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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

SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS OR ALTERNATIVELY PETITION FOR WRIT OF MANDAMUS "APPENDIX"

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NOT
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LAS VEGAS MUNICIPAL COURT

CITY OF LAS VEGAS

CITY OF LAS VEGAS,

Plaintiff,

vs.

CHRISTOPHER ANDERSEN,

Defendant.

Case No: **C1135328A**
Dept No: **1**

NOTICE OF DEMAND FOR JURY TRIAL

DEFENDANT'S NOTICE OF DEMAND FOR JURY TRIAL

COMES NOW Defendant, CHRISTOPHER ANDERSEN, by and through his attorney of record, MICHAEL D. PARIENTE, and pursuant to the Sixth Amendment of the United States Constitution and Blanton v. City of North Las Vegas, 489 U.S. 538 (1989) moves this Honorable Court for a jury trial setting.

Respectfully submitted:

MICHAEL D. PARIENTE

Nevada Bar No. 9469
330 South Third Street, Suite 1075
Las Vegas, NV 89101
Attorney for Defendant

NOTICE OF DEMAND FOR JURY TRIAL

TO: CITY OF LAS VEGAS, Plaintiff

TO: CITY ATTORNEY, Attorney for Plaintiff

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing NOTICE on for hearing before the Court at the Courtroom of the above-entitled Court on the 3 day of Oct 2016, at 2:10 p.m. of said day, in Department 3 of said Court.

Respectfully submitted,

Michael D. Pariente, Esq.

DATED this _____ day of July, 2016..

MEMORANDUM OF POINTS AND AUTHORITIES

Mr. Andersen, a father, business owner, and entrepreneur here in Las Vegas, requests this Honorable Court grant him a jury trial. He argues the loss of fundamental rights due to a conviction for domestic violence is a serious offense entitling a defendant to a right to a jury trial. He distinguishes his case from *Amezcua v. Eight Judicial District Court*, 319 P.3d 602 (Nev. 2014) due to the fact that NRS 202.360 has been

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amended subsequent to *Amezcua*, 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 deprive Nevadans of their Second Amendment Right to Bear Firearms if convicted in Nevada of domestic violence.

---

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;

(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.

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A Nevada conviction for domestic violence creates a presumption that the person so convicted is an unfit parent. This consequence makes domestic violence a serious offense entitling Mr. Andersen to a jury trial.

A person convicted of domestic violence in Nevada faces serious consequences in family law courts. Specifically, a person so convicted faces a presumption that he or she is an unfit parent.[2]

---

2 *NRS 432B.157 Presumption concerning custody when court determines that parent or other person seeking custody of child is perpetrator of domestic violence.*

1. Except as otherwise provided in NRS 125C.210 and 432B.153, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody of a child has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that it is not in the best interest of the child for the perpetrator of the domestic violence to have custody of the child. Upon making such a determination, the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

2. If after an evidentiary hearing held pursuant to subsection 1 the court determines that more than one party has engaged in acts of domestic violence, it shall, if possible, determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:

(a) All prior acts of domestic violence involving any of the parties;

(b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;

(c) The likelihood of future injury;

(d) Whether, during the prior acts, one of the parties acted in self-defense; and

(e) Any other factors that the court deems relevant to the determination.

In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies to each of the parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies only to the party determined by the court to be the primary physical aggressor.

3. A court, agency, institution or other person who places a child in protective custody shall not release a child to the custody of a person who a court has determined pursuant to subsection 1 has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child unless:

(a) A court determines that it is in the best interest of the child for the perpetrator of the domestic violence to have custody of the child; or

(b) Pursuant to the provisions of subsection 2, the presumption created pursuant to subsection 1 does not apply to the person to whom the court releases the child.

4. As used in this section, "domestic violence" means the commission of any act described in NRS 33.018.

NRS 125C.230 Presumption concerning custody when court determines that parent or other person seeking custody of child is perpetrator of domestic violence.

1. Except as otherwise provided in NRS 125C.210 and 125C.220, a determination by the court after

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Mr. Andersen has a substantive right to be an active father in raising his daughter. The complaining witness in this case is the mother of his daughter.

> "A parent's interest in raising his or her child is a fundamental right. Parental termination proceedings implicate this fundamental right. We analyze substantive due process challenges to statutes impinging on fundamental constitutional rights under a strict scrutiny standard." *Vincent L.G. v. State Div. of Child & Family Servs. (In re D.R.H.)*, 120 Nev. 422, 426-427 (Nev. 2004).

> "Embedded within the Fourteenth Amendment is a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.' The United States Supreme Court has recognized several fundamental interests including 'the interest of parents in the care, custody, and control of their children.'" *Troxel v. Granville*, 530 U.S. 57, 65, 147 L. Ed. 2d 49, 120 S. Ct. 2054 (2000) (plurality opinion) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 138 L. Ed. 2d 772, 117 S. Ct. 2258, 117 S. Ct. 2302 (1997), *Rico v. Rodriguez*, 121 Nev. 695, 704 (Nev. 2005).

Because Mr. Andersen's substantive right to raise his children is threatened by a

---

an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody of a child has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

2. If after an evidentiary hearing held pursuant to subsection 1 the court determines that more than one party has engaged in acts of domestic violence, it shall, if possible, determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:

(a) All prior acts of domestic violence involving any of the parties;

(b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;

(c) The likelihood of future injury;

(d) Whether, during the prior acts, one of the parties acted in self-defense; and

(e) Any other factors that the court deems relevant to the determination.

In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies to each of the parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies only to the party determined by the court to be the primary physical aggressor.

3. As used in this section, "domestic violence" means the commission of any act described in NRS 33.018.

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domestic violence conviction, the Court must afford him 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).

Applying the first prong of the *Matthews* test to Mr. Andersen's case, the private interest that will be affected is the right of Mr. Andersen to raise his daughter. The second prong is the risk of an erroneous deprivation caused by a conviction for domestic violence. This criminal conviction creates the presumption that Mr. Andersen is an unfit parent under NRS 432B.157 and NRS 125C.230. 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 because the City must convince six people, 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.

In conclusion, a criminal conviction for domestic violence would adversely affect Mr. Andersen's fundamental rights to raise his children. The gravity of the consequences for him makes this a serious offense requiring the procedural protections of a jury trial.

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Indeed, the Nevada Legislature deems domestic violence so serious an offense that it created this rebuttable presumption that persons convicted of domestic violence are unfit parents and therefore not deserving of the right to see their children.[3] The fact that the Nevada Legislature has passed this law to make it harder for persons convicted of domestic violence to see and raise their children indicates that it deems the offense serious in its attempt to protect children and families affected by domestic violence. The loss of the right of an accused to raise his or her own child is a substantial burden on the person convicted of domestic violence. It is for these reasons that the offense is serious. Had the Nevada Legislature not deemed domestic violence a serious offense, it would have never passed such a law creating a presumption that a person so convicted of domestic violence is presumed an unfit parent.[4]

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3 Even before a conviction, the Nevada Legislature treats domestic violence as a serious offense. First, per NRS 178.484(7), a person arrested for domestic violence faces a mandatory 12-hour hold before release from incarceration. The mandatory minimum bail requirements for alleged (and as yet unconvicted) domestic battery arrestees increases from $3,000 to $5,000 for alleged second offenders and to $15,000 for alleged third offenders. See NRS 178.484(7). The enhanced bail for domestic battery arrestees with alleged prior convictions has no time limitation on the age of the alleged prior convictions per NRS 178.484(7)(b)(2) and (c). This contrasts with the enhanced penalties for multiple domestic violence convictions under NRS 200.485(1)(b) and (c) and (3)(b). Enhanced bail for domestic violence arrestees is harsher than for suspects arrested for any other misdemeanors. Enhanced bail for domestic violence charges do not require that the prior offense be committed within seven years. All other offenses, such as DUI, which have enhanced bail, apply to defendants with prior offenses within the immediately preceding seven years only. A defendant arrested for battery constituting domestic violence whom the arresting police believe has two prior convictions from 10 or more years ago will be held on $15,000 bail although it is only a misdemeanor charge with a minimum two-day jail sentence. See NRS 200.485(1)(a).

Unlike other misdemeanors, arrest is mandatory for a defendant suspected of domestic battery within 24 hours of the suspected offense. See NRS 171.137(1). In all other misdemeanor cases, the peace officer has discretion to issue a citation instead of arresting the suspect. See NRS 171.1771 and NRS 171.1772.

