

MOT

Michael D. Pariente
The Pariente Law Firm, P.C.
3960 Howard Hughes Parkway
Suite 615
Las Vegas, NV 89169
(702) 966-5310
Attorney for Petitioner

Electronically Filed
Aug 09 2017 08:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF NEVADA

STATE OF NEVADA

CHRISTOPHER ANDERSEN,
Petitioner,

vs.

THE HONORABLE ROB BARE,
EIGHTH JUDICIAL DISTRICT
COURT JUDGE,
Respondent,

CITY OF LAS VEGAS,
Real Party in Interest.

NEV. SUPREME CT. CASE
NO. _____

NEV. CT. OF APP. CASE
NO. _____

DIST. CASE NO. C-16-
319933-A

DIST. CT. DEPT. 32

MUNICIPAL CT. CASE
NO. C11135328A/B

MUNICIPAL CT. DEPT. 1

PETITION FOR WRIT OF HABEAS CORPUS OR
ALTERNATIVELY PETITION FOR WRIT OF MANDAMUS

COMES NOW Defendant, CHRISTOPHER ANDERSEN, by and
through his attorney of record, MICHAEL D. PARIENTE, and petitions this
Honorable Court to grant his petition for a writ of habeas corpus or

1
2 alternatively writ of mandamus to order the Honorable Rob Bare, District
3 Court Judge, Department 32 to order the Honorable Cynthia Leung,
4 Municipal Court Judge No. 1 to reverse his conviction and grant him the
5 right to trial by jury.
6

7 DATED this 8th day of August, 2017.

8 Respectfully submitted,
9

10 */s/ Michael D. Pariente*
11

12 _____
13 MICHAEL D. PARIENTE, ESQ.

14 Nevada Bar No. 9469

15 3960 Howard Hughes Parkway

16 Suite 615

17 Las Vegas, Nevada 89169

18 Attorney for Petitioner
19
20
21
22
23
24
25
26
27
28

ROUTING STATEMENT

Mr. Andersen agrees with the presumption that his appeal should first be heard before the Nevada Court of Appeals.

MEMORANDUM OF POINTS AND AUTHORITIES

Mr. Christopher Andersen files this petition for writ of mandamus alleging that the Honorable Cynthia Leung violated her ministerial duty by not granting Mr. Andersen a jury trial. He also alleges the Honorable Rob Bare erred in not granting his Appeal which was denied by written order on July 20, 2017.

Mr. Andersen moves to vacate his criminal conviction for Misdemeanor Battery Constituting Domestic Violence (NRS 200.485). Mr. Andersen, a father, business owner, and entrepreneur here in Las Vegas, requests this Honorable Court grant his appeal to set aside the judgment of conviction entered on December 6, 2016 because the Las Vegas Municipal Court denied him his request for a jury trial. On December 6, 2016, Mr. Andersen entered a conditional guilty plea reserving the right to appeal this issue of the denial of his right to a jury trial. He argues the loss of fundamental rights due to a conviction for domestic violence is a “serious offense” entitling a defendant a right to a jury trial. He distinguishes his

case from *Amezcuca v. Eight Judicial District Court*, 319 P.3d 602 (Nev. 2014) due to the fact that NRS 202.360 has been amended subsequent to *Amezcuca*, to make him a felon punishable up to 6 years in Nevada prison if he is caught possessing a firearm and has a conviction for domestic violence.¹ In 2015, the Nevada Legislature amended NRS 202.360 to

1 NRS 202.360 Ownership or possession of firearm by certain persons prohibited; penalties.

1. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a) (33);

(b) Has been convicted of a felony in this State or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms;

(c) Is a fugitive from justice;

(d) Is an unlawful user of, or addicted to, any controlled substance; or

(e) Is otherwise prohibited by federal law from having a firearm in his or her possession or under his or her custody or control.

A person who violates the provisions of this subsection is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

2. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been adjudicated as mentally ill or has been committed to any mental health facility by a court of this State, any other state or the United States;

(b) Has entered a plea of guilty but mentally ill in a court of this State, any other state or the United States;

deprive Nevadans of their Second Amendment Right to Bear Firearms if convicted in Nevada of domestic violence.

