

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBURT HICKAM, JR. AKA
WILLIAM HICKS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Feb 18 2015 11:42 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No. 64776

RESPONDENT'S APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 18th day of February, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Counsel for Appellant

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/s/ j. garcia

Employee, Clark County
District Attorney's Office

CFB//jg


CLERK OF THE COURT

0014
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Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

| | | |
|--------------------------------------|---|------------------------|
| In the Matter of the Application of, |) | |
| |) | CASE NO. C-12-278699-1 |
| |) | |
| |) | DEPT. NO. V |
| WILBURT HICKMAN, a.k.a. |) | |
| William Hicks, |) | |
| for a Writ of Habeas Corpus. |) | DATE: March 21, 2012 |
| |) | TIME: 9:00 a.m. |

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of
The State of Nevada, in and for the County of Clark

The Petition of Wilburt Hickman submitted by ERIKA D. BALLOU, Deputy Public
Defender, as attorney for the above-captioned individual, respectfully affirms:

1. That she is a duly qualified, practicing and licensed attorney in the City of Las
Vegas, County of Clark, State of Nevada.

2. That Petitioner makes application for a Writ of Habeas Corpus; that the place
where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty
is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is
Doug Gillespie, Sheriff.

3. That the imprisonment and restraint of said Petitioner is unlawful in that:
Wilburt Hickman is being held to answer for all counts of Attempt Murder with Use of a Deadly
Weapon when no legal probable cause was provided at the time of the preliminary hearing. In
addition, Mr. Hickman is being held to answer to one of the counts of Assault with a Deadly
Weapon under a theory for which no probable cause was provided at the time of the preliminary
hearing. Finally, Mr. Hickman was held to answer for Malicious Destruction of Property as a felony

RA 000001

1 when no legal probable cause regarding the allegation of damage over \$5,000 was provided at the
2 time of the preliminary hearing.

3 4. That Petitioner has previously waived his right to be brought to trial within 60
4 days.

5 5. That Petitioner consents that if Petition is not decided within 15 days before
6 the date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date
7 designated by the Court.

8 6. That Petitioner personally authorized his aforementioned attorney to
9 commence this action.

10 WHEREFORE, Petitioner prays that this Honorable Court make an order directing
11 the County of Clark to issue a Writ of Habeas Corpus directed to the said Doug Gillespie, Sheriff,
12 commanding him to bring the Petitioner before your Honor, and return the cause of his
13 imprisonment.

14 DATED this 28th of February, 2012.

15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEFENDER

17
18 By: /s/ ERIKA D. BALLOU
19 ERIKA D. BALLOU, #8365
20 Deputy Public Defender
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DECLARATION

ERIKA D. BALLOU makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. That I am the attorney of record for Petitioner in the above matter; that I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true; that Petitioner, WILBURT HICKMAN, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 28th day of February, 2012.

/s/ ERIKA D. BALLOU
ERIKA D. BALLOU

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

3 COMES NOW the Petitioner, WILBURT HICKMAN, by and through his counsel,
4 ERIKA D. BALLOU, of the Clark County Public Defender's Office, and submits the following
5 Points and Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas Corpus.

6 **STATEMENT OF FACTS**

7 A Criminal Complaint was filed against Mr. Wilburt Hickman charging him with two counts
8 of Battery with Use of a Deadly Weapon (Counts I and II), six counts of Assault with a Deadly
9 Weapon (Counts III-VIII), one count of Invasion of the Home (Count IX), and one count of
10 Malicious Destruction of Property (Count X) as a felony as the value was over \$5,000. A
11 Preliminary Hearing was held on January 4, 2012. At the Preliminary Hearing, Aneesah Franklin,
12 Allen Burse, Washington Thompson, Marquetta Jenkins, Rahmeka Adams, Sharon Powell, Tiffany
13 Trass, and Ericka Severs testified. All of the above listed witnesses, except Ms. Severs, testified to
14 the fact that Mr. Hickman's vehicle crashed into the New Antioch Christian Fellowship church on
15 December 18, 2011. Following all evidence at said hearing, the state amended the Criminal
16 Complaint to add eight counts of Attempt Murder with Use of a Deadly Weapon (Counts I-VIII),
17 amended one count of Battery with Use of a Deadly Weapon to allege that it resulted in substantial
18 bodily harm (Count X), and amended the charge of Invasion of the Home to a charge of Burglary
19 (Count XVII). Mr. Hickman is charged by way of Information with: Counts I-VIII – Attempt
20 Murder with Use of a Deadly Weapon; Count IX – Battery with Use of a Deadly Weapon; Count X
21 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm; Counts XI-XVI –
22 Assault with a Deadly Weapon; Count XVII – Burglary; and Count XVIII – Malicious Destruction
23 of Property as a felony alleging damage of over \$5,000. The crimes are alleged to have happened on
24 December 18, 2011. The Preliminary Hearing Transcript was filed on February 9, 2012. Mr.
25 Hickman's calendar call is currently set for September 24, 2012, with a trial date of October 1, 2012.

26 **ARGUMENT**

27 To establish probable cause to bind a defendant over for trial, the state must demonstrate
28 probable cause that (1) a crime has been committed and (2) the defendant committed it. NRS §

1 171.206; *Jones v. Sheriff*, 93 Nev. 297, 565 P.2d 325 (1977). The standard of review for a pretrial
2 habeas challenge to the sufficiency of the evidence is that the state has the burden of showing “slight
3 or marginal” evidence that a crime has been committed and that the defendant committed it. *Sheriff*
4 *v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 179 (1980). A writ of habeas corpus will not be denied if
5 there is a showing of a lack of probable cause that a crime was committed and that the defendant
6 committed the crime. *In re Rowland*, 74 Nev. 215, 218, 326 P.2d 1102, 1103 (1958). Only legal
7 evidence may be received at a preliminary hearing. *Goldsmith v. Sheiff*, 85 Nev. 295, 303, 454 P.2d
8 86, 91 (1969). “No other type of evidence may be considered by the magistrate. The rules of
9 evidence require the production of legal evidence and the exclusion of whatever is not legal.” *Id.*,
10 quoting *People v. Schuber*, 163 P.2d 498 (Cal.App. 1945).