4 In its effort to remain one of the only states that prohibits jury trials for domestic violence charges, Petitioner expects the City will pin its hopes on *Blanton* footnote 8, which reads as follows:
In performing this analysis, only penalties resulting from state action, e. g., those mandated by statute or regulation, should be considered. See Note, The Federal Constitutional Right to Trial by Jury for the Offense of Driving While Intoxicated, 73 Minn. L. Rev. 122, 149-150 (1988) (nonstatutory consequences of a conviction "are speculative in nature, because courts cannot determine with any consistency when and if they will occur, especially in the context of society's continually shifting moral values"). *Blanton v.*

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The automatic rebuttable presumption upon conviction of being an unfit parent is a penalty. The relevant matter is whether the rebuttable presumptions that NRS 432B.157 and 125C.230 that automatically apply are illustrative of legislative intent of seriousness. These statutes provide a person convicted of domestic violence now bears the burden of proving to the Court by clear and convincing evidence that he or she is not an unfit parent. The difficulty of convincing a family law court that the presumption of being an unfit parent due to a conviction for domestic violence is fairly obvious. For example, *Russo v. Gardner* held that "since Gardner was criminally convicted of domestic violence, by definition it follows that the 'clear and convincing' standard was met for a finding of domestic violence under NRS 125.480(5), thereby creating a rebuttable presumption." *Russo v. Gardner*, 114 Nev. 283, 290 (1998). A domestic violence conviction leads to the automatic penalty of having to rebut a presumption in every family law matter henceforth. Such a thorough intrusion into one's fundamental rights to raise one's children reflect the severity of the offense.

Perhaps the best demonstration of the seriousness of this penalty comes from referring to a question asked by this Honorable Court during Oral Argument in *Blanton*: specifically, was the punishment of having to perform community service in an

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N. Las Vegas, 489 U.S. 538, 543 n.8 (U.S. 1989)

Petitioner argues that taking away his Second Amendment Right and thus barring him from owning or possessing a firearm under NRS 202.360, a Category B Felony, is the type of *statutory* change referenced in *Blanton* signaling the intent of the Nevada Legislature to make Misdemeanor Domestic Violence a *serious* offense!

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embarrassing outfit "even worse than six months in jail"... "They'd rather go to jail for six months than wear this for 48 hours?" Transcript of Oral Argument at 3, *Blanton*, 489 U.S. 538, available at http://www.oyez.org/cases/1980-1989/1988/1988_87_1437. Although counsel for Petitioner in *Blanton* struggled to answer in the affirmative, here, Mr. Andersen firmly believes that, if asked the same question, the vast majority of people would answer that losing the right to raise one's children is worse than six-months in jail, and if given the choice, one would choose jail instead of permanently losing one's children.

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

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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." Thus, this Court should find the Legislatures lifetime ban *and* felony prosecution for possessing a firearm, when combined with 6 months imprisonment

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"entitles a Defendant to the common-sense judgment of a jury."

The United States Attorney's Office for the U.S. District in Nevada prosecutes defendants convicted in Nevada courts of Battery Constituting Domestic Violence under 18 USC § 922(g)(9) if defendants are caught possessing a firearm. In Clark County, Las Vegas Metropolitan Police Department has created a custom that a person even arrested for domestic violence must surrender his or her firearms and return his or her permit to carry a firearm. Even persons who have been arrested for domestic violence, but have had their cases denied for prosecution, face difficulty from Nevada state authorities in purchasing a firearm. These customs by state actors of treating persons accused of domestic violence and treating those accused, but later exonerated as if they have been convicted of domestic violence, violate their Second Amendment right to possess a firearm. "Counties and municipalities are [state actors] ... for constitutional deprivations resulting from application of governmental custom or policy." *Miranda v. Clark County*, 319 F.3d 465, 469 (9th Cir. Nev. 2003).

In this case, Mr. Andersen, together with thousands of men and women each year who are accused of domestic violence in Clark County, suffer an unconstitutional deprivation of their Second Amendment right to bear arms based solely on an accusation of domestic violence even if that accusation proves false and the charges are dropped. For those convicted of domestic violence, they are not permitted in Nevada to purchase weapons, any guns seized from them will not be returned, and under NRS 202.360 they are prosecuted for violating this Category B Felony facing up to 6 years in prison. It is for this reason that defendants are admonished of these risks they face by pleading guilty.

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The Court should look at the entire penalty scheme when reviewing the offense under *Blanton*. An example of a court applying *Blanton* is in *Fushek v. State*, 183 P.3d 536 (Ariz. 2008), where the court reviewed all the related statutory provisions, considering the mandatory lifetime registration and loss of privacy, the codification of the offense in a statutory section containing mostly felonies, and the clear statement of purpose in the legislative history; to conclude that the consequences of conviction "reflect a legislative determination that the offense is indeed serious," and *Fushek* was entitled to a jury. *Fushek*, 183 P.3d at 541, 541-544 (internal citations omitted).

The same analysis applies here. The severity of the penalties unequivocally demonstrate that Nevada has deemed the crime serious. NRS 202.360 now makes it a Category B Felony if one is caught owning or possessing a firearm if previously convicted of domestic violence. An offense of NRS 200.485, in addition to the 6-month maximum sentence, carries mandatory fines and administrative fees, mandatory community services hours, mandatory counseling, additional Civil liability under a claim unique to this offense, the removal of the prosecutor's ability to plea bargain, and is the only crime in Nevada to mandate that a police officer must arrest in instances of apparent domestic violence. NRS 200.485.

Furthermore, the legislative declaration itself should erase any doubts as to the legislative intent: "The legislature hereby finds and declares that: 1. There is a critical public need to ensure the effective prosecution of persons who commit acts of domestic violence in this state." A.B. 170, 69th Leg. Sess. (Nev. 1997). Such a preamble declaration of the legislature's views was persuasive in *Fushek* that the offense was serious. *Fushek*, 183 P.3d at 543 ¶29.

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Here, the clear statutory language and numerous penalties are all in addition to the two penalties that Mr. Andersen has long maintained are severe enough to be sufficient by themselves to demonstrate that the Nevada Legislature has determined that Domestic Violence is a serious crime: the loss of one's children and the loss of one's Second Amendment Right to Bear Arms.

Now, NRS 202.360 explicitly bans gun-ownership for a conviction of misdemeanor domestic violence. Additionally, NRS 202.3657, the statute governing the issuance of Concealed Firearm Permits, NRS 202.3657(g) contains an explicit provision that mandates the denial of all applications and also the revocation of current permits for anyone who: "Has been convicted of a crime involving domestic violence . . ." (NRS 202.3657(g)). This proscription alone, even without NRS 202.360, amounts to a constructive ban on the ability of a person to use a firearm for self-defense. When enacted, the belief of the vast majority of legislators was that the ability to legally conceal and carry ones firearm was fundamental to the ability to be able to use firearm for self-defense; the law's intent was to make it easier to obtain a concealed firearms permit ("CFP") in Nevada. Senator Porter summarized the bill best: its purpose was "to provide citizens with a more uniform process by which they can exercise their Second Amendment right." Hearing on S.B. 299 Before S. Judiciary Sub-Comm., 68th Sess., (April 25, 1996). Senator Adler proposed an explicit provision in the bill that domestic violence violators, "should be excluded from those allowed to carry concealed weapons, whether they are convicted of a felony or misdemeanor," *Hearing on S.B. 299 Before S. Judiciary Comm.* (Mar. 28, 1995), available at http://www.leg.state.nv.us/Session/68th1995 minutes/SJD328.txt. This became NRS

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202.3657(g). Nevada felt CFP is critical for self-defense, and as *McDonald v. City of Chicago, supra*, held, self-defense is a fundamental element of the Second Amendment Right. Nevada has constructively prevented those convicted of domestic violence from bearing arms for self-defense, thus, Nevada has prohibited Mr. Andersen"s Second Amendment Right.

Even before the change in NRS 202.360 making it a felony to own or possess a firearm if a Nevada was previously convicted of domestic violence, there is also ample legislative history showing that the Nevada Legislature was aware that NRS 202.360 did not proscribe firearm ownership for a misdemeanor domestic violence conviction, and was comfortable with such a determination only because there is a federal statute, 18 U.S.C. §921(a)(33)(B)(i), already prohibiting firearm possession and use by those convicted of such a charge. *See* Hearing on A.B. 394 Before S. Judiciary Comm., 71st Sess., (April 19, 2001) (Senator Care "indicated owing to the Lautenberg amendment...a misdemeanor of domestic violence [conviction] loses the right to possess a firearm."). But now, the Nevada Legislature has amended NRS 202.360(2) to mirror the Lautenberg Amendment and ban those and prosecute those Nevadans who are caught possessing a firearm after they have been convicted of misdemeanor domestic violence. Thus, the loss of Mr. Andersen's Second Amendment right to bear arms, by state application is such a penalty rendering it a "serious offense."