The lower courts erred in denying Mr. Andersen a jury trial consistent with his procedural due process rights:

[O]nce it is determined that the Due Process Clause applies, ‘the question remains what process is due.’ [Citation.]” (*Loudermill*, supra, 470 U.S. at p. 541.) “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” (*Morrissey v. Brewer* (1972) 408 U.S. 471, 481 [33 L. Ed. 2d 484, 92 S. Ct. 2593].) “[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335 [47 L. Ed. 2d 18, 96 S. Ct. 893].) *Cook v. City of Buena Park*, 126 Cal. App. 4th 1, 6 (Cal. App. 4th Dist. 2005).

(c) Has been found guilty but mentally ill in a court of this State, any other state or the United States;

(d) Has been acquitted by reason of insanity in a court of this State, any other state or the United States; or

(e) Is illegally or unlawfully in the United States.

A person who violates the provisions of this subsection is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. As used in this section:

(a) “Controlled substance” has the meaning ascribed to it in 21 U.S.C. § 802(6).

(b) “Firearm” includes any firearm that is loaded or unloaded and operable or inoperable.

Applying the first prong of the *Matthews* test to Mr. Andersen's case, the private interest that will be affected is his Second Amendment right to bear arms. The second prong is the risk of an erroneous deprivation of his Second Amendment right caused by a conviction for domestic violence. Third, the additional protection of a six-person jury trial to hold the City to its burden of proving its case beyond a reasonable doubt would help eliminate the risk that Mr. Andersen does not face an erroneous deprivation of his Second Amendment right because the City must prove its case beyond a reasonable doubt to six people sitting in a jury, instead of one Municipal Court Judge. Finally, the City's interest in fiscal and administrative burdens would be proportionately no greater than those incurred by the overwhelming majority of states that provide jury trials for misdemeanors.

The loss of the right to possess a firearm makes a conviction for battery constituting domestic violence a serious offense. The Court held that the right to possess a firearm for self-defense is a fundamental right and cannot be abridged by the State. Specifically, the Court in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) held that the Second Amendment is a fundamental right that is fully applicable to the States through the Fourteenth Amendment. *McDonald* further holds:

Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is "the central component" of the Second Amendment right. 554 U.S., at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 662; see also *id.*, at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 679 (stating that the "inherent right of self-defense has been central to the Second Amendment right"). Explaining that "the need for defense of self, family, and property is most acute" in the home, *ibid.*, we found that this right applies to handguns because they are "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," *id.*, at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 679 (some internal quotation marks omitted); see also *id.*, at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 679 (noting that handguns are "overwhelmingly chosen by American society for [the] lawful purpose" of self-defense); *id.*, at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 680 ("[T]he American people have considered the handgun to be the quintessential self-defense weapon"). Thus, we concluded, citizens must be permitted "to use [handguns] for the core lawful purpose of self-defense." *Id.*, at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 680. *McDonald v. Chicago*, 130 S. Ct. 3020 (U.S. 2010).

Other courts have recognized the right to a jury trial in cases where a defendant faces a lifetime prohibition of possession of a firearm as a consequence of a misdemeanor assault conviction not punishable by more than six months:

In the present case the question is whether the lifetime prohibition of possession of a firearm in addition to 6 months imprisonment makes the offense serious under *Blanton* and therefore entitles Defendant to a jury trial. Citing *USA v. Chavez*, 204 F.3d 1305 (11th Cir. 2000), the Government argues that the lifetime prohibition on firearm possession does not make the penalty serious. The undersigned is unpersuaded by the court's reasoning in *Chavez* and concludes that the penalty is serious. In *Chavez*, the court focused on the fact that in 18 U.S.C. § 921 (a)(33)(B)(i)(II) Congress recognized that some domestic

violence offenses do not carry the right to a jury trial even though a conviction results in the prohibition of firearm possession. However, the issue is not whether Congress recognized a right to a jury trial for domestic violence offenses. The issue is whether the *penalty* Congress attached to the offense was serious enough to entitle the Defendant to a jury trial under the 6th Amendment. Having examined that issue, the Court finds that a lifetime prohibition on the possession of a firearm is a serious penalty which entitles a Defendant to a jury trial under the 6th Amendment. Possession of a firearm for military purposes, self protection and sport has been an important aspect of American life throughout our history. Today, the issue of Governmental restriction of firearm possession is hotly debated. Substantial segments of American society hold strong opinions on the issue. Many advocate strict government restrictions on the ability to possess firearms while many others take the opposite view and consider firearms possession to be an integral part of their lives. In this context, the issue is very serious. Moreover, the categories of persons prohibited from possessing firearms under 18 U.S.C. § 922(g) and the penalties imposed under 18 U.S.C. § 924 for violating the prohibition (10 years) *demonstrate that Congress views the prohibition as serious. The Court finds that a lifetime prohibition on the possession of a firearm is a serious penalty and, when combined with 6 months imprisonment, entitles a Defendant to the common-sense judgment of a jury.* Defendant's Motion for a Jury Trial is GRANTED. *United States v. Smith*, 151 F. Supp. 2d 1316, 1317-1318 (N.D. Okla. 2001). (italics added)