11 Mr. Hickman was held to answer to eight counts of Attempt Murder with Use of a Deadly
12 Weapon. NRS § 193.330 states, in pertinent part, “An act done with intent to commit a crime, and
13 tending but failing to accomplish it, is and attempt to commit that crime.” Therefore, in order to be
14 charged with attempt murder, one must have the specific intent to kill.

15 When amending the Criminal Complaint, the state specifically relied on the case of Priscilla
16 Ford and analogized Mr. Hickman’s case with that of Ms. Ford. In its closing remarks, the state
17 argued:

18 With respect to attempt murder, the defense has argued that these counts
19 should not stand simply because the defendant did not say anything to any specific
20 individual that would indicate he wanted to kill him; however, the fact of the matter
21 is, is that mere words are not the only evidence, direct or circumstantial, that can
22 indicate a person’s intent to kill another, a specific intent.

23 Here there has been extensive evidence given that this defendant tried to kill
24 all of these witnesses that have testified today. This case bears great similarity to the
25 Priscilla Ford case from 1980. On Thanksgiving day on [sic] 1980, Priscilla Ford
26 decided to take her four-door sedan, drive it up onto a sidewalk and run over a
27 crowded group of people.

28 She killed six people and almost killed 23 others, and she was convicted on all
of these charges *because the very act of taking a 2,000-pound vehicle and driving it
into a crowd of people demonstrates a person’s intent to kill them.* (Emphasis
added.)¹

The state neglected to inform the magistrate that Priscilla Ford was not convicted on all
counts based solely on the act of driving a car into a crowd. In fact, in Ms. Ford’s case there were

¹ See Reporter’s Transcript of Preliminary Hearing, January 4, 2012 (attached as Exhibit A), pp. 127-128.

1 “such declarations and admissions by the defendant as: ‘I will get you honkies,’ ‘I deliberately
2 planned to get as many as possible. A Lincoln Continental can do a whole lot of damage, can’t it?,’
3 ‘How many did I get?,’ ‘The more dead the better. Give the mortuaries the business. That’s the
4 American way. Did I get 50? How many did I get? I hope 75.’” *Ford v. State*, 102 Nev. 126, 130
5 fn4, 717 P.2d 27, 30 fn4 (1986). The Nevada Supreme Court went as far as to state that “All of the
6 evidence points to the fact that Ford drove onto the sidewalks of Reno with the intent to kill
7 pedestrians. This evidence includes *inculpatory statements made by Ford both before and after the*
8 *November incident* and the statements of witnesses to the incident.” *Ford v. State (Ford II)*, 105
9 Nev. 850, 852, 784 P.2d 951, 952 (1989) (Emphasis added.). When Ms. Ford died in 2005, the Las
10 Vegas Review Journal discussed her crime and noted that “Before the 1980 crime that became
11 known as the ‘Thanksgiving Day Massacre,’ Ford had said ‘the people of Reno will pay in death’ for
12 taking her daughter. She also told a U.S. attorney in Maine *in 1979 that she would run down*
13 *pedestrians if he did not help her get her daughter back.*”² (Emphasis added.)

14 Here, there is no evidence that Mr. Hickman made any such inculpatory statements. *See*
15 *generally* Exhibit A. In fact the state specifically instructed the magistrate to guess as to any intent
16 on the part of Mr. Hickman when it stated that “because the very act of taking a 2,000-pound vehicle
17 and driving it into a crowd of people demonstrates a person’s intent to kill” without any reliable
18 evidence as to his intent. Without even “slight or marginal” evidence of Mr. Hickman’s specific
19 intent to *kill*, as required by case law, all of the counts of Attempt Murder with Use of a Deadly
20 Weapon must be dismissed.

21 Mr. Hickman was held to answer for the charge of Assault with a Deadly Weapon in Count
22 XV against Sharon Powell. The evidence produced at the time of the Preliminary Hearing relating
23 to this charge was the testimony of Ms. Powell that she “got this overwhelming feeling just to move,
24 and as I moved a car came straight through the door where I was standing.”³ She also testified that
25 had she stayed “in the position, the car would have hit me.”⁴

26
27 ² *See* Death row inmate Ford dies: Woman drove car down Reno sidewalk in '80, killing six, injuring 23, January 30,
2005; online at http://www.reviewjournal.com/lvrj_home/2005/Jan-30-Sun-2005/news/25766120.html (Attached as
Exhibit B).

28 ³ *See* Exhibit A), p. 104.

⁴ *Id.*

1 In regards to Count XV, Mr. Hickman is alleged to have committed the assault against Ms.
2 Powell under alternate theories. This charge is alleged to have occurred in that Mr. Hickman “did
3 then and there willfully, unlawfully, feloniously and intentionally place another person in reasonable
4 apprehension of immediate bodily harm and/or did unlawfully attempt to use physical force against
5 another person.”⁵

6 The plain language of NRS § 200.471 allows for the crime of Assault with a Deadly Weapon
7 to occur under either of these alternate theories. However, the state has not shown even “slight or
8 marginal” evidence, as required by *Sheriff v. Hodes*, 96 Nev. at 186, 606 P.2d at 179, that Ms.
9 Powell was in reasonable apprehension of immediate bodily harm. She never testified that she was
10 in fear, only that she had a feeling that she should move so she did so. In fact, as the direct
11 examination by the state progressed, it appeared that Ms. Powell was not in a position where she
12 could have seen the oncoming vehicle.⁶ The charge of Assault with a Deadly Weapon cannot stand
13 under the theory that Ms. Powell was placed in apprehension of immediate bodily harm.