Since a conviction under NRS 200.485 effectively destroys one's Second Amendment right to bear arms and results in criminal liability under NRS 202.360,; *United States v. Smith, supra*, is persuasive. In *Smith*, the Court held that a "lifetime prohibition on the possession of a firearm is a serious penalty," which entitles

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Defendant to a jury trial under the Sixth Amendment. Id. at 1318.The same principle applies here.

Other courts have concluded that driving while intoxicated is a serious offense requiring jury trial. The United States Eighth Circuit Court of Appeals has held that a 15-year license revocation for a third conviction for driving while intoxicated rebuts the presumption that a maximum term of imprisonment is petty:

> "The Supreme Court's analysis of the facts in *Blanton* supports our conclusion that adding the 15-year license revocation to the six month prison term resulted in a penalty severe enough to warrant a jury trial in this case. In *Blanton* a DWI conviction led to a penalty of up to six months imprisonment, a $1000 fine, a 90-day suspension of the offender's driver's license, and compelled attendance at an alcohol abuse education course. Because the maximum possible prison sentence did not exceed six months, the Court weighed the severity of the additional statutory penalties. The Court held that the $1000 fine was not 'out of step' with a six month sentence, and that the required education course "[could] only be described as de minimis." 109 S Ct. at 1294 n. 9. With regard to the license suspension, the Court was unable to determine if the suspension ran concurrently with the prison term. But even if the suspension were consecutive, the court observed that the offender could obtain a restricted license after 45 days. A full suspension for 45 days and a partial suspension for another 45 days was not severe enough to raise sixth amendment concurs. Id. Far from ruling out consideration of license revocations, the Court's decision implies that license revocations are exactly the kind of "additional statutory penalties" we should consider. While a 90-day suspension was not severe enough to raise sixth amendment concerns, a 15-year revocation is a substantial burden on the offender that is completely "out of step" with a six month prison term. Upholding this conviction would permit the Nebraska legislature to defeat the right to a jury trial by keeping the prison sentence to no more than six months, while finding other severe penalties to punish what it considers to be a serious offense. We therefore conclude that Richter was denied his sixth amendment right to a jury trial. *Richter v. Fairbanks*, 903 F.2d 1202, 1205 (8th Cir. Neb. 1990).

In this case, Mr. Andersen is providing notice under NRS 175.011 demanding his right to trial by jury. If Mr. Andersen 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

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owing 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.

Mr. Andersen argues the loss of raising his dauther far outweighs the severity of the loss of a defendant's driver's license for fifteen years where the latter is entitled to a jury trial in another jurisdiction. Additionally, Mr. Andersen's Second Amendment right to possess a firearm is at risk of being lost. These potential consequences create the need for an additional safeguard to ensure that Mr. Andersen does not suffer a violation of his Due Process rights in the form of the loss of his Second Amendment right and the right to raise children.

By allowing a judge and not a jury to convict a defendant of Battery Constituting Domestic Violence, a judge thus unconstitutionally has the ability to terminate a defendant's right to raise his or her own children. This is due to the presumption created by NRS 432B.157 and NRS 125C.230 that the now convicted defendant is an unfit parent.

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." In fact, there is no other misdemeanor in the Nevada Revised Statutes where a defendant risks losing a federally protected constitutional right upon conviction. Indeed, the admonishment Nevada courts use warn a defendant that a conviction for battery constituting domestic violence may subject a defendant to state prosecution for a violation of NRS 202.360 and to federal prosecution if the defendant is subsequently caught possessing a firearm.

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While a defendant convicted of driving under the influence (DUI) suffers suspension of his or her license, that loss is only temporary as he or she can eventually re-apply to have his or her license privileges reinstated. A conviction for battery constituting domestic violence results in the permanent loss of a defendant's Second Amendment right. 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, a defendant should be afforded the additional safeguard of a jury to decide his or her fate.

CONCLUSION

The Court should grant Mr. Andersen demand for a jury trial.

Respectfully submitted,

MICHAEL D. PARIENTE
JOHN G. WATKINS, OF COUNSEL
The Pariente Law Firm, P.C.
3960 Howard Hughes Parkway
Suite 615
Las Vegas, NV 89169
Tel: (702)966-5310

Counsel for Petitioner

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.

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ROC
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Attorney for Defendant

LAS VEGAS MUNICIPAL COURT

CITY OF LAS VEGAS

CITY OF LAS VEGAS,

Plaintiff,

vs.

CHRISTOPHER ANDERSEN,

Defendant.

Case No: **C1135328A**
Dept No: **1**

NOTICE OF DEMAND FOR JURY TRIAL

RECEIPT OF COPY

RECEIPT OF COPY of the **NOTICE** is hereby acknowledged this 26 day of JULY, 2016.

CITY ATTORNEY'S OFFICE:

CITY ATTORNEY
CRIMINAL DIVISION

CITY ATTORNEY
200 Lewis Ave.
Las Vegas, NV 89101

BRADFORD R. JERBIC
City Attorney
Katherine Currie-Diamond
Deputy City Attorney
Nevada Bar No. 13676
Regional Justice Center, 2nd Floor
P.O. Box 3930
Las Vegas, Nevada 89127

LAS VEGAS MUNICIPAL COURT

CLARK COUNTY, NEVADA

THE CITY OF LAS VEGAS, Plaintiff, vs. CHRISTOPHER LEE ANDERSEN Defendant.	CASE NO.: C1135328A/B DEPT NO.: 1

OPPOSITION TO DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, the City of Las Vegas ("City") and files the following Opposition to Demand For Jury Trial. This pleading is based upon the points and authorities outlined below.

POINTS AND AUTHORITES

The law on this matter is very clear. A person charged with a petty offense is not entitled to a jury trial. Blanton v North Las Vegas, 489 U.S. 538, 103 L Ed 2d 550 (1989), State v Smith, 9 Nev. 806, 672 P. 2d 631 (1983).

In Blanton, the Supreme Court addressed the question of when an offense was deemed serious for jury trial purposes. In Blanton, a unanimous Supreme Court found that Nevada's DUI statute was not a serious crime such that the defendant was entitled to a jury trial:

> It has long been settled that "there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provisions." In determining whether a particular offense should be categorized as "petty", our early decisions focused on the nature of the offense. . . . .In recent years, however, we have sought more "objective indication of the seriousness with which society regards the offense." "[w]e have found the most relevant such criteria in the severity of the maximum authorized penalty....Following this

City of Las Vegas
Office of the City Attorney
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> approach, our decision in Baldwin established that a defendant is entitled to a jury trial whenever the offense for which he is charged carries a maximum authorized prison term of greater than six months. Blanton, 448 U.S. at 542-42, citations omitted.

In State v Smith, 99 Nev. 806, 672 P.2d 631 (1983), the Nevada Supreme Court held that where the maximum penalty is six months imprisonment or less, the offense is "petty" and the right to trial by jury does not attach. Id. at 811. Additionally, the Court in Smith held that neither Article 1, Section 3 of the Nevada Constitution, nor the Sixth Amendment of the United States Constitution guarantee the right to trial by jury for first offense DUI.

The Nevada Supreme Court has recently re-addressed the issue whether a defendant is entitled to a jury trial for a petty offense. In Amezcua v Eighth Judicial District Court, 319 P.3d 602 (2014). Amezcua was charged with first-offense battery constituting domestic violence. He filed a timely notice for a jury trial which was denied by the justice court. Amezcua subsequently filed a petition for a writ of mandamus in the district court, which was denied. His conviction was affirmed on appeal by the district court. Amezcua then filed a petition for writ of mandamus or habeas corpus with the Nevada Supreme Court.

In denying the petition, the Nevada Supreme Court again acknowledged that the right to a jury trial does not extend to every criminal proceeding. Amezcua, 319 P.2d at 604, citing Blanton. The right to a jury trial only attaches to "serious" offenses. Id. The Nevada Supreme Court went on to state:

> "[T]o determine whether the . . . right to a jury trial attaches to a particular offense, the court must examine 'objective indications of the seriousness with which society regards the offense.'" United States v. Nachtigal, 507 U.S. 1, 3, 113 S. Ct. 1072, 122 L. Ed. 2d 374 (1993) (quoting Blanton v. N. Las Vegas, 489 U.S. 538, 541, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989)). The best objective indicator of the seriousness with which society regards an offense is the maximum penalty that the legislature has set for it. *Id.* Although a "penalty" may include things other than imprisonment, the focus for purposes of the right to a jury trial has been "on the maximum authorized period of incarceration." *Id.* (quoting Blanton, 489 U.S. at 542). Taking this approach, the Supreme Court has held that an offense for which the period of incarceration is six months or less is presumptively a "petty" offense and a jury trial is not constitutionally required. *Id.* We have reached the same conclusion. Blanton,

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103 Nev. at 633-34, 748 P.2d at 500-01. The presumption may be overcome "only by showing that the additional penalties, viewed together with the maximum prison term, are so severe that the legislature clearly determined that the offense is a 'serious' one." Nachtigal, 507 U.S. at 3-4 (quoting Blanton, 489 U.S. at 543). Amezcua, 319 P.3d at 604.