The *Smith* case, *supra*, is right on point. The fact that the Nevada Legislature has barred persons from owning or possessing firearms, even for self-defense for the rest of their lives, and subjects them to felony prosecution punishable up to 6 years if such persons are convicted of domestic violence, demonstrates that the Legislature “views the prohibition as serious.” The Legislature chose to amend NRS 202.360 in 2015 to treat

persons convicted of domestic violence the same as felons, mentally ill persons, and drug addicts by lumping them in with the category of people who cannot own or possess a firearm even for self-defense demonstrates a clear intent of the Legislature that it believes Domestic Violence is a serious crime. Thus, this Court should find the Legislature’s lifetime ban *and* felony prosecution for possessing a firearm, when combined with 6 months imprisonment “entitles a Defendant to the common-sense judgment of a jury.”

In this case, Mr. Andersen has provided notice under NRS 175.011 demanding his right to trial by jury. If Mr. Andersen’s appeal is denied and he is convicted of Battery Constituting Domestic Violence in violation of NRS 200.481, NRS 200.485, and NRS 33.018, he faces the loss of his right to possess a firearm even for self-defense, up to 6 years in prison if he is caught owning or possessing a firearm under NRS 202.360(2), despite the fact that the Court in *McDonald v. City of Chicago, supra*, held that the Second Amendment right to bear arms is a fundamental right incorporated through the Fourteenth Amendment to the States.

The fact that a defendant stands to lose his Second Amendment right and face felony prosecution under NRS 202.360(2) upon conviction of

misdemeanor battery constituting domestic violence makes this criminal offense anything but “petty”. Because a defendant’s Second Amendment right is at stake in a criminal complaint of Battery Constituting Domestic Violence and because he or she faces subsequent felony prosecution under NRS 202.360(2) if caught owning or possessing a firearm even for self-defense, Mr. Andersen should have been afforded a jury trial per his demand.

CONCLUSION

This Honorable Court should grant Mr. Andersen’s petition for writ of habeas corpus or alternatively writ of mandamus, reverse the conviction, and remand this case to the Las Vegas Municipal Court Department No. 1 for a jury trial.

Respectfully submitted,

THE PARIENTE LAW FIRM, P.C.

/s/ Michael D. Pariente

MICHAEL D. PARIENTE, ESQ.

Nevada Bar No.: 009469

3960 Howard Hughes Parkway

Suite 615

Las Vegas, Nevada 89169

Attorney for Petitioner

VERIFICATION

STATE OF NEVADA)

)ss:

COUNTY OF CLARK)

CHRISTOPHER ANDERSEN, being first duly sworn, deposes and states as follows:

That I am the Petitioner in the above-entitled action; that I have read the foregoing Petition for Writ of Mandamus or Alternatively Petition for Writ of Habeas Corpus and know the contents thereof, that the same is true of my own knowledge, except for those matters therein contained stated on information and belief, and as to those matters, I believe them to be true.

DATED this 7 day of August, 2017.



CHRISTOPHER ANDERSEN

SUBSCRIBED and SWORN to before me
this 7 day of August, 2017.

NOTARY PUBLIC in and for said
Clark County and State of Nevada



DECLARATION OF COUNSEL

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, MICHAEL D. PARIENTE, ESQ., being first duly sworn according to
law, upon oath, deposes and says:

1. Your declarant is an Attorney at Law duly licensed to practice in all
courts in the State of Nevada;
 2. Your declarant is the Attorney of record for the Defendant herein;
- FURTHER YOUR DECLARANT SAYETH NAUGHT.



MICHAEL D. PARIENTE, ESQ.

