption had taken place overnight the night before. So was that a factor that went into his thinking or his lack of thinking? Absolutely it was.

And through the trial and again here at sentencing, Mr. Hamner has gone – has stressed again and again and again that he was able to walk on his own, or that he didn't need to be held up, that he was able to get in the car, he was able to drive it. His alcohol consumption was not to the extent that he was unable to do those things, but alcohol does have the very-well-known effect of loosening your inhibitions and getting people to do – not getting people to do, but allowing them to do things that they would think better of if they were sober, things that maybe they want to do but they don't clearly think through the consequences of them.

So what does that go to? Does that go – one of the things it goes to is whose story here, Mr. Hamner's or mine, is more consistent with the facts? Is – was he – had he by that time forgotten about the very daughter that he had twice gone in to ask for? And now the State asks you to believe that he's somehow kind of forgotten about the daughter and now his only goal is to hurt people he's never met before. To me that seems like the unlikeliest of unlikely scenarios.

What does seem likely is that he was trying to go get his daughter. Did he think through, oh, okay, is that – is that a smart thing to do under any circumstance? What was – what were his thought processes? Does the alcohol affect that? Absolutely it does and it did. It did that day.

And so when he went into the church that time did a lot of people get scared? Yes. Did a few of them get hurt? Absolutely. Was the way they got hurt consistent with somebody whose aim was to kill them? The very worst injury that anybody sustained here was one baby toe that got broken, one baby toe.

If his goal was actually to kill people would he have gone through the door or he would have, you know, mashed somebody up against the wall, if that's – if that was his goal? That was not his goal. His goal was to see his daughter, Your Honor.

He made some poor decisions. And certainly in his letter to you he's talked about the problems that – you know, that he's had some problems and he's made some poor decisions.

When we look at his priors, Mr. Hamner says that that was the bare minimum to get into the large habitual criminal. Well, I would submit that there's a lot of bare minimums that you can see throughout his history and including up until this very case that went to trial in this courtroom.

Let's take the felonies, the type of felonies there are. The – one of the felonies is failure to – failure – was it – failure to stop for a police officer. It was stop required on signal of a police officer. That's one of the felonies he's convicted on. I'd submit that that – it is a felony. I'm not trying to say I think it should be excused or that he was not guilty of it, he was, but as felonies go I'd say that's a bare-minimum felony.

Some of the issues in this case we have bare minimums. Was the – was there substantial bodily harm? The jury found that there was, and so, obviously, Your Honor has to go with what the jury found and you can't overrule the jury. But in terms of what kind of harm might ever constitute substantial bodily harm when you've got potentially somebody who is, you know, in a coma or maimed or in constant pain throughout life, we have a girl who broke her baby toe, who testified that it hurt for a couple of days. That's a bare minimum. What we've got is a bare minimum on a lot of these things here, Your Honor.

He's got two prior felony convictions and one of them is this attempt to – or a failure to stop for a police officer. Another is the domestic violence. I'd agree, yes, he has some problems. Those problems have caused him to make bad decisions and lose control.

But I'd again submit that as felonies go, in the scheme of things, in the scheme of what might be a felony and what the Court might be looking for and looking at, that can be distinguished from other more serious-type cases where somebody does form some premeditation to either hurt somebody or steal somebody [sic], and where they do that over a period of time with reflection and deliberation. That's not what we have here with Mr. Hickman.

With Mr. Hickman's history and this very incident, he does some stupid things, but they're spur-of-the-moment stupid things. Not – and I'm not excusing them, but I'm trying to put them in the context of the range of things that Your Honor could look at.

We're not trying to reduce his sentence to something lower than whatever the law calls for. The law calls for various sentences here. But I think it would not be appropriate in this case to give him the habitual criminal, and I would

ask Your Honor to run all of these counts concurrently.

I think this was one – you know, Mr. Hamner has done an excellent job of going into each of these people, and certainly each of the people that were there that day did experience this individually and separately from every other one of them, but when we're looking at what Mr. Hickman did, he did one thing that happened just almost instantaneously. He drove a couple of yards in a car into the church. This whole thing was over in seconds.

And so while each person that was there had their own experience of it, in terms of looking at his culpability, I would submit that it was really more of a singular thing that he did and should be credited with – credited with what is essentially a singular punishment and that the charges should be run concurrently. So I'd submit it at that.

THE COURT: Thank you.

All right. I believe the reason that the jury hung on the attempt murder is that I think it came across to at least some of those jurors that basically he didn't think about – you know, that he didn't have the intent but he basically didn't really care if he hit somebody or not. He decided that he was going to drive his car through the church doors for whatever reason, whether he thought his daughter was still there and he wanted to get in to see her or whether he was just upset with the people who had ejected him out of the church and wouldn't let him come in. And, frankly, I don't really care which reason it was.

I can say to you, Mr. Hickman, you're just lucky that through the grace of God that no one was killed, because certainly it wasn't because it couldn't have happened. The conduct in this, really, there's not any excuse for this kind of behavior at your age. And I've taken into consideration your letters, of course Mr.

Posin's arguments, and the fact that your convictions, some of them are quite old, and the nature of them.

And so as to Count 9, battery with use of a deadly weapon – well, I'm also assessing the $25 administrative assessment fee and the $150 DNA testing fee. As to Count 9, battery with use of deadly weapon, I hereby adjudicate you under the small habitual offender provision and sentence you to a minimum term of 60 months, a maximum term of 215 months. Restitution as to that count will be ordered payable to Anneesah Franklin in the amount of $12,639.83.

As to Count 10, battery with use of deadly weapon resulting in substantial bodily harm, I hereby order restitution in that count in the amount of $3,263.73, payable to Anya – Anyla Hoye –

MR. HAMNER: Anyla.

THE COURT: – A-N-Y-L-A, H-O-Y-E, and adjudicate you as well under the small habitual, sentencing you to a minimum term of 60 months and a maximum term of 215 months. That will run consecutive to Count 9.

As to Count 11, assault with a deadly weapon, I hereby sentence you to a minimum term of 16 months, a maximum term of 72 months. That will run concurrently to Count 10.

As to Count 12, assault with a deadly weapon, I hereby sentence you to a minimum term of 16 months, a maximum term of 72 months, concurrent to Count 11.

As to Count 13, assault with a deadly weapon, I hereby sentence you to a minimum term of 16 months, a maximum term of 72 months. That will run concurrent to Count 12.