14 Finally, Mr. Hickman is charged with Malicious Destruction of Property as a felony under
15 NRS § 206.310 and NRS § 193.155. Specifically, NRS § 193.155 allows for damage to property
16 over \$5,000 to be treated as a category C felony. If the damage is over \$250 but less than \$5,000,
17 the offense is to be treated as a gross misdemeanor.

18 The only evidence adduced at the preliminary hearing relating to this charge was the
19 testimony of Ericka Severs, the church administrator of New Antioch Christian Fellowship.⁷ Ms.
20 Severs testified that she signed a contract for repairs to the church doors in the amount of
21 \$2,869.42.⁸ In addition, Ms. Severs testified that she had received a verbal estimate for “about
22 \$7,000” for damage to the carpet.⁹ This statement was relied upon by the magistrate in holding Mr.
23 Hickman to answer for this charge.¹⁰

24 According to NRS § 51.035, “‘Hearsay’ means a statement offered in evidence to prove the
25 truth of the matter asserted.” There are exceptions which remove certain of these kinds of

26 ⁵ See Information, electronically filed January 11, 2012 (attached as Exhibit C), p. 4.

27 ⁶ See Exhibit A, p. 105.

27 ⁷ *Id.* at 117.

28 ⁸ *Id.* at 119-120.

⁹ *Id.* at 121.

¹⁰ *Id.* at 126-127.

1 statements from being considered hearsay. See NRS § 51.035 (1-3). Hearsay evidence is
2 inadmissible unless there is an applicable hearsay exception. NRS § 51.065. Ms. Severs' statement
3 regarding the damage to the carpet is hearsay in that she received this information from someone
4 who did not testify at the Preliminary Hearing. Because only legal evidence may be received at a
5 preliminary hearing, *Goldsmith*, 85 Nev. at 303, 454 P.2d at 91, the magistrate's reliance upon Ms.
6 Severs' hearsay testimony regarding any damage over \$2,869.42 is misplaced. Therefore, the felony
7 charge of Malicious Destruction of Property cannot stand that this charge must be amended to reflect
8 a gross misdemeanor with damage of less than \$5,000.

9 CONCLUSION

10 Based on the above and foregoing, Petitioner, Wilburt Hickman, respectfully requests that
11 this Honorable Court issue a Writ of Habeas Corpus dismissing Counts I-VIII. In addition, Mr.
12 Hickman respectfully requests that this Honorable Court issue a Writ of Habeas Corpus amending
13 Count XV (Assault with a Deadly Weapon) to remove the allegation that Mr. Hickman willfully,
14 unlawfully, feloniously, and intentionally placed Sharon Powell in reasonable apprehension of
15 immediate bodily harm. Finally, Mr. Hickman respectfully requests that this Honorable Court issue
16 a Writ of Habeas Corpus amending Count XVIII (Malicious Destruction of Property) to reduce the
17 value to \$2,869.42 and thereby reducing said charge to a gross misdemeanor rather than a felony.

18
19 DATED this 28th of February, 2012.

20 PHILIP J. KOHN
21 CLARK COUNTY PUBLIC DEFENDER

22
23 By: /s/ ERIKA D. BALLOU
24 ERIKA D. BALLOU, #8365
25 Deputy Public Defender
26
27
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1 **NOTICE**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF
4 HABEAS CORPUS will be heard on 21st day of March, 2012, at 9:00 a.m. in Department No. V
5 District Court.

6 DATED this 28th day of February, 2012.

7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9
10 By: /s/ ERIKA D. BALLOU
11 ERIKA D. BALLOU, #8365
12 Deputy Public Defender
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20 **CERTIFICATE OF ELECTRONIC SERVICE**

21
22 A COPY of the above and foregoing Petition for Writ of Habeas Corpus was sent via
23 electronic to the District Attorney's Office at PDMotions@ccdancv.com on this 28th day of February,
24 2012.
25

26 By: /s/ KONIE BALDWIN
27 An employee of Clark County Public
28 Defender's Office

• ORIGINAL •

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER S. HAMNER
6 Deputy District Attorney
7 Nevada Bar #11390
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

2012 APR -9 P 3:12

Clifford Hamner
CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

CASE NO: C-12-278699-1

13 WILBURT HICKMAN, aka
14 William Hicks,
15 #0905481

DEPT NO: V

Defendant.

16
17 ORDER DENYING DEFENDANT'S WRIT OF HABEAS CORPUS IN PART AND
18 GRANTING IN PART

19 DATE OF HEARING: 3/28/12
20 TIME OF HEARING: 9:00 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the
22 28th day of March, 2012, the Defendant being present, represented by ERIKA BALLOU,
23 Deputy Public Defender, the Plaintiff being represented by STEVEN B. WOLFSON,
24 District Attorney, through CHRISTOPHER S. HAMNER, Deputy District Attorney, and the
25 Court having reviewed the briefs of the parties and good cause appearing therefor,

26 ///

27 ///

28 ///

///

C-12-278699-1
ORDD
Order Denying
1821123



1 IT IS HEREBY ORDERED that the Defendant's Writ of Habeas Corpus, shall be,
2 and it is granted in part as to Count 15 – Assault with a Deadly Weapon against Sharon
3 Powell. As to one of the State's theories of liability under Count 15, the Court finds that
4 there was not slight or marginal evidence presented during the preliminary hearing to prove
5 that Defendant willfully, unlawfully, feloniously and intentionally, placed Sharon Powell in
6 reasonable apprehension of immediate bodily harm. Thus, the Court denies this theory of
7 liability under Count 15. However, Count 15 will not be denied in its entirety as the Court
8 finds that the State did provide slight or marginal evidence that Defendant unlawfully
9 attempted to use physical force against Sharon Powell.