Amezcua argued that collateral consequences associated with a conviction for battery constituting domestic violence reflected a legislative intent that the offense should be considered a serious offense, thus mandating a jury trial.[1] The Nevada Supreme Court rejected these arguments and held that the statutory penalties imposed by the Nevada Legislature for battery constituting domestic violence did not elevate the crime to a "serious" offense.

In this case the Defendant is arguing the exact collateral consequences associated with a conviction for battery constituting domestic violence that the Nevada Supreme Court has already rejected. The Amezua case is directly on point in this matter. The law relating to the right to a jury trial for an offense punishable of up to 6 months in jail is abundantly clear. The defendant does not have a right to a jury trial in this case. The issues that Defendant raises in his brief are matters that must be dealt with by the legislature, as this Court is bound by the decision of both the United States Supreme Court as well as the Nevada Supreme Court.

CONCLUSION

Based upon the foregoing argument, the City respectfully requests that the Defendant request for a jury trial be denied.

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[1] These collateral consequences included the rebuttable presumption that a perpetrator of domestic violence is unfit for sole or joint custody of children (NRS 432B.157 and NRS 125C.230), the loss of the right to possess a firearm under 18 U.S.C. 922(g)(9) and the possibility of deportation for noncitizens under federal immigration law.

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Office of the City Attorney
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DATED this 13th day of September, 2016

Katherine Currie-Diamond
Deputy City Attorney
Bar # 13676
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that on September 13, 2016, I forwarded a true and correct copy of the foregoing **OPPOSITION TO DEMAND FOR JURY TRIAL**, by facsimile transmission to:

Michael D. Pariente
3960 Howard Hughes Parkway
Suite 615
Las Vegas, Nevada 89169
(702) 953-7055

An employee of the City of Las Vegas

City of Las Vegas
Office of the City Attorney
P.O. BOX 3530
Las Vegas, Nevada 89127
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MUNICIPAL COURT

LAS VEGAS, NEVADA

THE CITY OF LAS VEGAS	)	CASE NO. C1135328A/B
	)	
Plaintiff,	)	DEPT. 1
	)	
vs.	)	
	)	
CHRISTOPHER LEE ANDERSEN	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE CYNTHIA LEUNG,
MUNICIPAL COURT JUDGE

TRANSCRIPT RE: MOTION

OCTOBER 19, 2016

APPEARANCES:

The Plaintiff:	THE CITY OF LAS VEGAS
For the Plaintiff:	MATTHEW WALKER, ESQ. 200 Lewis Avenue Las Vegas, Nevada 89101
The Defendant:	CHRISTOPHER LEE ANDERSEN
For the Defendant:	MICHAEL D. PARIENTE, ESQ. 3960 Howard Hughes Pkwy. Las Vegas, Nevada 89169

LAS VEGAS, NEVADA OCTOBER 19, 2016

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.

THE COURT: Okay.

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

MR. WALKER: I believe so, Your Honor.

THE COURT: Okay.

And your position is that's not --

MR. PARIENTE: Right. There's --

THE COURT: -- (indiscernible) interpret that?

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

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

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

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

THE COURT: Yeah. Okay.

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

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

THE COURT: Okay.

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

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

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

MR. PARIENTE: No.

THE COURT: -- (indiscernible)?

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

THE COURT: Right.

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

to do a response by the --

THE COURT: Okay.

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

THE COURT: Okay.

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

MR. PARIENTE: I'm fine --

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

MR. PARIENTE: -- with --

THE COURT: Okay.

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

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

THE COURT: All right.

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

THE COURT: Okay.

MR. PARIENTE: Appreciate it. Okay.

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

MR. PARIENTE: Sounds good. Thank Your Honor.

THE COURT: All right.

(PROCEEDINGS CONCLUDED AT 09:39:32)

* * * * *

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

MUNICIPAL COURT

LAS VEGAS, NEVADA

THE CITY OF LAS VEGAS	)	CASE NO. C1135328A
	)	
Plaintiff,	)	DEPT. 1
	)	
vs.	)	
	)	
CHRISTOPHER ANDERSEN,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE CYNTHIA LEUNG,
MUNICIPAL COURT JUDGE

TRANSCRIPT RE: PLEA NEGOTIATION

DECEMBER 6, 2016

APPEARANCES:

The Plaintiff:	THE CITY OF LAS VEGAS
For the Plaintiff:	MATTHEW WALKER, ESQ. 200 Lewis Avenue Las Vegas, Nevada 89101
The Defendant:	CHRISTOPHER ANDERSEN
For the Defendant:	MICHAEL PARIENTE, ESQ. Pariente Law Firm PC 3960 Howard Hughes Parkway #615 Las Vegas, Nevada 89169

LAS VEGAS, NEVADA DECEMBER 6, 2016

P R O C E E D I N G S

(PROCEEDINGS BEGAN AT 09:53:06)

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

Good morning, Mr. Pariente.

MR. PARIENTE: Good morning, Your Honor.

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

Your Honor, this is negotiated.

THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

raised which was denied before.

THE COURT: Okay.

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

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

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

THE COURT: Okay.

MR. PARIENTE: -- would kick in.

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

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

THE COURT: Okay.

City, was that your understanding as well?

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

THE COURT: Uh-huh.

MR. WALKER: -- to qualify for appeal.

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

THE COURT: Impose the sentencing?

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

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

THE COURT: Okay.

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

MR. PARIENTE: All right.

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

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

THE COURT: Oh, sure.

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

THE COURT: Okay.

So what was the proposed resolution for sentence?

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

THE COURT: Okay.

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

THE DEFENDANT: I do.

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

THE DEFENDANT: No.

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

THE DEFENDANT: Yeah.

THE COURT: Okay.

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

THE DEFENDANT: Yes, I did.

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

THE DEFENDANT: (Indiscernible.)

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

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

THE COURT: Do you understand that?

THE DEFENDANT: (No audible response.)

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: No contest.

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

MR. PARIENTE: Yes, Your Honor.

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

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

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

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

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

eighty days in jail?

THE DEFENDANT: (No audible response.)

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

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

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

MR. PARIENTE: I always --

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

MR. PARIENTE: We could just take it off calendar. I think that'd be the easier thing.

THE COURT: Okay.

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

Now I think it has to be --

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

check date?

MR. PARIENTE: Okay.

THE COURT: Waive your appearance and then --

MR. PARIENTE: Okay.

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

MR. WALKER: Right.

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

THE COURT: Judgment?

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

THE COURT: That's fine.

MR. PARIENTE: So --

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

MR. PARIENTE: Okay. Great.

THE COURT: -- if that's --

MR. PARIENTE: Okay.

THE COURT: I have no problem with that.

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

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

get on the record.

THE COURT: Okay. What is that?

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

THE COURT: So are you --

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

THE COURT: Yeah. Yeah.

MR. PARIENTE: If I could just --

THE COURT: Absolutely.

MR. PARIENTE: -- clarify.

THE COURT: Do you want a minute?

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

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

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

THE COURT: In that case?

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

Family Court order.

THE COURT: right.

MR. WALKER: And that's our understanding.

THE COURT: Okay.

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

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

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

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

(NO AUDIBLE RESPONSE.)

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

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

MR. WALKER: Absolutely.

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

MR. WALKER: Yes, I know.

THE COURT: Okay. So --

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

THE COURT: Okay.

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

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

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

THE DEFENDANT: I understand, Your Honor.

THE COURT: Yeah, or anything like that.

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

THE COURT: Right.

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

THE COURT: Right.

THE DEFENDANT: -- medical records.

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

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

MR. WALKER: Yes, Your Honor.

THE COURT: -- medical. Yeah.

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

THE DEFENDANT: Okay.

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

Okay? So it's just a provision.

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

UNIDENTIFIED SPEAKER: Okay.

THE COURT: Okay?

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

THE COURT: Does that help to clarify?

(NO AUDIBLE RESPONSE.)

Mr. Pariente, anything --

MR. PARIENTE: Yes, Your Honor?

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

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

thirty-day --

THE COURT: Yeah.

MR. PARIENTE: -- return date --

THE COURT: Okay.

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

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

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

Thirty-day date will be?

THE CLERK: January 12th at eight thirty.

THE COURT: January 12th at eight thirty.

MR. PARIENTE: Thank Your Honor.

THE COURT: Okay.

All right. Good luck.

THE DEFENDANT: Thank you.

MR. PARIENTE: Thank you.

MR. WALKER: Thanks, Mike.