As to Count 14, assault with a deadly weapon, I hereby sentence you to

a minimum term of 16 months, a maximum term of 72 months. That will run concurrent to Count 13.

As to Count 15, assault with a deadly weapon, I hereby sentence you to a minimum term of 16 months, a maximum term of 72 months, concurrent with Count 14.

Count 16, assault with a deadly weapon, I hereby sentence you to a minimum term of 16 months, a maximum term of 72 months, concurrent to Count 15.

And as to Count 17, burglary, I hereby sentence you to a minimum term of 22 months, a maximum term of 96 months. And that will be concurrent with Count 16. Restitution is ordered in that count in the amount of $10,369.04, payable to Antioch Church of Las Vegas, Inc., a Nevada Non-Profit Corporation.

Credit for time served – let me see here.

THE CLERK: I'm sorry. Was his DNA waived? I didn't have –

THE COURT: No.

THE CLERK: Okay.

THE COURT: It wasn't. He's got the DNA that was ordered.

THE CLERK: Okay.

THE COURT: All right. And today is the – what date? Today is the 18th?

THE CLERK: The 18th, yeah.

THE COURT: Okay. So 14 days.

THE CLERK: And I don't suppose you could spell the church or give me the paper and I'll look it up?

THE COURT: Just a minute. And for the clerk, Antioch Church is A-N-

T-I-O-C-H.

Credit for time served, looks like 731 days. That's the 717 days calculated on the PSI through December 4th, plus an additional 14 days until present day.

Thank you.

MR. POSIN: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 9:57 A.M.

* * * * * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.

Lara Corcoran

LARA CORCORAN
Court Recorder/Transcriber

JOC

FILED
JAN 0 2 2014
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILBURT HICKMAN
aka WILLIAM HICKS
#0905481

Defendant.

CASE NO. C278699

DEPT. NO. V

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in

☐ Nolle Prosequi (before trial)
☐ Dismissed (after diversion)
☐ Dismissed (before trial)
☐ Guilty Plea with Sent (before trial)
☐ Transferred (before/during trial)
☐ Other Manner of Disposition

☐ Dismissed
☐ Acquitta
☐ Guilty Plea with Sent (during tri
☐ Conviction

violation of NRS 200.010, 200.030, 193.330, 193.165, of COUNT 6 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 8 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 9 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.4810; COUNT 10 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.481.2e, COUNT 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 12 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 13 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 14 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 15 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 16 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, and COUNT 17 – BURGLARY (Category B Felony) in violation of NRS 205.060; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 9 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.4810; COUNT 10 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.481.2e, COUNT 11 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 12 – ASSAULT WITH A

DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 13 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 14 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 15 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 16 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, and COUNT 17 – BURGLARY (Category B Felony) in violation of NRS 205.060; thereafter, on the 18TH day of December, 2013, the Defendant was present in court for sentencing with his counsel, Mitchell Posin, Esq., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the $25.00 Administrative Assessment Fee, $150.00 DNA Analysis Fee including testing to determine genetic markers, $12,639.93 Restitution payable to Anneesah Franklin, $3,263.73 Restitution payable to Anyla Hoye, and $10,369.04 Restitution payable to Antioch Church; the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO COUNT 9 – Sentenced under the SMALL HABITUAL STATUTE to a MAXIMUM of TWO HUNDRED – FIFTEEN (215) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS; AS TO COUNT 10 - Sentenced under the SMALL HABITUAL STATUTE to a MAXIMUM of TWO HUNDRED – FIFTEEN (215) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTH, to run CONSECUTIVE to Count 9; AS TO COUNT 11 - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16) MONTHS, to run CONCURRENT with Count 10; AS TO COUNT 12 – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16) MONTHS, to run CONCURRENT with Count 11; AS TO COUNT 13 - TO A MAXIMUM

of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16) MONTHS, to run CONCURRENT with Count 12; AS TO COUNT 14 - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16) MONTHS, to run CONCURRENT with Count 13; AS TO COUNT 15 - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16) MONTHS, to run CONCURRENT with Count 14; AS TO COUNT 16 - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16) MONTHS, to run CONCURRENT with Count 15; and AS TO COUNT 17 – TO A MAXIMUM of NINETY - SIX (96) MONTHS with a MINIMUM Parole Eligibility of TWENTY-TWO (22) MONTHS, to run CONCURRENT with Count 16; with SEVEN HUNDRED THIRTY-ONE (731) DAYS credit for time served. (COUNTS 1 THROUGH 8 were DISMISSED WITH PREJUDICE, on September 25, 2013.)

DATED this 30th day of December, 2013.

CAROLYN ELLSWORTH
DISTRICT COURT JUDGE

8

DEC 10 2013

MC Not
Wilburt Hickman Jr.
PP 330 S. Casino Center
DA Lv, NV 89101
AOR-Mitchell Posin

DISTRICT COURT

CLERK OF THE COURT

CLARK COUNTY, NEVADA

State of Nevada
Plaintiff

vs.

Wilburt Hickman JR.
#90548
Defendant

C278699

CASE NO. ~~C262784~~

DEPT NO. V

DOCKET NO.

Notice of Motion And Motion for Reconsideration of Motion for a New Trial Due to Ineffective Assistance of Counsel And Conflict of Interest

Comes Now, Wilburt Hickman Jr., Prose, to move this Honorable Court, to "Reconsider" the Defendant's "Motion for a New trial due to Ineffective Assistance of Counsel, Prosecutorial Misconduct, and Conflict of Interest. Also, the Defendant, humbly and respectfully request that this Court, Dismiss Mr. Mitchell Posin ESQ., as the Defendant's Counsel of Record and appoint the Defendant independent Counsel.

This Motion is based and made on all the papers, Pleadings, and documents of file for this Case, the

attached Memorandum of Points and Authorities, and any Oral Arguement allowed by this Honorable Court.
Dated this 12 day of November, 2013.

Wilburt Hickman JR.

Notice of Motion

To: ALL Parties of Interest

Please, each of you take Notice that the foregoing Motion will Come before District Court Dept. 5 on the 12 day of February, ~~2013~~ 2014, at 9:00 a.m. for heuring.
Dated this 12 day of November, 2013.

Wilburt Hickman JR.

Certicate of Service

I, Wilburt Hickman Jr., Certify that I placed into the mail a "Motion for Reconsideration, etc." to the following Person listed below:
Dated this 12 day of November, 2013.