10 IT IS FURTHER ORDERED that the State prepare an Amended Information
11 reflecting this Court's Order as to Count 15 – Assault with a Deadly Weapon against Sharon
12 Powell.

13 IT IS FURTHER ORDERED that the Defendant's Writ of Habeas Corpus, shall be,
14 and it is denied as to its remaining two allegations. The Court finds that the State provided
15 slight or marginal evidence to support Counts 1 through 8 – Attempt Murder with a Deadly
16 Weapon as well as Count 18 – Malicious Destruction of Property.

17 DATED this 5th day of April, 2012.

18
19 
20 DISTRICT JUDGE
21

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

25 
26 CHRISTOPHER S. HAMNER
27 Deputy District Attorney
28 Nevada Bar #11390

jr

DISTRICT COURT
CLARK COUNTY, NEVADA

DEPT. V

RA 000012

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1 FRIDAY, SEPTEMBER 6, 2013 AT 10:22 A.M.

2
3 [Outside the presence of the jury]

4 THE COURT: All right. We're back on the record outside the presence of
5 the jury in case number C12278699, State of Nevada versus Wilburt Hickman.

6 The record will reflect the presence of the Defendant with his counsel
7 and Deputy District Attorney prosecuting the case and all officers of the Court.

8 Now, counsel, are you each familiar with Instruction numbers 1 through
9 29?

10 MR. POSIN: Yes, Your Honor.

11 THE COURT: And does the State object to giving of any of the instructions --
12 jury instructions numbered 1 through 29?

13 MR. HAMNER: No, Your Honor.

14 THE COURT: Does the State have any additional instructions to propose?

15 MR. HAMNER: We would just, at least, note for the record that when we had
16 discussed the instructions previously in chambers that, just for the record, that it was
17 kind of agreed upon that the defense counsel did not want an expert witness
18 instruction to be given because I think -- the thought process was that wasn't really
19 -- the observations of the officer was not really at issue and we just want that to be
20 just part of the record. But other than that, we don't have anything else to note.

21 THE COURT: Okay. And you agree with defense counsel that you wouldn't
22 give the expert instruction?

23 MR. HAMNER: That's correct.

24 THE COURT: That's why you're not offering?

25 MR. HAMNER: That's correct.

1 THE COURT: Does the Defendant object to any of these instructions which
2 are going to be given as 1 through 29?

3 MR. POSIN: No, Your Honor.

4 THE COURT: Does defense have additional instruction to propose?

5 MR. POSIN: Court's indulgence.

6 Your Honor, I'm sorry. I know that in chambers we had discussed there
7 were one or two that I had proposed that you were not giving. I'm afraid I didn't flag
8 them in my notes.

9 THE COURT: All right.

10 MR. POSIN: So, perhaps we can identify them and in a later point in the
11 proceedings I can --

12 THE COURT: I have them here. I was just hoping that you would type them.

13 All right. So, I have two. If you'd like to approach.

14 MR. POSIN: Thank you, Your Honor. There was two proposed instructions I
15 had submitted. One was read as follows: If the jury believes from the evidence that
16 the condition of the Defendant from intoxication was shown -- was such to show that
17 there was no specific intention to cause the death of an individual, they cannot find
18 the Defendant guilty of attempted murder. And as -- for that, I had cited NRS
19 193.220.

20 I'd also submitted an instruction that read in order to convict the
21 Defendant of attempted murder, the jury must find either the Defendant was in
22 control of his mental faculties and entertaining intent to kill when the crime occurred
23 or that he had formed this intent before he lost control of his faculties. Mere intent to
24 harm or intimate is not sufficient to warrant a guilty verdict for attempted murder.
25 Nothing less than a criminal intent to kill must be shown. And as authority for that, I

1 have cited the case of *Ford v. State at 102 Nevada 136* and *Keys versus State at*
2 *104 Nevada 739 [sic]*. If I may approach I'll give the Court back --

3 THE COURT: Thank you.

4 MR. POSIN: -- these copies.

5 THE COURT: All right. The copies that you handed me obviously are written
6 on because they were my working copies when we worked on these in chambers.
7 So, I'm going to write -- I'm going to strike the language for the writing on it that I
8 wrote in chambers and then I will write on the first one which was your jury
9 instruction, proposed jury instruction number 12, Defendant's proposed, which is the
10 one that says if the jury believes from the evidence the condition of the Defendant
11 from intoxication or otherwise to show that there was no significant intention to
12 cause the death of an individual they cannot find the Defendant guilty of attempted
13 murder. I'm not giving that because it's covered. The specific intent is covered in
14 the other instructions. Otherwise, I think actually when we discussed it you're willing
15 to strike the or otherwise language; is that right?

16 MR. POSIN: That's correct, Your Honor. And that's why what I just read into
17 the record I read it without the or otherwise --

18 THE COURT: All right. So --

19 MR. POSIN: -- language.

20 THE COURT: -- it was your intention to offer it without the stricken part and
21 so that's what it shows on here. But I believe that it's duplicative of other
22 instructions and that is why I did not give it.

23 Does the State wish to make any further record?

24 MR. HAMNER: No, Your Honor.

25 THE COURT: All right. I'm going to mark it as Defense proposed but not

1 given. And I will sign that and ask the clerk to mark that as Defendant's proposed
2 jury instruction. Actually we can probably do both as one exhibit. The other one is
3 marked as jury instruction number 13. You already read it into the record and
4 likewise if this went up, I've stricken the language or the handwriting, hand printing
5 that I put on during our working session. Now I will notate that it is defense
6 proposed but not given. I will sign it and that will be marked likewise for the record.