(PROCEEDINGS CONCLUDED AT 10:02:58)

* * * * *

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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

Print Report

Las Vegas Municipal Court
At the Regional Justice Center
200 Lewis Ave, P.O. Box 3950
Las Vegas, Nevada 89127

Mailing Address:
P.O. Box 3950
Las Vegas, NV 89127
www.lasvegasnevada.gov

Printed on:
2/28/2018
2:14 PM

Phone: 38-Court(382-6878)

History Number: 100278079
Case Number: C1135328A
Citation Number: C1135328A
Violation: BATTERY/DOMESTIC VIOLENCE
Violation Date: 4/24/2015 10:30 PM

Name: ANDERSEN, CHRISTOPHER LEE
Department: 1
Court Date: 3/1/2018 3:00 PM

Case Sentencing

Item Name		Due	Paid	Balance
Administrative Assessment	$	95	0	95
Construction Assessment	$	10	0	10
CS FEE	$	35	0	35
Domestic Violence Assessment	$	35	0	35
DV1 FEE	$	780	0	780
Fine	$	310	0	310
Genetic Marker Testing AA	$	3	0	3
Specialty Court Program Assess	$	7	0	7
Community Service		48	0	48
DV Level I		1	0	1
No Contact with Victim		1	0	1
Stay Out of Trouble-BROAD		1	0	1
Suspended Jail		0	0	0

Total monetary balance due: $1275

Case Activity

Activity Date	Activity
11/29/2017 10:18 AM	Continued
10/30/2017 11:38 AM	Correction: MARSHAL'S UNABLE TO SERVE THE SUMMONS ON 10/25/17
10/23/2017 12:26 PM	Continued
8/15/2017 2:36 PM	Appeal Decision: Dismissed
8/15/2017 2:34 PM	Correction: 8/1/17 NOE Order Dismissing Appeal
8/1/2017 2:47 PM	Tape Start 1: 8/1/2017 9:05 AM
8/1/2017 9:04 AM	Continued
7/19/2017 7:23 AM	Tape Start 1: 7/18/2017 9:01 AM

7/18/2017 9:02 AM	Continued
4/17/2017 2:45 PM	Tape Start 1: 4/17/2017 8:37 AM
4/17/2017 1:53 PM	Continued
3/14/2017 7:11 AM	Appeal: Copy to City Attorney
1/12/2017 3:20 PM	Tape Start 1: 1/12/2017 9:46 AM
1/12/2017 9:46 AM	Continued
12/8/2016 12:17 PM	Appeal: Copy to City Attorney
12/8/2016 12:17 PM	Appeal: Appeal sent to District Court
12/7/2016 4:06 PM	Correction: APPEAL BOND OR
12/7/2016 11:55 AM	Appeal Fee Due: 24
12/7/2016 11:55 AM	Appeal Submitted by Attorney PARIENTE, MICHAEL D Bar# 9469
12/6/2016 4:45 PM	Appeal Fee Due: 24
12/6/2016 4:45 PM	Appeal Submitted by Attorney PARIENTE, MICHAEL D Bar# 9469
12/6/2016 1:49 PM	Tape Start 1: 12/6/2016 9:53 AM
12/6/2016 10:02 AM	Continued
12/6/2016 10:02 AM	Correction: NO CONTACT (TO FOLLOW DISTRICT COURT ORDER)
12/6/2016 10:00 AM	Reason for removing multiple calendared event: Matter handled with primary event
12/6/2016 10:00 AM	Multiple calendared event for 12/6/2016 9:15 AM removed
12/6/2016 10:00 AM	Correction Sentence: No Contact with Victim due 1
12/6/2016 9:57 AM	Sentence: Community Service due 48
12/6/2016 9:57 AM	Sentence: DV Level I due 1
12/6/2016 9:57 AM	Sentence: Genetic Marker Testing AA due $3
12/6/2016 9:57 AM	Sentence: Administrative Assessment due $95
12/6/2016 9:57 AM	Sentence: Construction Assessment due $10
12/6/2016 9:57 AM	Sentence: Specialty Court Program Assess due $7
12/6/2016 9:57	Sentence: Domestic Violence Assessment due $35

AM	
12/6/2016 9:57 AM	Sentence: Fine due $310
12/6/2016 9:57 AM	Sentence: Suspend JAIL 180 days
12/6/2016 9:57 AM	Suspend Sentence for 1y
12/6/2016 9:57 AM	Finding: GUILTY
12/6/2016 9:57 AM	Plea: NOLO
12/6/2016 9:56 AM	Withdraw Plea of: NOT GUILTY
12/5/2016 4:39 PM	Miscellaneous: Cert. of facsimile transmission Submitted by City Attorney WALKER, MATTHEW Bar# 10790
12/5/2016 3:31 PM	Miscellaneous: CITY'S OPPOSTION Submitted by City Attorney WALKER, MATTHEW Bar# 10790
12/1/2016 2:49 PM	Multiple Calendared Event continued
12/1/2016 2:49 PM	Multiple Calendared Event Set
12/1/2016 2:49 PM	Motion to Place on Calendar Submitted by Attorney PARIENTE, MICHAEL D Bar# 9469
10/19/2016 10:36 AM	Correction: TAPE: 10/19/16 @ 09:36AM
10/19/2016 10:36 AM	Correction: DEMAND FOR JURY TRIAL DENIED
9/28/2016 1:38 PM	Tape Start 1: 9/28/2016 10:02 AM
9/28/2016 10:05 AM	Sentence: Stay Out of Trouble-BROAD due 1
9/28/2016 10:04 AM	Continued
9/28/2016 10:03 AM	Motion: Place on Calendar Granted
9/27/2016 3:43 PM	Miscellaneous: SUPP REPLY TO OPP CONT TRIAL Submitted by Attorney PARIENTE, MICHAEL D Bar# 9469
9/22/2016 12:19 PM	Miscellaneous: REPLY TO OPPOSITION Submitted by Attorney PARIENTE, MICHAEL D Bar# 9469
9/21/2016 1:15 PM	Miscellaneous: OPP TO CONT TRIAL Submitted by City Attorney CURRIE-DIAMOND, KATHERINE Bar# 13676
9/19/2016 2:14 PM	Multiple Calendared Event continued
9/15/2016 4:13 PM	Miscellaneous: MOT TO CONTINUE TRIAL Submitted by Attorney PARIENTE, MICHAEL D Bar# 9469
9/13/2016 3:07 PM	Miscellaneous: OPP TO JURY TRIAL Submitted by Attorney CURRIE-DIAMOND, KATHERINE Bar# 13676
7/26/2016 3:19 PM	Miscellaneous: NOTICE OF DEMAND FOR JURY TRIAL Submitted by Attorney PARIENTE, MICHAEL D Bar# 9469
7/21/2016 2:11 PM	Correction: TAPE BEGINS ON 7/21/16 @ 11:02AM

7/21/2016 11:32 AM	Reason for removing multiple calendared event: Case Continued
7/21/2016 11:32 AM	Multiple calendared event for 7/21/2016 9:15 AM removed
7/21/2016 11:30 AM	Multiple Calendared Event continued
7/21/2016 11:04 AM	Continued
7/21/2016 11:03 AM	Continued
7/7/2016 1:55 PM	Multiple Calendared Event continued
7/7/2016 9:29 AM	Multiple Calendared Event Set
7/7/2016 9:29 AM	Motion to Place on Calendar Submitted by Attorney PARIENTE, MICHAEL D Bar# 9469
5/10/2016 4:48 PM	Tape Start 1: 5/10/2016 8:52 AM
5/10/2016 8:53 AM	Continued
3/7/2016 5:35 PM	Tape Start 1: 3/7/2016 2:51 PM
3/7/2016 2:49 PM	Continued
1/4/2016 11:28 AM	Tape Start 1: 1/4/2016 9:07 AM
1/4/2016 9:06 AM	Continued
12/21/2015 2:36 PM	Tape Start 1: 12/21/2015 2:36 PM
12/21/2015 2:34 PM	Continued
10/22/2015 1:55 PM	Tape Start 1: 10/22/2015 9:32 AM
10/22/2015 9:33 AM	Continued
8/13/2015 8:45 AM	Continued
6/4/2015 12:46 AM	Bail Refund Processed - Check # 510003015 Date: 06/03/2015
6/3/2015 7:18 AM	Bail Refund Transmitted $3115 (IR15-014915)
5/26/2015 3:40 PM	Tape Start 1: 5/26/2015 8:59 AM
5/26/2015 8:58 AM	Bail Refund Ordered: $3115
5/26/2015 8:57 AM	Continued
5/26/2015 8:57 AM	Plea: NOT GUILTY
5/26/2015 8:30	Private Attorney PARIENTE, MICHAEL D Bar# 9469