CERTIFICATE OF COMPLIANCE

I, Michael D. Pariente, Esquire, hereby certify that this petition for review by the Supreme Court pursuant to rule 40B complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: It has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14 and Times New Roman font. I further certify that this motion for rehearing complies with the page or type volume limitations of NRAP 40 or 40B because it is: monospaced, has 14 or fewer characters per inch and contains 2,792 words or 344 lines of text; or does not exceed 10 pages.

DATED this 8th day of August, 2017.



Michael D. Pariente, Esquire

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A-1
Transcripts

1
2
3
4 **MUNICIPAL COURT**
5 **LAS VEGAS, NEVADA**
6

7 THE CITY OF LAS VEGAS) CASE NO. C1135328A/B
8)
9 Plaintiff,) DEPT. 1
10)
11 vs.)
12)
13 CHRISTOPHER LEE ANDERSEN)
14)
15 Defendant.)
16 _____)

17
18
19 BEFORE THE HONORABLE CYNTHIA LEUNG,
20 MUNICIPAL COURT JUDGE

21 TRANSCRIPT RE: MOTION

22 OCTOBER 19, 2016
23
24

APPEARANCES:

25 The Plaintiff: THE CITY OF LAS VEGAS
26 For the Plaintiff: MATTHEW WALKER, ESQ.
27 200 Lewis Avenue
28 Las Vegas, Nevada 89101
29
30 The Defendant: CHRISTOPHER LEE ANDERSEN
31 For the Defendant: MICHAEL D. PARIENTE, ESQ.
32 3960 Howard Hughes Pkwy.
33 Las Vegas, Nevada 89169
34

P R O C E E D I N G S

(THE PROCEEDINGS BEGAN AT 09:36:18)

THE COURT: All right. We're back on record.

Good morning.

This is the matter of Christopher Lee Andersen,
BATTERY/DOMESTIC VIOLENCE, C1135328A, and, Count B, SIMPLE
BATTERY.

Mr. Pariente.

MR. PARIENTE: Yes, Your Honor. Good morning.

THE COURT: All right.

Trial's still set for December 6th. Today is the
day we had set for your motion.

Is there anything else that you -- your motion --
did you get a copy of the opposition?

MR. PARIENTE: I did, Your Honor. We didn't do a
reply. Basically, our position is that Amesqua doesn't
control because NRS 202.360 was amended to prohibit people
who've been convicted of domestic violence of -- for -- to --
actually, it's a felony if they're caught possessing a
firearm if they've been convicted of domestic violence. So
that, therefore, it is no longer a petit offense of dome --
that makes domestic violence a serious offense.

Other than that, we'll submit on the briefs.

1 THE COURT: Okay.

2 Doesn't -- City, doesn't Amesqua -- isn't --
3 doesn't that stand for the proposition that that is a
4 collateral consequence?

5 MR. WALKER: I believe so, Your Honor.

6 THE COURT: Okay.

7 And your position is that's not --

8 MR. PARIENTE: Right. There's --

9 THE COURT: -- (indiscernible) interpret that?

10 MR. PARIENTE: -- there's language in Stanton --
11 the -- I'm sorry, the Blanton case, the Supreme Court case
12 where they talked about how the statutes cannot be written to
13 pack below the line, which means they can't add too many
14 things with a -- well, we're keeping it at six months but
15 require all these other things, and it can make it serious.

16 For instance, in Arizona, there is a statute that
17 -- it's a maximum of six months, it's a misdemeanor -- but if
18 the person is convicted of and it's a sexual offense and they
19 have to register as a sex offender, that Court there said
20 that that -- even though there's a six-month maximum, that
21 makes it a serious offense.

22 THE COURT: Um-hmm (in the affirmative).

23 MR. PARIENTE: So there are other cases I've cited.

24 THE COURT: Yeah. Okay.

1 All right. City, anything else that you want to
2 add?

3 MR. WALKER: No, Your Honor. I think we'll submit
4 it on our opposition.

5 THE COURT: Okay.

6 You know, I think that This Court has been pretty
7 consistent in denying that request. I think that the
8 direction that I need to follow is the Supreme Court, United
9 State Supreme Court as well. And I think that those cases,
10 City's indicated, give me clear direction that this is
11 considered a petit offense. So I am going -- you know, I am
12 going to be consistent with the rest of my rulings.