7 And does the Defendant -- do you wait until the final witness has
8 testified before you make the decision?

9 MR. POSIN: Your Honor, I think we can go ahead and canvass him right now
10 as to his right to testify.

11 THE COURT: All right. Mr. Hickman, if you'll stand please, sir.

12 Under the Constitution of the United States and under this constitution
13 of the state of Nevada, you cannot be compelled to testify in this case; do you
14 understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You may, however, at your own request, give up that right and
17 take the witness stand and testify but if you do you'll be submit to cross-examination
18 by the District Attorney and anything that you did say be it on direct or cross-
19 examination while you are on the stand would be subject to fair comment by the
20 District Attorney when he speaks to the jury in closing argument; do you understand
21 that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. If you choose not to testify, the Court will not permit
24 the District Attorney to make any comment to the jury because you've not testified
25 because that is your constitutional right; do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: If you elect not to testify, the Court will instruct the jury but only
3 if your attorney specifically requests he has done so, and actually we have included
4 in the jury instructions -- the jury instruction which indicates that the law does not
5 compel a Defendant in a criminal case to take the stand and testify and no
6 presumption may be raised and no inference of any kind may be drawn from the
7 failure of a Defendant to testify. And so that instruction will be given at your
8 attorney's request. Do you have any questions about these rights?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Have you.

11 THE DEFENDANT : May I --

12 THE COURT: Yes.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And have you decided whether you would like to testify?

15 THE DEFENDANT: No, I'm not going to testify.

16 THE COURT: All right. And you made that decision after consultation with
17 your counsel?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Thank you very much.

20 THE DEFENDANT: Thank you, ma'am.

21 THE COURT: All right. Where is our marshal?

22 [Inside the presence of the jury]

23 THE COURT: Thank you. Please be seated.

24 Ladies and gentlemen, this is the continuation of State of Nevada
25 versus Wilburt Hickman, case number C12 278699. The record will reflect the

1 presence of the Defendant with his counsel, the Deputy District Attorney prosecuting
2 the case, and all officers of the Court, all 12 members of the jury as well as the two
3 alternates; will counsel so stipulate?

4 MR. POSIN: Yes, Your Honor.

5 MR. HAMNER: Yes, Your Honor.

6 THE COURT: Okay. Call your next witness.

7 MR. HAMNER: The State calls Rahmeka Adams to the stand.

8 THE MARSHAL: Please step up to the stand and raise your right hand,
9 please.

10 **RAHMEKA ADAMS**

11 [having been called as a witness and being first duly sworn, testified as follows:]

12 THE COURT CLERK: Please be seated. If you could please state and spell
13 your first and last name for the record.

14 THE WITNESS: My name is Rahmeka Adams; it is R-A-H-M-E-K-A Adams,
15 A-D-A-M-S.

16 THE COURT: Proceed.

17 MR. HAMNER: Thank you.

18 **DIRECT EXAMINATION**

19 BY MR. HAMNER:

20 Q Ms. Adams, do you live here in Las Vegas currently?

21 A No.

22 Q Where do you currently live?

23 A Louisiana.

24 Q What do you do for a living?

25 A I'm in the military.

1 Q Now at some point let's say back December of 2011, were you living
2 here in Clark County?

3 A Yes.

4 Q Are you familiar with the New Antioch Christian Fellowship Church?

5 A Yes; I used to be a member.

6 Q How long did you go to that church for?

7 A About two or three years.

8 Q Two or three years. I want to turn your attention to December -- sorry
9 -- I want to turn your attention to December 18, 2011; do you remember where you
10 were on that day?

11 A Yes; at church.

12 Q Okay. I'm going to focus around that morning; what time did you get to
13 church?

14 A Around 9: 56, right before church started.

15 Q Ms. Adams, I'm going to show you what's been already admitted as
16 State's 1. And that monitor should pop up on your screen at some point. Okay.
17 You see it over there on your monitor?

18 A Yes.

19 Q Now looking at State's 1, do you recognize what you're looking at
20 there?

21 A Yes.

22 Q What is that?

23 A That is the church?

24 A Okay. Tell the jury how you kind of arrived at the church? And if you
25 put your finger on that monitor you can actually draw a line through your path or

1 whatnot. So, tell the jury, where did you when you first showed up -- pulled up to the
2 church?

3 A Well whenever you drive down Las Vegas Boulevard you have to make
4 a U-turn. So, I first arrived in the first parking lot which is right here. Can you see it?

5 Q No.

6 A Is it not working.

7 Q Just push -- see how hard you push. The trial of technical difficulties.
8 Okay. Why don't you tell me and then I'll make some motion on there.

9 So, you went down Las Vegas Boulevard. Did you enter the front part of the church
10 or the back part of the church?

11 A I entered the front part of the church.

12 Q Okay. So, when I front part I'm referring to where the double doors
13 are?

14 A Oh, no, then the back part of the church. I entered the parking lot on
15 the back part of the church first.

16 Q Okay. So, when you say you entered you came in on Las Vegas
17 Boulevard and you entered in this parking area here?

18 A Yes.

19 Q All right. So, when you get to that front part, do you notice anything at
20 that point?

21 A At that time there were some gentlemen in the parking lot with another
22 gentleman that I didn't recognize.

23 Q Did you recognize some of the gentlemen?

24 A Yes.

25 Q Tell the jury who you saw that you recognized?

1 A I don't remember their names.

2 Q Were they members of the security team, members, pastors? What are
3 we talking about?

4 A There was an associate pastor there. Then there was a couple of men
5 that do security around the church.

6 Q Okay. And you said you saw another person there that they were
7 speaking to?

8 A Yes.

9 Q And you had never seen that person before?

10 A No.

11 Q Okay. So, what were they doing out there?

12 A They were kind of talking to the gentleman and they were looking
13 around, and I think I specifically think I seen them pointing around like, you know,
14 just talking to the man.