AM	
5/21/2015 3:36 PM	Complaint Filed 5/21/2015 3:35 PM
5/18/2015 2:05 PM	Bail Poster Address Change
4/25/2015 7:59 PM	Bail Paid $3115 (3rd Party) ANDERSEN, JOAN JANIE
4/25/2015 7:59 PM	Paid $3115 (15-LEST 4-001691)
4/25/2015 7:59 PM	Continued
4/25/2015 4:01 PM	Continued
4/25/2015 4:01 PM	Probable Cause Found
4/25/2015 7:18 AM	Bail Review Complete
4/25/2015 7:18 AM	Continued
4/25/2015 2:39 AM	Initial Court Date
4/25/2015 2:39 AM	Bail Due: $3115
4/25/2015 2:39 AM	Allocated to Department: 1
4/25/2015 2:39 AM	Arrest/Case Created

Class Requirement:

Classes Due: 26

Classes Completed: 0

Register of Actions
Case No. C-16-319933-A

Christopher Lee Andersen, Appellant(s) vs Las Vegas City of, Respondent(s)

§
§
§
§
§
§
§

Case Type: **Criminal Appeal**
Date Filed: **12/09/2016**
Location: **Department 32**
Cross-Reference Case Number: **C319933**
Lower Court Case Number: **C1135328A/B**

Party Information

Appellant **Andersen, Christopher Lee**

Lead Attorneys
Michael D. Pariente
Retained
702-966-5310(W)

Respondent **Las Vegas City of**

Bradford Robert Jerbic
Retained
702-229-6629(W)

Events & Orders of the Court

OTHER EVENTS AND HEARINGS

12/09/2016 **Appeal from Lower Court (Criminal)**
Record on Appeal

12/09/2016 **Receipt for Documents and Notice of Hearing**
Receipt for Documents and Notice of Hearing

01/18/2017 **Appeal From Lower Court** (10:00 AM) (Judicial Officer Bare, Rob)
Parties Present
Minutes
Result: Set Status Check

03/08/2017 **Status Check** (10:00 AM) (Judicial Officer Bare, Rob)
Status Check: Transcript
Parties Present
Minutes
Result: Briefing Schedule Set

03/14/2017 **Supplement**
Supplement to Appeal

05/09/2017 **Supplement**
Supplement on Appeal

05/10/2017 **Respondent's Brief**
Respondent's Answering Brief

07/05/2017 **Argument** (10:00 AM) (Judicial Officer Bare, Rob)
Argument / Decision
Parties Present
Minutes
06/14/2017 Reset by Court to 07/05/2017
06/28/2017 Reset by Court to 07/05/2017
07/05/2017 Reset by Court to 06/28/2017
Result: Appeal Denied

08/01/2017 **Order**
Order Dismissing Appeal

08/09/2017 **Notice of Entry of Order**
Notice of Entry of Order Dismissing Appeal

08/15/2017 **Remittitur to the Lower Court**

APP
Michael D. Pariente, Esq.
The Pariente Law Firm, P.C.
John G. Watkins, Esq., Of Counsel
3960 Howard Hughes Parkway
Suite 615
Las Vegas, Nevada 89169
(702) 966-5310
Attorney for Defendant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Christopher Andersen,

Appellant,

vs.

City of Las Vegas,

Appellee.

DC Case No: A-16-746752-W
Municipal Court Case No: C1135328A
Municipal Court: 1

APPEAL FROM JUDGMENT FROM LAS VEGAS MUNICIPAL COURT

COMES NOW Appellant, CHRISTOPHER ANDERSEN, by and through his attorney of record, MICHAEL D. PARIENTE, and files this appeal from the judgment of conviction entered by the Las Vegas Municipal Court No. 1 on December 6, 2016.

Respectfully submitted,

MICHAEL D. PARIENTE, ESQ.
Nevada Bar No.: 9469
3960 Howard Hughes, Suite 615
Las Vegas, Nevada 89169

DATED this 15th day of March, 2017.

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MEMORANDUM OF POINTS AND AUTHORITIES

Mr. Christopher 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 to a right to a jury trial. He distinguishes his case from *Amezcua v. Eight Judicial District Court*, 319 P.3d 602 (Nev. 2014) due to the fact that NRS 202.360 has been amended subsequent to *Amezcua*, 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

---

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;

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

The lower court 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).

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

---

(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.

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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

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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

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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, a Mr. Andersen should have been afforded a jury trial per his demand.

CONCLUSION

This Honorable Court should grant Mr. Andersen's appeal, reverse the conviction, and remand this case to the Las Vegas Municipal Court Department No. 1 for a jury trial.

Respectfully submitted,

MICHAEL D. PARIENTE, ESQ.
Nevada Bar No.: 9469
3960 Howard Hughes, Suite 615
Las Vegas, Nevada 89169

DATED this 15th day of March, 2017.

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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.

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ROC
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Christopher Andersen,

Appellant,

vs.

City of Las Vegas,

Appellee.

DC Case No: A-16-746752-W
Municipal Court Case No: C1135328A
Municipal Court: 1

APPEAL OF JUDGMENT FROM LAS VEGAS MUNICIPAL COURT

RECEIPT OF COPY

RECEIPT OF COPY of the **APPEAL OF JUDGMENT FROM LAS VEGAS MUNICIPAL COURT** is hereby acknowledged this 16 day of March 2017.

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DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER ANDERSEN Appellant-Defendant, vs. CITY OF LAS VEGAS Respondent-Plaintiff.	CASE NO.: C-16- 319933-A DEPT NO.: 32 Municipal Case: C1135328A

RESPONDENT'S ANSWERING BRIEF

Hearing Date:
Hearing Time:

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I.

STATEMENT OF THE CASE

On April 24, 2015, an altercation occurred wherein the Appellant-Defendant, Christopher Andersen ("Defendant" herein), was arrested for Battery Domestic Violence ("BDV"). He was ultimately charged with BDV and a second count of Simple Battery. Subsequent to his arraignment on the charges, Defendant filed a Notice Of Demand For Jury Trial. That Notice was heard on October 19, 2016, and denied by the lower court. On December 6, 2016, the scheduled date for trial on the charges, Defendant entered a conditional plea of *nolo contendere* to the BDV[1] with stipulation by the parties that he was preserving his right to appeal the Court's decision as to the jury trial issue. This timely Appeal followed.

II.

STATEMENT OF THE FACTS

On July 26, 2016, Defendant filed his Notice Of Demand For Jury Trial. The City then filed a timely Opposition To Demand For Jury Trial. The Notice was treated as a Motion by the Court, and calendared for argument on October 19, 2016.

At the time of the hearing, the City's position, as conveyed in its Opposition, was that the Nevada Supreme Court was very clear in Amezcua v. Eighth Judicial District Court, 319 P.3d 602 (2014), that misdemeanants charged with BDV were not entitled to a trial by jury due to it being a petty offense. See Respondent's Exhibit #1.

Defendant's chief argument was that an amendment of NRS 202.360 by the Nevada Legislature subsequent to the Amezcua decision, which criminalized possession of a firearm after a BDV conviction, had in effect re-classified BDV as a serious offense. Transcript Re: Motion at 2:16-23.

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[1]The Simple Battery Count was dismissed at that time pursuant to negotiations.

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The Court then denied the Motion, citing to the findings in Amezcua that deemed consequences affecting firearm possession as collateral, as well as the jurisprudence on the issue as established by the United States and Nevada Supreme Courts. Transcript Re: Motion at 3:2-4 and 4:6-12.

III.

ARGUMENT

The Amendment To NRS 202.360 Does Not Elevate Battery Domestic Violence To A "Serious" Crime

The Amezcua case is only the latest in a long history of jurisprudence by both the Nevada Supreme Court and the United States Supreme Court under which Defendant is clearly not entitled to a jury trial.

In State v. Smith, 99 Nev. 806, 672 P.2d 631 (1983), the Nevada Supreme Court held that where the maximum penalty is six months imprisonment or less, the offense is "petty" and the right to trial by jury does not attach. *Id.* at 811. In Smith, the court noted that "despite the differences in language of the constitutional provisions," neither Article 1, Section 3 of the Nevada Constitution, nor the Sixth Amendment of the United States Constitution guarantee the right to trial by jury for first offense DUI or any "petty" offenses. Id. at 810.

A few years later, in Blanton v. North Las Vegas Mun. Court, 103 Nev. 623 (1987), several defendants charged with DUI petitioned to claim their right to jury trials in municipal courts. The defendants in Blanton argued that Article 1, Section 3 of the Nevada Constitution and the Sixth Amendment to the United States Constitution guaranteed them a right to a jury trial.