C/o
Clerk of Courts
200 Lewis Ave.
Las Vegas, Nevada 89101

Witness by: Ronnie Edwards by: Wilburt Hickman Jr.

I.

Memorandum of Points of Authorities

Statements of the Case

On January 4, 2012 the Defendant had his Preliminary Hearing. At the Conclusion of the Preliminary Hearing, the Defendant was Bound up to District Court for Arraignment.

On January 12, 2012, the Defendant was arraigned in lower-level District Court. The Defendant plead not guilty and invoke his right to a Speedy trial. A trial date was set for March 5, 2013, and a Calendar Call date set for february 27, 2012.

ON february 28, 2012, a petition for Writ of Habeas Corpus was filed on the Defendant's behalf. Due to the Writ of Habeas Corpus being filed the

Defendant's trial date was reset.

On April 9, 2012, the Defendant's Writ of Habeas Corpus was granted in part.

On April 17, 2013, the Public Defender's Office was allowed to withdraw and Mr. Mitchell Posin ("Mr. Posin") was Confirmeed as Counsel (Although, he was Paid 6 months earlier: (See. Money release)

On August 23, 2013, a Notice of Habitual Criminality was file by the Prosecutor.

On August 26, 2013, the Defendant's Calendar Call hearing was Conducted. Both Side (Prosecution and the Defense) announce "Ready for Trial".

On September 3, 2013, the Defendant's trial began.
On September 9, 2013, the Jury returned a Verdict of guilty on Several Charges and Huny on 8 Counts.

II.
Arguement

The Defendant was denied his Constitutionally right to a fair trial. Due to ineffective assistance of Counsel, Prosecutorial Misconduct, and erroneous Jury instructions.

2. Mr. Posin did not have the Defendant's Complete Discovery, but still proceed to trial, without first getting the Defendant's informed Consent.

3. Mr. Posin refuse to use or hire an investigator for the Defendant's case. Mr. Posin claimed he need more money for that.

4. Did not interview the witnesses that the Defendant tolded him about and who wished to testify for the Defendat.

5. Mr. Posin did not visit Defendant before trial, to discuss the following important matters:

(a). Relevant documents prepared by investigators.

(b). Voire dire questions

(c). outline or draft of Opening Statement

(d). Cross-examination plans for all prospective prosecution Witnerses

(e) direct-examination plans for all defense witnesses

(f) Prior Statements of all Prosecution's Witness (Mr. Posin did not have Preliminary transcription).

(g) outline or draft of closing Statements.

(h). Never developed a plan on how we would Confer during trial

(i). Never discussed whether it would be better to not Put on a defense and instead rely on the State failure to meet its Constitutional burden of Proving each element beyond a "reasonable doubt."

(J). Considered filing a pretrial motion to Strike the Prosecution's "expert witness".

(K). Never filed any motions on the defendant's behalf.

(L). Never Sought an expert to testify on the defendant's behalf.

(M) Never file a motion to Compel for the following matters:

1. Witnesses Criminal Histories -

"the existence, substance, and manner of execution or fulfillment, of any promises, agreements, understandings, and arrangements, whether verbal or written, whether Completed or not, between the State, its agents OR attorneys, and any witness or the witness' agents or attorneys or representatives, wherein the state has agreed, or purported to agree, either expressly or impliedly including but not limited to the following," (Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 [1972]).

2. Officer's notes regarding Case -

Any handwritten or otherwise memorialized notes kept by the investigating officers in this (to include those Constructively possessed)

3. Reports/Logs Communication Re this Case

All 911 calls, logs, CADS, Car to Car and any other reports/logs/notes regarding this event.

5). Photos / Diagrams / Videos

Any photos taken regarding this case and diagrams drawn, and any surveilance videos in the State's actual or constructive possession.

5). Impound Report.

A copy of the impound report(s) regarding this case if one exists.

6). Reports Regarding any Testing / Examination / Treatments:

Regardless of the results, any reports regarding any testing or examinations of any nature, regarding this case. Especially any documents provided to the experts who planned on testifying in this case.

7). Reports from the Hospital / Ambulance(s):

Any documents to include reports, records and notes from any hospital, medical facility, Counseling facility, and ambulance(s) that the State has is its actual or Constructive possession.

8). Officer's Misconduct / Displinary Action(s):

Pursuant to Milke v. Ryan 2013 WL 979127 .A.9 (Ariz.), 2013, in order to provide effective assistance of Counsel, the defense Counsel Should request both exculpatory and impeachment material that is relevant either to guilt or punishment to include: Officer Misconduct, displinary actions against officers, impeachment material from officers' personel file-

or elsewhere including "all records of any Internal Affairs investigations. Also, any such impeachment material of any State's agents that works for Metro who plans on testfying.

Mr. Posin never obtained the defendant's discovery nor did he file a motion to obtain it." Prior to trial, the Prosecution must provide the defense with any and all exculpatory evidence in its actual or constructive Possession Pursuant to the Due Process Clauses of the fifth and 14th Amendments of the United States Constitution. Brady V. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). Kyles V. whitney, 514 U.S. 418, 115 S. Ct. 1555 (1995) (emphasis added). Mr. Posin obviously provided ineffective assistance of Counsel, due in Large part to the fact that he was upset with the Defendant for not having More Money to pay him. Mr. Posin was paid only to Secure a Plea Agreement nothing more. This is the reason that Mr. Posin refuse(to Spend any Money investigating or Preparing a defense. This Created a Conflict between the Defendant and Mr. Posin. Mr. Posin had divided loyalties. "The Sixth Amendment guarantee of Assistances of Counsel comprimes two Correlative rights: The right to Counsel of reasonable Competence and the right to Counsels' undivided loyalty. Manhalt V. Reed ___, 847 f.2d 576, 579 (9th Cir. 1988). After trial, the Defendant's Sister Call Mr. Posin and told him that the

Defendant Need to Speak With. Only after She mentim money did he agreed to visit the Defendant. When Mr. Posin visit the Defendant asked Mr. Posin to Send him a Copy of his Discovery and any other documents that the defendant had aright to, also. The Defendant asked Mr. Posin to file an ineffective assistance of Counsel Motion. Mr. Posin immediately pressed the button to leave and Stated, "You do it, Smart guy."