15 Q Okay. But you don't really hear anything because you're not out of your
16 car yet?

17 A Uh-hm; no.

18 Q Do you get out of your car and park at that point?

19 A No; actually there were no parking spaces so I had to turn around the
20 drive out of that parking lot into the additional parking lot in the front of the church.

21 Q Now, Ms. Adams, do you see one of those individuals who's in that kind
22 of parking lot area here in the courtroom today?

23 A Yes; that man right there.

24 Q Okay. Why don't you point out where they're located in the courtroom
25 and maybe an article of clothing that they're wearing?

1 A He has a blue shirt on.

2 Q All right. And what direction? Is he standing -- is he over on my left.

3 A To your right.

4 Q To my right. From looking at me to the right of me?

5 A Yes.

6 MR. HAMNER: All right. Let the record reflect the witness has identified the
7 Defendant?

8 THE COURT: It will.

9 MR. HAMNER: Thank you.

10 BY MR. HAMNER:

11 Q So, you see him standing outside with some people from your church?

12 A Yes.

13 Q Okay. So, there's no parking. Where do you go now; did you go home
14 at this point?

15 A No; I go into the adjacent parking lot in the front of the church.

16 Q So, when you say adjacent parking lot are we talking about here?

17 A Yes.

18 Q All right. Now you pull into the parking lot. At that point, where do you
19 go?

20 A I park -- I can't really show you because it's not working --

21 Q Okay.

22 A -- but I park -- do you see where the car is right there?

23 Q Are we talking about this car here?

24 A Yes, that car. I parked directly across from that car.

25 Q Okay. So, you parked somewhere in this area here?

1 A Yes.

2 Q Okay. Are you by yourself at this point?

3 A No; I have my daughter with me.

4 Q So, what do you do? So, you get out of your car and what happens?

5 A I get out the car and of course I'm just looking around because I see the

6 same gentlemen that were on the other parking lot -- in the other parking lot on this

7 side of the parking lot now. So, I'm just looking and paying attention to my

8 surroundings and I'm waiting for my daughter to get out of the car. So, I walk on the

9 other side of the car to the passenger side and I'm opening the door for her and

10 waiting for her to get out.

11 Q So, you saw -- I think you pointed to the Defendant before at the other

12 end. Now you're seeing the Defendant on that same side of the parking lot that

13 you're now parked in?

14 A Yes.

15 Q Around where he is parked at; if you can remember?

16 A He's probably parked -- it's further down.

17 Q Why don't we do this? You see the building that's a little farther up.

18 You see this building here?

19 A Uh-hm.

20 Q Can you tell me which one of these cars kind of directly across or if he's

21 parked at these cars or tell me if he's parked across from the cars?

22 A He's parked across from those cars, the white car.

23 Q There's four white cars that I can see.

24 A I can see four white cars too. I'm sorry. I apologize for that. You see

25 the first car?

1 Q We talking this one?

2 A Closest to the building, yes.

3 Q Okay.

4 A He's probably parked next -- across from the two cars that are -- yes.

5 Q These two cars?

6 A Yes.

7 Q So, he's kind of parked somewhere here?

8 A Yes.

9 Q And you're parked somewhere here?

10 A Yes.

11 Q Okay. So, now you're outside of your car?

12 A Yes.

13 Q And you see him there. Is he alone at this point?

14 A No.

15 Q Who's there?

16 A He's with the associate pastor Dwayne.

17 Q Okay. So, you see more members of church staff there?

18 A Yes.

19 Q Now when you get out of your car, what's your feeling at this point,
20 seeing this same guy now on the opposite end; what are you feeling at that point?

21 A I have a heightened sense of awareness because I see him on the
22 other side so apparently there's something going on. So, I'm paying attention to
23 what's going on down there and waiting on my daughter to get out.

24 Q How many -- tell the jury -- how many people are caught up, milling
25 about in this parking lot?

1 A About 15 or 20.

2 Q Okay. Now they're all congregated the church --

3 A No; they're walking from their cars. Some of them are gathered around
4 the door. I mean, of course there's something going on so everybody is kind of
5 watching and on looking.

6 Q So, you're feeling a little bit concerned. So, what do you decide to do
7 with you and your daughter at that point?

8 A I tell her to hurry up and get out the car. So, at that time I'm looking
9 down towards the car with the gentleman and Dwayne and Dwayne is basically
10 talking to him saying, man, we can't help you here. Could you please leave. We
11 can't help you here. And so by that time my daughter is getting out, the man has
12 gotten in to his car. As I am midway across the parking lot, I see him pull out of his
13 parking space and he pulled out and slowing started to approach the church.

14 Q All right. I want to stop you there. I want to take a couple steps back
15 for a second; okay? So, where do you and your daughter walk from. You walk --
16 you say, hurry up, let's go. Are you going to someplace in particular?

17 A We are walking towards the doors of the church.

18 Q Okay. Is that the double doors of the church?

19 A Yes, the double doors of the church.

20 Q Would that be these double doors kind of located about here?

21 A Yes, sir.

22 Q All right. So, when you are looking back are you still only looking at him
23 when your by your car or are you also kind of looking back as you're walking
24 towards the front entrance of the church?

25 A I'm looking back towards his car as he's driving as I'm walking towards

1 the doors of the church.

2 Q Now you mentioned to the jury that they were also kind of saying things
3 like, you know, hey, we can't help you, something along those lines?

4 A Uh-hm.

5 Q What was the Defendant's demeanor at that time? Could you tell if he
6 was happy, sad, what are we talking about here?