The Nevada Supreme Court ultimately held that the right to a jury trial "does not extend to every criminal proceeding." *Id.* at 629. The Nevada Supreme Court identified "significant issues relating to serious financial, administrative and policy concerns" that would arise from misdemeanor trials, and concluded that such concerns should be addressed and "resolved by the legislature after conducting

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appropriate hearings and investigations on the implications" of these types of trials. *Id.* at 636. The Nevada Supreme Court further found that if such a drastic change was to be judicially mandated, "such a decision must come from the United States Supreme Court." *Id.* at 637.

This decision was actually entertained by the United States Supreme Court a little over a year later in Blanton v. North Las Vegas, 489 U.S. 538, 103 L Ed 2d 550 (1989) through *Writ Of Certiorari*. In Blanton, the United States Supreme Court addressed the question of when an offense was deemed serious for jury trial purposes. In Blanton, a unanimous Supreme Court found that Nevada's DUI statute was not a serious crime such that the defendant was entitled to a jury trial:

> It has long been settled that "there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provisions." In determining whether a particular offense should be categorized as "petty", our early decisions focused on the nature of the offense... . In recent years, however, we have sought more "objective indication of the seriousness with which society regards the offense." "[w]e have found the most relevant such criteria in the severity of the maximum authorized penalty... . Following this approach, our decision in Baldwin established that a defendant is entitled to a jury trial whenever the offense for which he is charged carries a maximum authorized prison term of greater than six months. Blanton, 448 U.S. at 542, citations omitted.

The Blanton court then went on to establish a guideline for evaluating the seriousness of an offense. It ruled that if the maximum jail time authorized by statute does not exceed six months, there is a presumption that the offense is petty. Said presumption then can only be overcome if "additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a 'serious' one." *Id.* at 543.

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The United States Supreme Court went on to apply this test in United States v. Nachtigal, 507 U.S. 1, 122 L Ed 2d 374 (1993). In Nachtigal, the defendant was charged with DUI in a national park. If convicted, a defendant could be sentenced to up to six months in jail and a $5,000 fine. A defendant could also be placed on probation for up to five years. A person on probation could be subject to up to 21 conditions of probation. And, most pertinent to the instant case, one of those conditions as set forth in 18 U.S.C. 3563(b)(8) is that a defendant "refrain from possessing a firearm, destructive device or other dangerous weapon".

Nachtigal argued that the probation conditions meant that the crime of DUI in a national park was a serious offense. The United States Supreme Court held that the penalties Nachtigal faced were not sufficient to overcome the presumption, despite the fact that a defendant could, as part of his probation, be ordered not to possess a firearm. The United States Supreme Court stated:

> Because the maximum term of imprisonment is six months, DUI under 36 CFR 4.23(a)(1) is presumptively a petty offense to which **no jury trial right attaches.** . . . Nor do we believe that the parole alternative renders the DUI offense serious. Like a monetary penalty, the liberty infringement caused by a term of probation is far less intrusive than incarceration. The discretionary probation conditions do not alter this conclusion; while they obviously entail a greater infringement on liberty than probation without attendant conditions, they do not approximate the severe loss of liberty caused by imprisonment for more than six months. Nachtigal 507 U.S. at 9-10. Citations omitted. (Emphasis Added).

Given the Nachtigal ruling, it is clear that the United States Supreme Court does not consider the potential loss of the right to possess a firearm upon conviction a significant enough factor to overcome the Blanton presumption.

Furthermore, following the rationale laid out by the Nachtigal ruling, the Nevada Supreme Court, recently ruled in Amezcua v. Eighth Judicial District Court, 319 P.3d 602 (2014) that collateral consequences, those not explicitly

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authorized as penalties under the charging statute, are not relevant to a "seriousness" analysis.

In Amezcua, the defendant was charged with first-offense battery constituting domestic violence. He filed a timely notice for a jury trial which was denied by the justice court. Amezcua subsequently filed a petition for a *writ of mandamus* in the district court, which was denied. His conviction was affirmed on appeal by the district court. Amezcua then filed a petition for *writ of mandamus* or *writ of habeas corpus* with the Nevada Supreme Court.

In denying the petition, the Nevada Supreme Court reiterated that the right to a jury trial only attaches to "serious" offenses, and that the penalties set forth for those offenses were the bar upon which the "seriousness" of the offense was to be measured:

> "[T]o determine whether the . . . right to a jury trial attaches to a particular offense, the court must examine 'objective indications of the seriousness with which society regards the offense.'" United States v. Nachtigal, 507 U.S. 1, 3, 113 S. Ct. 1072, 122 L. Ed. 2d 374 (1993) (quoting Blanton v. N. Las Vegas, 489 U.S. 538, 541, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989)). The best objective indicator of the seriousness with which society regards an offense is the maximum penalty that the legislature has set for it. *Id.* Although a "penalty" may include things other than imprisonment, the focus for purposes of the right to a jury trial has been "'on the maximum authorized period of incarceration.'" *Id.* (quoting Blanton, 489 U.S. at 542). Taking this approach, **the Supreme Court has held that an offense for which the period of incarceration is six months or less is presumptively a "petty" offense** and a jury trial is not constitutionally required. *Id.* We have reached the same conclusion. Blanton, 103 Nev. at 633-34, 748 P.2d at 500-01. **The presumption may be overcome "only by showing that the additional penalties, viewed together with the maximum prison term, are so severe that the legislature clearly determined that the offense is a 'serious' one."** Nachtigal, 507 U.S. at 3-4 (quoting Blanton, 489 U.S. at 543). Amezcua, 319 P.3d at 604. (Emphasis added)

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Amezcua argued that, in addition to other consequences of his conviction, he could potentially lose his gun rights under 18 U.S.C.A. § 922(g)(9), and that these consequences were sufficient "additional penalties" to reflect a legislative intent that the offense should be considered serious.

Citing to its previous rulings in Palmer v. State, 118 Nev. 823, 826, 59 P.3d 1192, 1194 (2002) and Nollette v. State, 18 Nev. 341, 344, 46 P.3d 87, 89 (2002), the Amezcua court found that Amezcua's potential loss of his gun rights was a collateral consequence of his conviction, and therefore not relevant to an analysis of the "seriousness" of an offense. *Id.* at 605.

Following the Nachtigal court's lead, the Amezcua court placed heavy emphasis on the direct sentencing allowed under the charging statute:

> The only penalties that NRS 200.485(1) imposes, in addition to imprisonment, are a community-service requirement of not more than 120 hours and a fine of not more than $1,000. There is nothing so severe in those penalties, considered together, as to clearly indicate a determination by the Nevada Legislature that this is a serious offense to which the right to a jury trial attaches.

The Amezcua court then found that Amezcua had failed to overcome the Blanton presumption, and that the Nevada Legislature did not view misdemeanor BDV a "serious" offense.[2] *Id.*

In his Appeal From Judgment From Las Vegas Municipal Court (Appeal), Defendant ignores the clear law of Blanton and Nachtigal, and asks this Court instead to apply a fresh due-process analysis. Appeal, p. 3. However, as described in detail above, the United States Supreme Court has already conducted its own due-process analysis, and ruled that **there is not a Sixth Amendment right to a**

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[2]While it is instructive rather than precedential, it is worth noting that this Court has previously agreed with the Blanton and Amezcua courts. See Respondent's Exhibit #3.

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jury trial for petty crimes or offenses. Blanton at 541, citing Duncan v. Louisiana, 391 U.S. 145, 159, 88 S.Ct. 1444, 1452, 20 L.Ed.2d 491 (1968).

Therefore, the only real analysis to be applied is whether misdemeanor BDV, under NRS 200.485, is a petty offense or a serious offense. In support of his position that it is a serious offense, Defendant focuses primarily on the recent amendment to NRS 202.360, criminalizing possession of a firearm by those convicted of misdemeanor BDV, and argues that it is a reflection of a change in the Nevada Legislature's intent. Under the jurisprudence cited herein above, this focus is premature, and ultimately incorrect.

The maximum allowed incarceration under the charging statute NRS 200.485 is six months, and that has not been changed by the Nevada Legislature. Therefore under Blanton, *it is presumed* that the Nevada Legislature considers NRS 200.485 BDV to be petty. The only way Defendant can overcome that presumption is if there are additional penalties so severe that the Nevada Legislature clearly determined the offense is a 'serious' one.

As the Amezcua court noted, loss of the right to a firearm is not a direct consequence of conviction of BDV under Nevada law. Given that the penalty component of NRS 200.485 has not been amended since the Amezcua ruling, even if the Defendant were to argue that the abridgement on his firearm rights and the criminalization thereof under NRS 202.360 are "additional penalties" severe enough to overcome the Blanton presumption, they could not be considered because, under Amezcua, they are collateral and thus irrelevant. With no other factors to consider, it would still be presumed that the Nevada Legislature considers NRS 200.485 BDV to be petty, and the "seriousness" analysis could stop there.