13 I'm not sure what you're doing, though, with what
14 happens with these rulings.

15 Are you -- do you have another case that you're
16 taking up, are you going forward --

17 MR. PARIENTE: No.

18 THE COURT: -- (indiscernible)?

19 MR. PARIENTE: My client's actually authorized me
20 to take this one up to the U.S. Supreme Court, so that's what
21 we're actually prepared to do. We did that with the Amesqua
22 case.

23 THE COURT: Right.

24 MR. PARIENTE: And, actually, the State was ordered

1 to do a response by the --

2 THE COURT: Okay.

3 MR. PARIENTE: -- U.S. Supreme Court, which is
4 unprecedented. We've taken it up about five times to the
5 U.S. Supreme Court. We are going to take it up on this one,
6 too.

7 THE COURT: Okay.

8 Is there anything else in the record that you think
9 your record should reflect or you're fine with your briefs --

10 MR. PARIENTE: I'm fine --

11 THE COURT: -- (indiscernible) your experience --

12 MR. PARIENTE: -- with --

13 THE COURT: Okay.

14 MR. PARIENTE: -- what you've done.

15 MR. WALKER: We're fine, Your Honor, as well.

16 THE COURT: All right.

17 MR. PARIENTE: All right. Thank you, Judge.

18 THE COURT: Okay.

19 MR. PARIENTE: Appreciate it. Okay.

20 THE COURT: We'll see you December 6th.

21 MR. PARIENTE: Sounds good. Thank Your Honor.

22 THE COURT: All right.

23 (PROCEEDINGS CONCLUDED AT 09:39:32)

24 * * * * *

1 ATTEST: I do hereby certify that I have truly and
2 correctly transcribed the video proceedings in the above-
3 entitled case to the best of my ability.

4 /s/CHARLENE BARRA
5 TRANSCRIPTIONIST
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1
2
3
4 **MUNICIPAL COURT**
5 **LAS VEGAS, NEVADA**
6

7 THE CITY OF LAS VEGAS) CASE NO. C1135328A
8 Plaintiff,) DEPT. 1
9 vs.)
10 CHRISTOPHER ANDERSEN,)
11 Defendant.)
12 _____)

13
14 BEFORE THE HONORABLE CYNTHIA LEUNG,
15 MUNICIPAL COURT JUDGE

16 TRANSCRIPT RE: PLEA NEGOTIATION

17 DECEMBER 6, 2016
18

19 APPEARANCES:

20 The Plaintiff:

21 For the Plaintiff:

THE CITY OF LAS VEGAS

MATTHEW WALKER, ESQ.

200 Lewis Avenue

Las Vegas, Nevada 89101

22 The Defendant:

23 For the Defendant:

CHRISTOPHER ANDERSEN

MICHAEL PARIENTE, ESQ.

Pariente Law Firm PC

3960 Howard Hughes Parkway #615

Las Vegas, Nevada 89169
24

2
3 P R O C E E D I N G S

4 (PROCEEDINGS BEGAN AT 09:53:06)

5 THE COURT: Okay. This is the matter of Christopher
6 Anderson. This is a BATTERY/DOMESTIC VIOLENCE, C1135328A,
7 Count B is a SIMPLE BATTERY.

8 Good morning, Mr. Pariente.

9 MR. PARIENTE: Good morning, Your Honor.

10 Your Honor, Michael Pariente in to for Mr. Anderson.

11 Your Honor, this is negotiated.

12 THE COURT: Okay.

13 MR. PARIENTE: It's a little complicated so I'll
14 explain it all.

15 THE COURT: Okay.

16 MR. PARIENTE: And I'll call on Matt to assist if
17 there's any ambiguity.

18 Basically what we're doing is we're going to enter a
19 plea to the DOMESTIC VIOLENCE Count. The SIMPLE BATTERY Count
20 will be dismissed.

21 Now, what we have agreed is that we are going to be
22 allowed to stay the proceedings. We're going to file a Notice
23 of Appeal today. During this time we're going to appeal this
24 case to the District Court on the jury trial issue that we

1 raised which was denied before.

2 THE COURT: Okay.

3 MR. PARIENTE: If it's denied there, we will appeal
4 it to the Nevada Appeals Court. If it's denied at that level,
5 go to the Nevada Supreme Court Level. If it's denied there,
6 then we will petition the U.S. Supreme Court to hear this
7 issue.