And Since the Defendant is not a Lawyer he Cannot Say what other Constitional duties mr. Posin failed to Provide to his Client. "An accused's right to be represented by Counsel is a fundmental Component of the Criminal Justice System. Lawyers in Criminal Cases "are necessities not Luxuries". Their Presence is essential because they are the means through which the other rights a person on trial are Secured," U.S. V. Cronic, 466 U.S. at 653, 104 S.Ct. 2043. "thus the adversarial Process by which the Sixth Amendment requires that the accused have Counsel acting in the role of an advocate." Anders V. California, 386 U.S. 738, 743, 87 S.Ct. 1396 (1967). In U.S. V. Decoster, 199 U.S. App. D.C. 359, 382, 624 f.2d 196, 219 (1979) it was Stated that, "In Some Cases

the performance of Counsel may be so inadequate that, in effect, no assistance of Counsel is Provided (emphasis added).

C. Mr. Posin's Constitutionally ineffective Trial Representation

Below is a list of Mr. Posin's acts and omission at trial:

1). failing to introduce toxicology report into evidence
2). failure to object to the State's erroneous Jury instruction
3). failed to Mention Defendant's intoxication
4). failed to have any Discovery (Brady Material) ready for trial. Never reviewed Prosecution file.
5). failed to Subpoena any Witness or documents.
6). failed to hire an expert to Counter State's expert
7). failed to present to the Jury an Affirmative Defense of Dimished Capacity (Voluntury intoxication)
8). failed to present all exculpatory evidence
9). failed to properly Prepare for trial, never once did he consult or include the defendant trial preparation
10). failed to dilligently Cross-examine State Witnesses
11). failed to Share any of the Conversations Contents of the many Sidebars and Chamber Conferences, and failed to have to ConveRSation Record to preserve the record for Collateral review.

12). failed to listen to the Defendant in trial when the Defendant who tell him a Witness was lying, all he would say is shut up.

13). failed to mention the money the victims received from the Defendant's insurance company.

14). Never Called any of the Witnesses that wanted to testify on the Defendant's behalf.

15). failed to tell the Judge what the D.A. folded him ("Somebody has it in for him").

16). failed to mention when Certain Witnesses Committed Perjury

17). failed to present receipts, Bills, and other documents to show how much money the Defendant had invested into the Vehicle.

Mr. Posin's Constitutionally deficient representation "before and during" trial denied the Defendant his right to a fair trial. "To satisfy the Constitution, Counsel must function as an advocate for the Defendant, as opposed to a friend of the Court," Jones Vs Barnes, 463 U.S. 745, 758, 103 S.Ct. 3308, 3316, 77 L.Ed.2d 987 (1983). "Thus the appropriate inquiry focuses on the adversarily process. Similarily, if Counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the Adversary

process itself presumptively unreliable." Cronic, 466 U.S. 648, 104 S.Ct. at 2047.

A. Ineffective Assistance of Counsel

1. To Satisfy Constitutional due process a defendant has a Sixth Amendment Right to effective assistance of Counsel. "Deficient" assistance of Counsel is representation that falls below an objective Standard of reasonableness, Dawson V State, 108 Nev. 112, 115, 825 P.2d 593 (1992). "The Proper Measure of Attorney Performance remains Simply Reasonable under prevailing Professional Norms. Strictland v. Washington, 466 U.S. at 688, 104 S.Ct. 2052. Mr. Posin's acts and Omissions Undoubtably Confirm, that Mr. Posin's "Representation Was Constitionally ineffective. Below is a detail list of Mr. Posin's acts and Omissions.

B. Mr. Posin's acts and Omission

1. Mr. Posin failed to provide his client with essential Pre-trial Counsel and advise. Mr. Posin Sole Concern was how much money the Defendant Could Pay him. Never Was there a Conversation about "trial Strategy", Possible Defenses, OR anything to do with the Defendant's Case. "The Sixth Amendment right to effective assistance to Counsel inhers to all Critical Stages" of a Criminal Proceeding Unless Competently waived", U.S. V. Matea, 950 F.2d 114, 47 (1st Cir. 1991).

ACKNOWLEDGEMENT

STATE OF NEVADA SS.
COUNTY OF CLARK

DATED THIS 4th day of December, 2013.

I, Wilburt Hickman Jr. do solemnly swear, under the penalty of perjury, that the above Motion Reconsideration is accurate, correct and true to the best of my knowledge. NRS 171.102 and NRS 208.165.

Respectfully Submitted,
Wilburt Hickman Jr.

Wilburt Hickman Jr. #905481
330 So. Casino Center Blvd.
Las Vegas, NV. 89101

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Appellant's Appendix 0339

The Honorable Judge Carolyn Ellsworth
200 E. Lewis Ave! Dept. #5
Las Vegas, NV. 89155

Clerk of The Court

Please → Rush!

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DI GIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILBURT HICKMAN, aka,
William Hicks,
#0905481

Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

ORDER DENYING DEFENDANT'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF MOTION FOR NEW TRIAL

DATE OF HEARING: February 12, 2014
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 12th day of February, 2014, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MARC DI GIACOMO, Chief Deputy District Attorney, and without argument, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Notice of Motion and Motion for Reconsideration of Motion for New Trial, shall be, and it is DENIED. This type of motion must be filed by way of a post-conviction relief writ of habeas corpus.

DATED this 21st day of February, 2014.

DISTRICT JUDGE

AFS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
MARC DI GIACOMO
Chief Deputy District Attorney
Nevada Bar #006955

MD/erg/L-1

cannot find him guilty of crimes that are not charged here. You're looking at the crimes that are charged, and of those crimes, I think you will find that he is not guilty. Thank you.

THE COURT: Mr. Hamner.

MR. HAMNER: Thank you.

STATE REBUTTAL ARGUMENT

BY MR. HAMNER:

I made some notes of what I heard Opposing Counsel said. I want to touch on some of those and then touch on a couple of things that I want to bring up.

Now, the Defense concedes that we're pretty much in agreement, it's him. He's the one who did it. There's no dispute as to what he did. So let's just check all that stuff off because that's the truth. All the -- everything the witnesses said is on point. The question becomes, what's his intent?

He said, what we need to do is look into that man's mind on that day to figure what he was thinking. From the very beginning of this trial, during voir dire, we talked about, hey, might it be important to look at the before, the during and the after? And I think some people said, you know, it is, because it gives you, just what he said, a window into that man's mind.