7 A He was kind of agitated.

8 Q Okay. Now you couldn't hear anything he says at this point?

9 A No; I cannot hear anything he says.

10 Q But from what you can tell he seems agitated to you at this point?

11 A Yes.

12 Q Now you mentioned he got into his car and he started to back out.
13 Describe to the jury how he backs out of this parking space?

14 A He backs out slowly.

15 Q And when you see him back out slowly, I think you said he even started
16 driving a little bit forward; is that right?

17 A Yes, he did. I mean, there's people in the parking lot so of course
18 normally you take caution with driving out of the parking space and you drive slowly
19 because there's people walking across the street and that type of thing.

20 Q So, you mentioned you were concerned at first when you see him for
21 the second time on the other side of the church?

22 A Yes.

23 Q Now when you see him backing out and slowing driving out, are your
24 feelings the same or are they different?

25 A No; I was kind of at ease because he's in his car now and so he's

1 getting ready to leave so I'm kind of like, okay, well that's resolved. Let's get ready
2 for church.

3 Q So, at some point you're feeling a little bit like your -- you're letting your
4 guard down a little bit because you think things are kind of done with?

5 A Yes, sir.

6 MR. POSIN: Objection; leading.

7 THE COURT: Sustained.

8 BY MR. HAMNER:

9 Q So, was your guard still up or was it down at this point?

10 A It was down. I mean, I wasn't really concerned about it because he
11 was, you know, he pulled out of his parking space and he was getting ready to leave
12 the parking lot so --

13 Q Now as he's driving forward, where are you located in this parking lot?

14 A I am midstream which that white line is that could you see in the middle
15 of the parking lot I am right there as he pulled out of his parking lot and starts to
16 drive forward.

17 Q So, on the white line somewhere between where you were parked and
18 the front entrance of the church?

19 A Yes, sir.

20 Q Okay. Do you ever ultimately get to the front entrance of the church?

21 A Yes, sir.

22 Q Where is the Defendant -- and by the way what kind of car is he driving;
23 do you remember?

24 A He's driving -- he was driving a Cadillac?

25 Q Do you remember what color?

1 A A crème color Cadillac.

2 Q So, where are you -- you ultimately get to the front entrance of the
3 church, I think you said; right?

4 A Yes, sir.

5 Q Where is the Defendant in his car at this point in time?

6 A He's probably -- I don't know how to explain it to you. You know where
7 you see the A in the --

8 Q Sure.

9 A -- in the building.

10 Q Yeah.

11 A If you draw a line --

12 Q Out towards the street?

13 A Yes; out towards -- a little bit further back -- right there. He's probably
14 right there.

15 Q So, by the time you get to the front entrance of the church that's about
16 where he's located?

17 A Uh-hm.

18 Q All right. So, now you're at the front entrance of the church. You still
19 got your daughter with you at this point?

20 A Uh-hm; yes, sir.

21 Q Tell me what happens when you reach the front entrance of the
22 church?

23 A When I reach the front entrance of the church, I heard a revving of an
24 engine -- of an engine and as I'm walking through the doors of the church I look
25 back and I see his car and his wheels turning towards the doors of the church at an

1 accelerated speed.

2 Q So, you hear -- you actually see the wheels turning?

3 A Yes, sir.

4 Q So, are you inside the church or are you kind of at the entrance?

5 A I am at the entrance.

6 Q How many people are standing outside kind of on that sidewalk area
7 near the cement just outside the front entrance of the church?

8 A At the time about probably like 10 to 15. They are a lot of people
9 walking in midstream to the doors of the church at the time.

10 Q As you were walking into the church, were both the doors open or
11 closed?

12 A No; one door was open. The right side door was open.

13 Q Okay. And, Ms. Adams, could you see how many people were just on
14 the inside foyer here?

15 A Yes; there were about 10 people -- 10 to 12 people in the foyer.

16 Q So, you mentioned you saw this car and you said you heard the revving
17 of the engine and you saw the wheels turning?

18 A Uh-hm.

19 Q Could you actually see the Defendant at this point?

20 A Yes.

21 Q How could you see him?

22 A Because whenever I'm looking back, I can see the windshield and I can
23 see him in the car. I can see his hands on the wheel.

24 Q So, you could see the Defendant's hands on the wheel through the front
25 windshield of that car?

1 A Yes.

2 Q What is he doing at that point with his hands?

3 A Turning his wheel.

4 Q He's turning his wheel?

5 A Yes.

6 Q Is he slumped over asleep in his car?

7 A No.

8 Q Not passed out or something in the car?

9 A No, sir.

10 Q Are his eyes open?

11 A Yes.

12 Q Where's he looking?

13 A He's looking towards the front entrance of the church.

14 Q Okay. When you see him turning this wheel and accelerating and

15 driving towards you and the church, what do you do at this point?

16 A I started screaming and telling people to move out of the way, get out

17 the way.

18 Q Do you do anything more than just scream?

19 A No; my daughter was in front of me and there was another child in front

20 of me so I'm trying to push people out the way.

21 Q What's the scene like at that point in time?

22 A At that time it was a little bit chaotic --

23 Q Okay.

24 A -- because people outside were screaming too so --

25 Q Now, Ms. Adams, as this car's coming towards you, do you hear the

1 brakes being applied?

2 A No, sir.

3 Q Do you only hear the engine revving?

4 A Yes, sir.

5 Q Do you hear any noise coming from the tires?

6 A There was a screeching noise coming from the tires. When you're
7 driving and you're going fast and you're turning, the screeching noise where the tires
8 are skidding across the pavement would be the noise that I would be talking about,
9 like urrrh so --

10 Q Okay. Ms. Adams, at any point before this car starts -- I guess reaches
11 the church, do you hear the brakes slam down?