8 If we do achieve relief along that way, then, of
9 course, the guilty-plea conviction, which would be stayed, of
10 course, would be set aside and we would obviously have the
11 right to a jury trial.

12 If we are not successful, then the conviction would
13 be imposed at that point and the requirements would --

14 THE COURT: Okay.

15 MR. PARIENTE: -- would kick in.

16 THE COURT: Sir, you're in agreement to plead to the
17 charge and then stay the imposition of the sentence while you
18 file a Writ, is that what you're filing?

19 MR. PARIENTE: Well, it's actually going to be an
20 appeal. So we're going to be appealing the conviction because
21 we weren't allowed a jury trial. So it's -- we're going to be
22 appealing it to the District Court.

23 THE COURT: Okay.

24 City, was that your understanding as well?

1 MR. WALKER: It is, Your Honor. I think
2 procedurally the conviction would have to enter in order for
3 it to be a final judgment --

4 THE COURT: Uh-huh.

5 MR. WALKER: -- to qualify for appeal.

6 But it's our understanding The Court would stay the
7 sentencing. We wouldn't ask for The Court to --

8 THE COURT: Impose the sentencing?

9 MR. WALKER: -- pursue the sentencing at this -- and
10 I think you would have to -- the sentence would have to be
11 imposed, but stay the execution of the sentence for Mr.
12 Anderson to pursue his appellate remedy and higher court
13 remedies thereafter.

14 And it is my understanding they are going to file
15 the Notice of Appeal today.

16 THE COURT: Okay.

17 MR. WALKER: So we'd have no objection to staying
18 that.

19 As Mr. Pariente indicated, he did advise that they
20 would be proceeding through all levels of potential remedy.
21 And we would have no objection to continuing the stay of the
22 sentencing pending the outcome of that pursuit, with a proviso
23 that all filings and timely prosecution of those remedies be
24 fulfilled by Mr. Andersen.

1 Simply put, Judge, if it appears that there's some
2 delay in pursuing those remedies, we'd be asking The Court to
3 revisit enforcing the sentence.

4 THE COURT: Okay.

5 MR. PARIENTE: And obviously we will timely file
6 what we need to.

7 THE COURT: Okay.

8 MR. PARIENTE: All right.

9 THE COURT: All right. Sounds like everyone's in
10 agreement with respect to procedurally how we're going to go
11 forward on it. Okay.

12 MR. PARIENTE: As far as the requirements, Judge,
13 I'll let the State -- excuse me -- I'll let the City --

14 THE COURT: Oh, sure.

15 MR. PARIENTE: -- put theirs on the record.

16 THE COURT: Okay.

17 So what was the proposed resolution for sentence?

18 MR. WALKER: In regards to the A Count, the count
19 that they're pleading on, it'd be one eighty suspended for one
20 year with a broad stay-out-of-trouble, and City's minimums for
21 a first offense, the Level One Counseling, four sixty fine,
22 forty-eight hours community service, two days credit to cover
23 for the two-day jail requirement.

24 THE COURT: Okay.

1 All right. Mr. Anderson, do you understand the
2 resolution and then procedurally how the case is going to move
3 forward?

4 THE DEFENDANT: I do.

5 THE COURT: Okay. Is anybody forcing you to do this
6 plea today?

7 THE DEFENDANT: No.

8 THE COURT: Do you understand you have the right to
9 go to trial if that's what you wanted to do?

10 THE DEFENDANT: Yeah.

11 THE COURT: Okay.

12 This document (holding for view) is the waiver form
13 on a BATTERY/DOMESTIC VIOLENCE charge. Did you go over this
14 with Mr. Pariente?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: Did he answer any questions that you
17 had?

18 THE DEFENDANT: (Indiscernible.)

19 THE COURT: Okay. So you understand that when you
20 plead guilty or no contest, you will have a misdemeanor
21 conviction for BATTERY/DOMESTIC VIOLENCE?

22 THE DEFENDANT: Um-hmm (in the affirmative).

23 THE COURT: Do you understand that?

24 THE DEFENDANT: (No audible response.)

1 THE COURT: Okay. Do you also understand this case
2 could be used against you in the future to make penalties
3 harsher if you were convicted of a second or third
4 BATTERY/DOMESTIC VIOLENCE charge?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Tell me how you plead, Sir.