So let's think about what he did, think about what he said. Now, what they basically said was, the only thing that was going through his mind, the very clever and unique reason why he drove halfway into a church was because he wanted to see his daughter? That's their theory, but is that supported by the evidence. Well, let's look at all the circumstances.

What did he say after he's halfway through a church where he flew

the doors off the hinges? Did he say, where's Samira? Did he say, I'd like to see my daughter now? Can I see her now? I'm so sorry, but I just want to see my daughter? Is that what this man said? No. He said, I'm going to kill all you motherfuckers. You don't know who you're messing with.

Mr. Craig Hutton said, He was threatening to kill everyone. Washington Thompson, who never even seen this guy, he looks at him dead in the eye and he goes, You are next. That's funny, I don't think Mr. Thompson looks like his daughter. You saw him. Is that someone that you could get confused with his daughter? Probably not. A window into his mind.

He drove through the church to see his daughter, is that -- my favorite instruction of all the instructions is the common sense instruction. It's in there. I don't know the exact one is, but the law basically says, when you're selected as a juror, you don't get to leave your common sense at the door. You've got to bring it in.

So when you listen to all of the evidence and you heard all of his statements, the thing you should be asking yourself is, does that make sense? Was this a man who was expressing his desire to see his daughter after he plowed halfway through this church? The answer's no, absolutely not. Beyond a reasonable doubt, the answer is no.

It's never about Samira at that point. It was at the beginning, but not at the end and not while he was getting in that car for the second time. It never was about his daughter at that point. It was about anger. It was about revenge. It was about spite. It was about payback. That's what motivated, to try to run over Allen Burse, run over the people at church and put that car halfway through that church. That's what he was thinking about that second time he was in the car.

And then there was some talk about backpedaling. It seems to be one of the words of this trial. There's a difference between backpedaling and giving context. Now, I appreciate Opposing Counsel wasn't there at the previous proceeding to ask the questions of these witnesses as to what they meant, but when you heard them testify, all those witnesses mumble incoherent, not sure what he said. When they were asked, they very clearly explained at trial what they meant.

You remember what they said. I don't need to remind that to you. But just remember, they also said they were never asked to explain exactly what those words meant at a prior proceeding. That's not backpedaling. That's not being given an opportunity to explain. And that's what we did. So when you think about their credibility and whether they're really trying to backpedal or if they're just simply asking now to explain further on what they said before, I'll let you be the judge of that.

Another interesting thing about this notion about intoxication, let's be clear about something as to what the law says. Instruction 16 says, "No act committed by a person while in a state of intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular intent is necessary," that's when you can kind of think about it. So as a general rule, it's no excuse to be drinking and then commit a criminal act.

So what this law actually says is, if you drink so much that you cannot mentally form the idea to do something intentional, then you can't be found guilty of a particular crime, whether it's burglary or assault or attempt murder. Okay? But here's the funny thing about the Defense's argument.

He told us the reason why he wanted to go in there was to see his daughter, if

that's to believe. Well, then that's funny. You must not have been that intoxicated if you formed the specific intent to go in the church to see your daughter. It doesn't work that way.

He's either totally zonked out of his mind, drunk out of his mind that he doesn't know what he's doing or you don't get the defense of intoxication. It doesn't work that way. You'll see the instructions. You're either totally wasted and you have no control or maybe when you had a few drinks -- we like to sometimes call it liquid courage -- it fuels some of your feelings. Maybe you get the courage to walk up to a girl and ask her out on a date at a bar. Maybe you get in a fight when you shouldn't have. Opposing counsel mentioned, maybe you slept with somebody that you probably shouldn't have. But the bottom line is, that notion, if the alcohol helps you do something a little bit more that you wouldn't have normally done if you drank, that doesn't qualify. It's not forming specific intent. That's not the way the defense works. You literally have to consume so much alcohol, that you don't know what you're doing.

So under either theory, our theory or theirs, he hadn't drank enough alcohol.

And think about the evidence that you heard. He admitted to the officer that he had one beer. You had multiple witnesses saying, you know what, if I didn't smell it, his behavior didn't look like a guy who was drunk, and you saw his actions, that they're conceding he did. Seemed like a pretty deliberate path into that church. Is this really a guy who didn't know how to drive a car? I mean, he did a bang up job getting to the church, parking the first time, walking under his own power, walking back, driving all around, parking a second time. Never bumping into a thing. That's amazing. In that one split second in time, oh, no, forget it,

lights went out, I don't really remember what happened.

Common sense, is that really supported by the evidence? The answer is no, absolutely not. He knew what he was doing. He was pissed, and he lashed out.

MR. HAMNER: Excuse my language, Your Honor.

BY MR. HAMNER:

The Defense concedes the battery. That's a general intent crime. So he's on the hook for those. Those are just lesser crimes. We've charged battery with a deadly weapon, battery with a deadly weapon resulting in substantial bodily harm. Here's the actual instruction -- you'll have the instruction on the deadly weapon. The deadly weapon instruction says, "Any instrument or device which under the circumstances in which it is used is readily capable of causing substantial bodily harm or death."

Do you think driving at a person who is unarmed, on foot, alone in the middle of the street could possibly cause substantially bodily harm or death if you gun the gas like Mr. Burse was? Yes. Deadly weapon. Do you think driving into a crowd of unarmed people on foot while you're gunning the gas might cause someone to die, to succeed at hitting or hurting them really bad? Of course. Deadly weapon. Same thing with driving through the church.

So the enhancement has been proven beyond a reasonable doubt because there's no dispute that he is the one who did all of those actions. He physically did it. He's on the hook for that enhancement. So you check off battery with a deadly weapon. Let's get to substantial bodily harm.

That law states that anybody who has prolonged impairment for one of their bodily members. So you have to ask yourself, did this nine-year-old girl

have some prolonged time when she wasn't able to use her foot in the right way? We concede, we contend, we've submitted, yes, absolutely. You put a little girl in a soft cast or a walking boot for a period of time where she has to take pain medication, she's having a hard time sleeping, she's complaining to her mother, yeah, guess what -- she's not able to run and play like they used to. That's prolonged impairment. She also had prolonged pain. And you can consider the testimony of her mother as well as her. Don't just take it from her mouth. Take it from the people who watch and care for her on a daily basis. We've met that beyond a reasonable doubt.

She's not in a coma. She doesn't have a limb lobbed off, but that's not what the law says. And you'll have a chance to read that. So we've made those enhancements. So you can check off those two crimes as they were initially charged. He's guilty of them beyond a reasonable doubt.