12 A No, sir.

13 Q Do you see the car slow down?

14 A No, sir.

15 Q Do you ever hear him toot or honk the horn?

16 A No, sir.

17 Q Do you ever hear him yell out, you know, get out of the way, something
18 along those lines?

19 A No, sir.

20 Q So, tell the jury what happened. You're telling people get of the way;
21 what happens next?

22 A The car hits the building and there's a scrunching noise and I assume
23 that that was the car being stopped by the doors of the building.

24 Q Now I want to show you what's been admitted as State's 12. Do you
25 kind of recognize what we're looking at here?

1 A Yes, sir.

2 Q What is that?

3 A That is the gentleman's car in the doors of the church.

4 Q Is that a fair and accurate depiction of what it looked like when it came
5 through that church?

6 A Yes, sir.

7 Q Now if you could, tell the jury where are you standing at the time you
8 first see the Defendant turning his wheel and accelerating towards the church?

9 A I am standing in the doorway.

10 Q Okay. Are you standing behind the closed door or in that open
11 doorway?

12 A I am in the open doorway.

13 Q So, you're kind of -- would that be an accurate -- you're kind of standing
14 right here at this entrance here?

15 A Yes, sir.

16 Q When the car comes through, how close does the car -- does the car hit
17 you?

18 A No, sir.

19 Q You managed to get out of the way?

20 A Yes, sir.

21 Q How close does the car come -- when it finally rests, where are you,
22 how far away are you from this car?

23 A Less than a foot.

24 Q So, could you tell us -- where are you kind of in this picture? I know it's
25 kind of -- there's no marking. Why don't you show me in this photo? Why don't you

1 point on here?

2 A I would be right here.

3 Q Okay. Right here?

4 A Yes, sir.

5 Q So, take a look on the monitor. You said you were right here?

6 A Yes, sir.

7 Q That's an accurate reflection as to where you were when that car came
8 to rest?

9 A Yes, sir.

10 Q Describe the scene inside that church once that car stops coming
11 forward?

12 A There's a lot of people yelling and most of the people had moved out of
13 the way at that time. Once I had realized what was going on, I turned around to look
14 for my daughter and I dropped to my knees and there was a shoe lodged in between
15 the door and the car and I started screaming for my daughter.

16 Q Did you know where your daughter was at that point?

17 A No.

18 Q How old was she?

19 A She was -- I think she was five at that time.

20 Q So, what did you think when you saw the shoe?

21 A That she may have been lodged underneath the car because she was
22 right next to me.

23 Q Did you ever find your daughter?

24 A I did.

25 Q Okay. Where was she?

1 A She was in the church.

2 Q Was she hurt?

3 A No, sir.

4 Q Okay. Did anyone try to help you at that point when you were yelling
5 out?

6 A Yes; people were looking underneath the car screaming trying to see if
7 there was child lodged underneath the car.

8 MR. HAMNER: Court's indulgence.

9 BY MR. HAMNER:

10 Q A couple other quick questions. When you saw this car coming at you,
11 were you afraid at this point?

12 A Yes, sir.

13 Q What were you afraid of?

14 A That it was going to hit me or my child.

15 Q And you hadn't moved out of that front entrance, do you believe that
16 you would have been hit?

17 A Yes, sir.

18 Q Now you mentioned somebody named Dwayne. Do you know
19 somebody by the name of Allen Burse?

20 A Yes, sir.

21 Q Okay. Was he one of these individuals who was kind of out there?

22 A Yes, sir.

23 Q Outside in the parking lot. Okay. And what county did all this happen
24 in?

25 A In Clark County.

1 MR. HAMNER: All right. Thank you. No further questions at this time.
2 THE COURT: Cross.
3 MR. POSIN: No cross, Your Honor.
4 THE COURT: Thank you. May this witness be excused?
5 MR. HAMNER: Yes, Your Honor.
6 THE COURT: Thank you very much for your testimony.
7 THE WITNESS: Thank you, Your Honor.
8 THE COURT: Do you have any further witnesses?
9 MR. HAMNER: No, Your Honor. At this time if we could just check to see
10 before we rest. I just want to make sure. I think all the exhibits have been admitted.
11 They have. At this time, the State rests.
12 **[The State rests]**
13 THE COURT: Does the defense wish to present?
14 MR. POSIN: Defense rests, Your Honor.
15 **[The Defense rests]**
16 THE COURT: Thank you. All right. Ladies and gentlemen, the State has
17 rested its case and the defense has rested this case. So, I'm going to now instruct
18 you on the law as it applies to the case. I'll like to instruct you just orally without
19 reading to you, but these instructions with are typewritten are very important. Each
20 and every word is important and they are carefully constructed to comport with the
21 law. So, I'm going to be reading these to you, but you don't need to worry that you
22 need to take notes because you're going to have these written instructions with you
23 in the jury room to read. So, best just to listen now and then you can read them
24 more closely when you get into the jury room to deliberate.
25 **[The Court reads the Instructions to the jury -- not transcribed]**

1 [State's Closing Argument -- not transcribed]

2 [Defense Closing Argument -- not transcribed]

3 [State's Rebuttal -- not transcribed]

4 [The Clerk swore in the officers to take charge of the jurors]

5 [The jury retires to deliberate 12:30 p.m.]

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

8 MR. HAMNER: No, Your Honor.

9 MR. POSIN: I just am curious. Assuming they're still deliberating this
10 afternoon, would you come back tomorrow or we could come back Monday?

11 THE COURT: Well we're not coming back Saturday.

12 MR. POSIN: Okay.

13 THE COURT: No; because that would require lots of overtime which we can't
14 afford here. So, we would bring you back Monday. But it's only 12:30. I did ask
15 them to order lunch. When we call you come back to the third floor courtroom
16 instead of up here. All right. Thank you. We're off the record.

17
18 [Jury Trial, Day 4, concludes at 12:31 p.m.]
19
20

21 ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.

23 
24 PATRICIA SLATTERY
25 Court Transcriber