7 THE DEFENDANT: No contest.

8 THE COURT: All right. You're stipulating to a
9 factual basis?

10 MR. PARIENTE: Yes, Your Honor.

11 THE COURT: I will accept your no-contest plea and
12 I'm going to follow the resolution.

13 There's a hundred and eighty days of jail but it is
14 suspended for a period of one year. What that means is the
15 case would stay open for a year while you stay out of trouble,
16 which means you can't pick up any new cases.

17 The requirements are by statute. Level I
18 Counseling, a four hundred and sixty dollar fine, and forty-
19 eight hours of community service.

20 You do have two days credit, so that will satisfy
21 the jail requirement.

22 At the end of one year, case will be closed out as
23 long as you had completed these requirements. But if you
24 didn't, do you understand you could face the hundred and

1 eighty days in jail?

2 THE DEFENDANT: (No audible response.)

3 THE COURT: Okay. Now based upon the conversation
4 and the representations from your attorney and the prosecutor,
5 I will stay the imposition or execution of the sentence with
6 the understanding that Mr. Pariente and yourself are going to
7 move forward filing an appeal with respect to the jury trial
8 issue.

9 All right. So let me just make sure that my Orders
10 are clear.

11 And once you file the appeal, for all intents and
12 purposes will take this case out of my jurisdiction. So do
13 you just want kind of a status check here as a place marker or
14 do you --

15 MR. PARIENTE: I always --

16 THE COURT: -- want to just take it off calendar or?

17 MR. PARIENTE: We could just take it off calendar.

18 I think that'd be the easier thing.

19 THE COURT: Okay.

20 MR. PARIENTE: I'm going to file -- I have my
21 runner's going to take it over and file it. They're going to
22 pick it up today. It'll be filed tomorrow.

23 Now I think it has to be --

24 THE COURT: Why don't I do just a thirty-day status

1 check date?

2 MR. PARIENTE: Okay.

3 THE COURT: Waive your appearance and then --

4 MR. PARIENTE: Okay.

5 THE COURT: -- we'll see how that proceeds. And
6 then once I know that the paperwork's there then I'll just
7 take it off calendar.

8 MR. WALKER: Right.

9 MR. PARIENTE: And if I could just interrupt. I
10 think we do have to have your final Entry of --

11 THE COURT: Judgment?

12 MR. PARIENTE: -- Judgment before we do the Notice
13 of Appeal.

14 THE COURT: That's fine.

15 MR. PARIENTE: So --

16 THE COURT: I can do that right now, if you --

17 MR. PARIENTE: Okay. Great.

18 THE COURT: -- if that's --

19 MR. PARIENTE: Okay.

20 THE COURT: I have no problem with that.

21 MR. WALKER: Thirty days is fine with us, and then
22 take it off calendar at that point, Judge.

23 But I apologize, and I apologize to Mr. Pariente,
24 there was an additional term of the negotiation that we didn't

1 get on the record.

2 THE COURT: Okay. What is that?

3 MR. WALKER: We did contemplate a No-Contact Order
4 from the victim in this case excepting as consistent with
5 Family Court Orders. There is a minor child involved and
6 there's a child-exchange arrangement that's been reached
7 through Family Court.

8 THE COURT: So are you --

9 MR. PARIENTE: Well, he's not clear on that. Just
10 --

11 THE COURT: Yeah. Yeah.

12 MR. PARIENTE: If I could just --

13 THE COURT: Absolutely.

14 MR. PARIENTE: -- clarify.

15 THE COURT: Do you want a minute?

16 MR. PARIENTE: Your Honor, there is a Family Court
17 Order that allows him to see the child, basically every --
18 what is it?

19 THE DEFENDANT: Yeah, every week. Fifty-percent
20 custody.

21 MR. PARIENTE: Yeah. So I guess what they're saying
22 is no outside contact with the complaining witness --

23 THE COURT: In that case?

24 MR. PARIENTE: -- that is not consistent with the

1 Family Court order.

2 THE COURT: right.

3 MR. WALKER: And that's our understanding.

4 THE COURT: Okay.

5 It's a little -- it's rid -- it's not really
6 redundant. It's just an added condition.

7 Obviously, I'm not going to supercede the District
8 Court order.

9 You have an order in place that should clearly tell
10 you how you can do the exchange and what kind of contact you
11 can have.