There's also a comment, well, it's not really going that fast. Did you see the pictures of that door? You can judge that for yourself. How fast do you got to go to blow a closed door up into the air? How fast do you have to be driving? How fast must he be going to put a Cadillac halfway into a church?

And you also had the eyewitness testimony. You can judge it for yourself. Did all those people think it was going pretty fast? The State would submit absolutely.

There was a lot of focus -- a little bit on the type of injury, that it was only just a pinky toe. But we have charges like attempt murder, the law doesn't say you have to put somebody on life support to be guilty of attempt murder. You have to permanently cut off one of their limbs to be guilty of attempt murder. That's not how it works. Because if that's how it works, someone could walk into a

crowded theatre with a gun, rattle off 150 bullets at people, and if he didn't hit a single soul, well, guess what, you're not guilty of attempt murder. Does that make sense? No.

You could push a nine-year-old girl off the top of a building and if she miraculously ended up unharmed, well, apparently it's not attempt murder. Really? Pushing a nine-year-old girl off of a very high building, that isn't something that could cause death or substantially bodily -- absolutely. It's the act that matters.

So the question you have to ask yourself, is the act of driving at an unarmed man first and then speeding into a crowd of unarmed people next and then driving half through -- halfway into a crowded church, are these acts that could substantially cause death? The answer is beyond a reasonable doubt yes.

Now, ladies and gentlemen, there was also -- getting to this issue of specific intent. I think a really interesting thing, if you're believed -- forget -- forget the Samira -- "I'm coming to find Samira" theory. Let's just assume what the law really says to get this intoxication defense, that you basically cannot form the mental intent at the time that you're doing it. Think about that because that's what the law says.

Here's the problem for the Defendant based on the evidence that was presented. Let's just assume for a second he is so intoxicated, he had no idea what he was doing. He did not how to back that car out, cut those wheels, et cetera. Let's just assume because the drinking was just so much for him. He basically blacked out, right? Here's the problem with that theory.

Take yourself to the testimony of Allen Burse. When he sat on the stand and talked about testifying at a prior proceeding, when he said, I've been a

cop, or whatever, but my gut was telling me not to take my eyes off this guy because I thought something bad was going to happen. What did he tell you this man did? He shouted out and said, you almost broke my arm, my damn arm, that's why. How in the world --

MR. POSIN: That misstates the testimony. He stated -- that was alleged to have been stated at the prior proceeding, not at --

MR. HAMNER: I got it --

THE COURT: Overruled.

BY MR. HAMNER:

Ladies and gentlemen, if he is so intoxicated that he was blacked out during this senseless attack on these people, how did he remember? Why was he trying to explain to Allen Burse, you know what, Mr. Burse, you're right, you had a good reason to suspect something bad was going to happen. He told us. We called his bluff at this point. He showed his tell. The hands he was showing, he was trying to say, I don't remember anything, but when you shot out at a witness and explain to them, you know what, sir, you're intuition's right. Something bad was going to happen because I didn't like the way you treated me. I didn't like how you put me in that arm bar, you put me in that car.

He told us two months later that he was fully cognizant of what he was doing, and there's no dispute about that fact. That's what he said. But if he's so intoxicated that he doesn't form that intent, he doesn't say that. He sits there silently just saying, I don't remember what happened because I was so wasted. And that is why we know beyond a reasonable doubt this is what he wanted to do. He repeatedly said over and over again he wanted to kill these people.

And that's another question. Why do you think he said all those

things once lodged in that church? The answer is, when you look at the very definition of attempted murder, it's the "performance of an act which tends but fails to kill a human being." The reason why he's saying to these people after he failed to kill them, "I'm going to kill you," is he recognized and realized he failed. He failed at first. And so he made a communication to all of them, "I'm going to kill all you people. You don't know who you're messing with." He's still trying to get that car free to finish the job.

Do not let the Defendant backpedal. Do not let him off the hook. Hold him responsible for this absolutely senseless act that terrified countless people, broke a little girl's foot and injured her mother. Do justice for all of these victims. Find him guilty on all counts. Thank you.

THE COURT: Will the marshal please take charge of the jury now.

(Pause)

THE COURT: Is he out there?

MR. SCOW: No, ma'am. I checked chambers behind us. He's not there. I'm assuming that possibly he may be in the restroom, Your Honor.

THE COURT: Well, I will swear you in, and then we'll swear him in.

(The Marshal enters the courtroom)

(Clerk swears the Marshal and Recorder)

(Court and Marshal confer)

THE COURT: Thank you.

THE MARSHAL: Okay. Ladies and gentlemen of the jury, please grab your notebooks, all your personal effects. Please follow me.

(Jury exits courtroom to deliberate)

(Out of the presence of the jury panel)

THE COURT: The record will reflect the jury has departed the courtroom. Are there any matters outside the presence?

MR. SCOW: No, Your Honor.

MR. POSIN: No, Your Honor. I just am curious, assuming they're still deliberating this afternoon, would you come back tomorrow or come back Monday or --

THE COURT: Well, we're not coming back Saturday, I know, because that would require lots of overtime, which we can't afford here. So we would bring them back Monday, but it's only 12:30. I did ask --

MR. POSIN: Yeah, not expecting --

THE COURT: Let's ask them for lunch.

(Court and Clerk confer)

THE COURT: So when we call you, come back to the third floor courtroom instead of here.

MR. POSIN: I like that courtroom better. It's (indiscernible).

THE COURT: This was never intended to be a courtroom. All right. Thank you. We're off the record.

MR. HAMNER: Thank you.

[Proceeding concluded at 12:32 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

Renee Vincent

Renee Vincent, Court Recorder/Transcriber

INST

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP - 9 2013

BY, Andrea M. Davis
ANDREA DAVIS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILBURT HICKMAN, aka
William Hicks, #2888968

Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 18th day of December, 2011, the Defendant committed the offenses of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481.2e); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471) and BURGLARY (Category B Felony - NRS 205.060), within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANNEESAH FRANKLIN, a human being, by striking the said ANNEESAH FRANKLIN with a deadly weapon, to-wit: a Cadillac.

COUNT 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANYLA HOYE, a human being, by striking the said ANYLA HOYE with a deadly weapon, to-wit: a Cadillac.

COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ALLEN BURSE, a human being, by driving a Cadillac at or in the direction of the said ALLEN BURSE with a deadly weapon, to-wit: a Cadillac.

COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill WASHINGTON THOMPSON, a human being, by driving a

Cadillac at or in the direction of the said WASHINGTON THOMPSON, being inside and/or in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

COUNT 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill MARQUETTA JENKINS, a human being, by driving a Cadillac at or in the direction of the said MARQUETTA JENKINS, being inside and/or in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

COUNT 6 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill RAHMEKA ADAMS, a human being, by driving a Cadillac at or in the direction of the said RAHMEKA ADAMS, being inside and/or in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill SHARON POWELL, a human being, by driving a Cadillac at or in the direction of the said SHARON POWELL, being inside and/or in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

COUNT 8 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill TIFFANY TRASS, a human being, by driving a Cadillac at or in the direction of the said TIFFANY TRASS, being inside and/or in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

COUNT 9 - BATTERY WITH USE OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: ANNEESAH FRANKLIN, with use of a deadly weapon, to-wit: a Cadillac, by driving said Cadillac at an occupied building, striking the said ANNEESAH FRANKLIN.

COUNT 10 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

did then and there wilfully, unlawfully and feloniously use force or violence upon the person of another, to-wit: ANYLA HOYE, age nine (9) years old, with use of a deadly weapon, to-wit: a Cadillac, by driving said Cadillac through the entrance of the said ANTIOCH CHURCH, resulting in substantial bodily harm to the said ANYLA HOYE.

COUNT 11 - ASSAULT WITH A DEADLY WEAPON

did then and there wilfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt to use physical force against another person, to-wit: ALLEN BURSE, with use of a deadly weapon, to-wit: a Cadillac, by driving said Cadillac at the said ALLEN BURSE in an attempt to strike him.

COUNT 12 - ASSAULT WITH A DEADLY WEAPON

did then and there wilfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt to use physical force against another person, to-wit: WASHINGTON THOMPSON, with use of a deadly weapon, to-wit: a Cadillac, by the said WASHINGTON THOMPSON, being inside or in front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at the said WASHINGTON THOMPSON.

COUNT 13 - ASSAULT WITH A DEADLY WEAPON

did then and there wilfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt to use physical force against another person, to-wit: MARQUETTA JENKINS, with use of a deadly weapon, to-wit: a Cadillac, by the said MARQUETTA JENKINS, being inside or in front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at the said MARQUETTA JENKINS.

COUNT 14 - ASSAULT WITH A DEADLY WEAPON

did then and there wilfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt to use physical force against another person, to-wit: RAHMEKA ADAMS, with use of a deadly weapon, to-wit: a Cadillac, by the said RAHMEKA ADAMS, being inside or in front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at the said RAHMEKA ADAMS.

COUNT 15 - ASSAULT WITH A DEADLY WEAPON

did then and there wilfully, unlawfully and feloniously attempt to use physical force against another person, to-wit: SHARON POWELL, with use of a deadly weapon, to-wit: a Cadillac, by the said SHARON POWELL, being inside or in front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at the said SHARON POWELL.

COUNT 16 - ASSAULT WITH A DEADLY WEAPON

did then and there wilfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt to use physical force against another person, to-wit: TIFFANY TRASS, with use of a deadly weapon, to-wit: a Cadillac, by the said TIFFANY TRASS, being inside or in front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at the said TIFFANY TRASS.

COUNT 17 – BURGLARY

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit a felony, to-wit: Attempt Murder and/or Battery and/or Assault, that certain building occupied by ANTIOCH CHURCH, located at 3950 North Las Vegas Boulevard, Las Vegas, Clark County, Nevada.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the Defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offenses charged.

INSTRUCTION NO. 4

Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate and specific intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove attempted murder.

INSTRUCTION NO. 5

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

INSTRUCTION NO. 6

If an illegal yet unintended act results from the intent to commit a crime, that act is also considered illegal. Under the doctrine of "transferred intent", original malice is transferred from one against whom it was entertained to the person who actually suffers the consequences of the unlawful act. For example, if a person intentionally directs force against one person wrongfully but, instead, hits another, his intent is said to be transferred from one to the other though he did not intend it in the first instance.

INSTRUCTION NO. 7

During an attack upon a group, the intent to kill does not need to be directed at one particular individual to find the defendant guilty of attempted murder, however, the jury must still determine beyond a reasonable doubt that the defendant had the specific intent to kill someone in the group. Mere intent to harm or intimidate is not sufficient to warrant a guility verdict.

INSTRUCTION NO. 8

You are instructed that if you find a defendant guilty of Attempt Murder you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

INSTRUCTION NO. 9

"Deadly weapon" means:

(a) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or

(b) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

INSTRUCTION NO. 10

Battery is the intentional and unwanted exertion of force or violence upon another, however slight.

A Battery With Use of a Deadly Weapon is any willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon.

If substantial bodily harm results to the victim of a battery, the crime committed is Battery Resulting in Substantial Bodily Harm.

If a Battery is committed with the use of a deadly weapon and it results in substantial bodily harm, then the crime is Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

Battery is the intentional and unwanted exertion of force or violence upon another, however slight.

INSTRUCTION NO. 11

As used in these instructions, "substantial bodily harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

2. Prolonged physical pain.

INSTRUCTION NO. 12

An Assault is unlawfully attempting to use physical force against another person, or intentionally placing another person in reasonable apprehension of immediate bodily harm.

To constitute an assault, it is not necessary that any actual injury be inflicted.

INSTRUCTION NO. 13

You are instructed that if you find a defendant guilty of Assault, you must also determine whether or not a deadly weapon was used in the commission of this crime.

INSTRUCTION NO. 14

If you find beyond a reasonable doubt that a defendant committed Assault With the Use of a Deadly Weapon, then you are instructed that the verdict of Assault With the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Assault, but you do find that an Assault was committed, then you are instructed that the verdict of Assault is the appropriate verdict.

You are instructed that you cannot return a verdict of both Assault With the Use of a Deadly Weapon and Assault.

INSTRUCTION NO. 15

Every person who, by day or night, enters any building or structure, with the intent to commit a assault and/or battery and/or a felony therein is guilty of Burglary.

In Nevada, the crime of Attempt Murder is a felony.

INSTRUCTION NO. 16

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular intent is a necessary element to constitute a particular crime, the fact of his intoxication may be taken into consideration in determining such intent.