12 This No-Contact Order would mean that you can't just
13 contact -- is it Mirabelle Andersen?

14 (NO AUDIBLE RESPONSE.)

15 Yeah, you can't just contact her for a reason other
16 than having to do with the exchange or custody of your
17 children.

18 I mean, for practical purposes, City, there's going
19 to be some communication --

20 MR. WALKER: Absolutely.

21 THE COURT: -- because of their raising children
22 together.

23 MR. WALKER: Yes, I know.

24 THE COURT: Okay. So --

1 MR. WALKER: And we would contemplate that obviously
2 they would need to have contact regarding the exchange of the
3 child. But any contact outside that issue is what we're
4 concerned about.

5 THE COURT: Okay.

6 So here's how I would put it to you. The
7 Prosecutor's --

8 And, City, you can clarify if I'm misspeaking.

9 They don't want you to contact -- they don't want
10 you to do any sort of harassing-type of communication or --

11 THE DEFENDANT: I understand, Your Honor.

12 THE COURT: Yeah, or anything like that.

13 THE DEFENDANT: I understand harassment. It's just
14 difficult to not be able to call or ask about --

15 THE COURT: Right.

16 THE DEFENDANT: -- choir events, school events --

17 THE COURT: Right.

18 THE DEFENDANT: -- medical records.

19 THE COURT: And I think that that type of
20 communication is well within the parameters of what the
21 District Court Order would have contemplated.

22 If these are smaller children, they're going to have
23 to talk about stuff like that, school events --

24 MR. WALKER: Yes, Your Honor.

1 THE COURT: -- medical. Yeah.

2 So what it is, is they don't want you to be
3 contacting her over and over and over and over again for
4 purposes of creating a problem.

5 THE DEFENDANT: Okay.

6 THE COURT: I mean, that's a sort of common-sense
7 way of putting it. I don't anticipate having that kind of
8 issue at all. I think it's just something that the prosecutor
9 -- and doesn't sound like your attorney has an issue with it
10 because they don't think that's what's going to happen.

11 Okay? So it's just a provision.

12 You guys have an Order from the District Court to
13 the extent that you need to communicate in order to follow
14 that. I'm going to be perfectly fine with that.

15 UNIDENTIFIED SPEAKER: Okay.

16 THE COURT: Okay?

17 UNIDENTIFIED SPEAKER: Um-hmm (in the affirmative).

18 THE COURT: Does that help to clarify?

19 (NO AUDIBLE RESPONSE.)

20 Mr. Pariente, anything --

21 MR. PARIENTE: Yes, Your Honor?

22 THE COURT: -- else we need to -- I need to address
23 with respect to that?

24 MR. PARIENTE: No. If you just want to give us the

1 thirty-day --

2 THE COURT: Yeah.

3 MR. PARIENTE: -- return date --

4 THE COURT: Okay.

5 MR. PARIENTE: -- it's (indiscernible).

6 THE COURT: All right. Let's get you a thirty-day
7 status check date.

8 You do not need to appear, Mr. Andersen. This is
9 kind of a place marker to see that the District Court -- that
10 the case is now moving forward as you all have described.

11 Thirty-day date will be?

12 THE CLERK: January 12th at eight thirty.

13 THE COURT: January 12th at eight thirty.

14 MR. PARIENTE: Thank Your Honor.

15 THE COURT: Okay.

16 All right. Good luck.

17 THE DEFENDANT: Thank you.

18 MR. PARIENTE: Thank you.

19 MR. WALKER: Thanks, Mike.

20

21 (PROCEEDINGS CONCLUDED AT 10:02:58)

22 * * * * *

23 /

24 /

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

/s/CHARLENE BARRA
TRANSCRIPTIONIST

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of THE PARIENTE LAW FIRM, P.C., and that on the date shown below, I caused service to be completed by:

- ☐ personally delivering
- ☒ delivery via Las Vegas Messenger Service
- ☐ sending via Federal Express or other overnight delivery service
- ☒ depositing for mailing in the U.S. mail with sufficient postage affixed thereto
- ☐ delivery via facsimile machine to fax no. [fax number]

a true and correct copy of the attached document addressed to:

City of Las Vegas Attorney Brad Jerbic
Las Vegas City Attorney
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

Attorney General Adam Paul Laxalt
Office of the Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101

DATED this 8th day of August, 2017.



Chris Barden, Paralegal