INSTRUCTION NO. 17

If the jury finds that the defendant, at the time of the crime, had, by drinking intoxicating liquors, made himself incapable mentally of entertaining the specific intent to kill, then he is not guilty of attempted murder. However if the defendant had the capacity to form the intent to kill, and conceives and acts upon such intent, it is not a defense to the crime of attempted murder that he was intoxicated.

INSTRUCTION NO. 18

Battery is a general intent crime. Therefore, any claim, or evidence of drinking alcohol or voluntary intoxication by the defendant is no defense to a charge of Battery.

INSTRUCTION NO. 19

When a person is accused of committing a particular crime and at the same time and by the same conduct may have committed another offense of lesser grade or degree, the latter is with respect to the former, a lesser included offense.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however, be found guilty of any lesser included offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The offense of Battery With a Deadly Weapon Resulting in Substantial Bodily Harm, necessarily includes the lesser offenses of Battery With a Deadly Weapon and/or Battery Resulting in Substantial Bodily Harm and/or Battery.

INSTRUCTION NO. 20

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 21

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 22

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the Defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 23

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 24

The credibility or believability of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 25

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 26

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

INSTRUCTION NO. 27

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 28

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 29

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: _____
DISTRICT JUDGE

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP - 6 2013

BY Andrea Davis
ANDREA DAVIS, DEPUTY

PINU

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * *

STATE OF NEVADA **VS** **WILBURT HICKMAN**	**CASE NO.: C-12-278699-1** **DEPARTMENT 5**

DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 6th day of September, 2013.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: Andrea M. Davis
Andrea Davis, Deputy Clerk of the Court

JURY INSTRUCTION NO. 12

If the jury believes from the evidence that the condition of the defendant, from intoxication ~~or otherwise~~, was such to show that there was no ***specific intention*** to cause the death of an individual, they cannot find the defendant guilty of attempted murder.[12]

~~will offer but not~~
~~give~~

Defense proposed but not given.

Carolyn Ellsworth

[12] NRS 193.220 When voluntary intoxication may be considered.

JURY INSTRUCTION NO. 13

In order to convict the defendant of attempted murder, the jury must find either that the defendant was in control of his mental faculties and entertained an intent to kill when the crime occurred, or that he had formed this intent before he lost control of his faculties, mere intent to harm or intimidate is not sufficient to warrant a guilty verdict for attempted murder.[13] "Nothing less than a criminal intent to kill must be shown."[14]

~~Will offer but not be given~~ will

Defense proposed but not given.

Cindy Ellsworth

[13] *Ford v. State*, 102 Nev. 136 (1986).

[14] *Keys v. State*, 104 Nev. 739 (1988).

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VER

3:34 PM

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP - 9 2013

BY, Andrea M. Davis
ANDREA DAVIS, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILBURT HICKMAN, aka William Hicks, #0905481

Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

VERDICT

We, the jury in the above entitled case, find the Defendant WILBURT HICKMAN, as follows:

COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (ANNEESAH FRANKLIN)

(please check the appropriate box, select only one)

☐ Guilty of Attempt Murder With Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (ANYLA HOYE)

(please check the appropriate box, select only one)

☐ Guilty of Attempt Murder With Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (ALLEN BURSE)

(please check the appropriate box, select only one)

☐ Guilty of Attempt Murder With Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (WASHINGTON THOMPSON)

(please check the appropriate box, select only one)

☐ Guilty of Attempt Murder With Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (MARQUETTA JENKINS)

(please check the appropriate box, select only one)

☐ Guilty of Attempt Murder With Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (RAHMEKA ADAMS)

(please check the appropriate box, select only one)

☐ Guilty of Attempt Murder With Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 7 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (SHARON POWELL)

(please check the appropriate box, select only one)

☐ Guilty of Attempt Murder With Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 8 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (TIFFANY TRASS)

(please check the appropriate box, select only one)

☐ Guilty of Attempt Murder With Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

COUNT 9 - BATTERY WITH USE OF A DEADLY WEAPON (ANNEESAH FRANKLIN)

(please check the appropriate box, select only one)

☑ Guilty of Battery With Use of a Deadly Weapon

☐ Guilty of Battery

☐ Not Guilty

COUNT 10 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (ANYLA HOYE)

(please check the appropriate box, select only one)

☑ Guilty of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm

☐ Guilty of Battery With Use of a Deadly Weapon

☐ Guilty of Battery Resulting in Substantial Bodily Harm

☐ Guilty of Battery

☐ Not Guilty

COUNT 11 – ASSAULT WITH A DEADLY WEAPON (ALLEN BURSE)

(please check the appropriate box, select only one)

☑ Guilty of Assault With Use of a Deadly Weapon

☐ Guilty of Assault

☐ Not Guilty

COUNT 12 – ASSAULT WITH A DEADLY WEAPON (WASHINGTON THOMPSON)

(please check the appropriate box, select only one)

- [x] Guilty of Assault With Use of a Deadly Weapon
- [ ] Guilty of Assault
- [ ] Not Guilty

COUNT 13 – ASSAULT WITH A DEADLY WEAPON (MARQUETTA JENKINS)

(please check the appropriate box, select only one)

- [x] Guilty of Assault With Use of a Deadly Weapon
- [ ] Guilty of Assault
- [ ] Not Guilty

COUNT 14 – ASSAULT WITH A DEADLY WEAPON (RAHMEKA ADAMS)

(please check the appropriate box, select only one)

- [x] Guilty of Assault With Use of a Deadly Weapon
- [ ] Guilty of Assault
- [ ] Not Guilty

COUNT 15 – ASSAULT WITH A DEADLY WEAPON (SHARON POWELL)

(please check the appropriate box, select only one)

- [x] Guilty of Assault With Use of a Deadly Weapon
- [ ] Guilty of Assault
- [ ] Not Guilty

COUNT 16 – ASSAULT WITH A DEADLY WEAPON (TIFFANY TRASS)

(please check the appropriate box, select only one)

- [x] Guilty of Assault With Use of a Deadly Weapon
- [ ] Guilty of Assault
- [ ] Not Guilty

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBURT HICKMAN, JR. A/K/A William Hicks, Appellant, vs. THE STATE OF NEVADA, Respondent.	Supreme Court Case No. 64776 (District Court Case No. C278699) **VOLUME II**

APPENDIX TO APPELLANT'S OPENING BRIEF

(Appeal from Judgment of Conviction (Jury Trial))

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