But, even were this Court were to disregard the Amezcua court's ruling that collateral consequences are irrelevant, Defendant must show that there are "additional penalties" beyond six months in jail and that those penalties combined

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with the jail time are sufficiently severe. The Defendant was charged under NRS 200.485 as defined by NRS 33.018 and NRS 200.481. See Respondent's Exhibit #2. Unfortunately, for the Defendant, the current language of NRS 202.360, specifically defines battery domestic violence differently than NRS 200.485:

> NRS 202.360(1)(a) states:
>
> 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)**;
>
> (Emphasis added)

Therefore, any consequences to the Defendant arising from NRS 202.360 cannot be said to be penalties of a conviction under NRS 200.485, but are the consequences of conduct arising under a completely different definition.

Furthermore, as can be seen from the plain language of the statute, the Nevada Legislature specifically limited the definition of misdemeanor domestic violence under NRS 202.360 to that already criminalized by the federal government[3]. Thus, far from changing its position regarding the relative "seriousness" of misdemeanor BDV, the Nevada Legislature specifically took care in its choice of language to make clear that its position *had not changed*.

Lastly, the Nachtigal court has already ruled that potential loss of a firearm *is not* severe enough of an "additional penalty" to overcome the Blanton presumption. Therefore, even if this Court were to find that NRS 202.360 creates new penalties for violations of NRS 200.485, under Nachtigal, such a finding would not be sufficient to show the requisite Legislative intent that misdemeanor BDV was "serious" enough to warrant a right to a jury trial.

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[3] 18 U.S.C.A. § 922(g)(9).

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IV.

CONCLUSION

Given the jurisprudence of the United States Supreme Court and the Nevada Supreme Court regarding the designation of "petty" versus "serious" offenses, the Defendant has not and cannot show that he is facing penalties beyond six months in jail which are so severe that the Nevada Legislature intended his offense to be considered serious. Therefore, his argument that the lower court erred in denying his Motion for jury trial fails because he cannot show that he is being charged with a serious offense, a procedural prerequisite to the right to a jury trial.

For the foregoing reasons, the City respectfully requests that this Court dismiss the Defendant's Appeal.

Respectfully submitted this 10th day of May, 2017.

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CERTIFICATE OF FACSIMILIE TRANSMISSION

I hereby certify that on May 12, 2017, I forwarded a true and correct copy of the foregoing RESPONDENT'S ANSWERING BRIEF, via facsimile transmission, to:

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An employee of the City of Las Vegas

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EXHIBIT 1

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LAS VEGAS MUNICIPAL COURT

CLARK COUNTY, NEVADA

THE CITY OF LAS VEGAS, Plaintiff, vs. CHRISTOPHER LEE ANDERSEN Defendant.	CASE NO.: C1135328A/B DEPT NO.: 1

OPPOSITION TO DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, the City of Las Vegas ("City") and files the following Opposition to Demand For Jury Trial. This pleading is based upon the points and authorities outlined below.

POINTS AND AUTHORITES

The law on this matter is very clear. A person charged with a petty offense is not entitled to a jury trial. Blanton v North Las Vegas, 489 U.S. 538, 103 L Ed 2d 550 (1989), State v Smith, 9 Nev. 806, 672 P. 2d 631 (1983).

In Blanton, the Supreme Court addressed the question of when an offense was deemed serious for jury trial purposes. In Blanton, a unanimous Supreme Court found that Nevada's DUI statute was not a serious crime such that the defendant was entitled to a jury trial:

> It has long been settled that "there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provisions." In determining whether a particular offense should be categorized as "petty", our early decisions focused on the nature of the offense. . . . .In recent years, however, we have sought more "objective indication of the seriousness with which society regards the offense." "[w]e have found the most relevant such criteria in the severity of the maximum authorized penalty....Following this

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> approach, our decision in Baldwin established that a defendant is entitled to a jury trial whenever the offense for which he is charged carries a maximum authorized prison term of greater than six months. Blanton, 448 U.S. at 542-42, citations omitted.

In State v Smith, 99 Nev. 806, 672 P.2d 631 (1983), the Nevada Supreme Court held that where the maximum penalty is six months imprisonment or less, the offense is "petty" and the right to trial by jury does not attach. Id. at 811. Additionally, the Court in Smith held that neither Article 1, Section 3 of the Nevada Constitution, nor the Sixth Amendment of the United States Constitution guarantee the right to trial by jury for first offense DUI.

The Nevada Supreme Court has recently re-addressed the issue whether a defendant is entitled to a jury trial for a petty offense. In Amezcua v Eighth Judicial District Court, 319 P.3d 602 (2014), Amezcua was charged with first-offense battery constituting domestic violence. He filed a timely notice for a jury trial which was denied by the justice court. Amezcua subsequently filed a petition for a writ of mandamus in the district court, which was denied. His conviction was affirmed on appeal by the district court. Amezcua then filed a petition for writ of mandamus or habeas corpus with the Nevada Supreme Court.

In denying the petition, the Nevada Supreme Court again acknowledged that the right to a jury trial does not extend to every criminal proceeding. Amezcua, 319 P.2d at 604, citing Blanton. The right to a jury trial only attaches to "serious" offenses. Id. The Nevada Supreme Court went on to state:

> "[T]o determine whether the . . . right to a jury trial attaches to a particular offense, the court must examine 'objective indications of the seriousness with which society regards the offense.'" United States v. Nachtigal, 507 U.S. 1, 3, 113 S. Ct. 1072, 122 L. Ed. 2d 374 (1993) (quoting Blanton v. N. Las Vegas, 489 U.S. 538, 541, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989)). The best objective indicator of the seriousness with which society regards an offense is the maximum penalty that the legislature has set for it. *Id.* Although a "penalty" may include things other than imprisonment, the focus for purposes of the right to a jury trial has been "'on the maximum authorized period of incarceration.'" *Id.* (quoting Blanton, 489 U.S. at 542). Taking this approach, the Supreme Court has held that an offense for which the period of incarceration is six months or less is presumptively a "petty" offense and a jury trial is not constitutionally required. *Id.* We have reached the same conclusion. Blanton,

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103 Nv at 633-34, 748 P.2d at 500-01. The presumption may be overcome "only by showing that the additional penalties, viewed together with the maximum prison term, are so severe that the legislature clearly determined that the offense is a 'serious' one." Nachtigal, 507 U.S. at 3-4 (quoting Blanton, 489 U.S. at 543). Amezcua, 319 P.3d at 604.

Amezcua argued that collateral consequences associated with a conviction for battery constituting domestic violence reflected a legislative intent that the offense should be considered a serious offense, thus mandating a jury trial.[1] The Nevada Supreme Court rejected these arguments and held that the statutory penalties imposed by the Nevada Legislature for battery constituting domestic violence did not elevate the crime to a "serious" offense.

In this case the Defendant is arguing the exact collateral consequences associated with a conviction for battery constituting domestic violence that the Nevada Supreme Court has already rejected. The Amezua case is directly on point in this matter. The law relating to the right to a jury trial for an offense punishable of up to 6 months in jail is abundantly clear. The defendant does not have a right to a jury trial in this case. The issues that Defendant raises in his brief are matters that must be dealt with by the legislature, as this Court is bound by the decision of both the United States Supreme Court as well as the Nevada Supreme Court.

CONCLUSION

Based upon the foregoing argument, the City respectfully requests that the Defendant request for a jury trial be denied.

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[1] These collateral consequences included the rebutable presumption that a perpetrator of domestic violence is unfit for sole or joint custody of children (NRS 432B.157 and NRS 125C.230), the loss of the right to possess a firearm under 18 U.S.C. 922(g)(9) and the possibility of deportation for noncitizens under federal immigration law.

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DATED this 13th day of September, 2016

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that on September 13, 2016, I forwarded a true and correct copy of the foregoing **OPPOSITION TO DEMAND FOR JURY TRIAL**, by facsimile transmission to:

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EXHIBIT 2

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LAS VEGAS MUNICIPAL COURT

CLARK COUNTY, NEVADA

CITY OF LAS VEGAS, Plaintiff, vs. CHRISTOPHER LEE ANDERSEN ID#: 7515016 Defendant.	CASE NO.: C1135328A/B DEPT NO.: 1 CODE NO.: 5018/5019 **CRIMINAL COMPLAINT**

Said Defendant, on or about April 24, 2015, at and within the City of Las Vegas, State of Nevada, in the area on, about, or between, 9501 West Sahara and 9300 West Sahara Avenue, has committed the following:

COUNT A

BATTERY which constituted domestic violence as defined by NRS 33.018 (Misdemeanor - LVMC 10.02.010 and NRS 200.481, 200.485), to-wit: That the said Defendant did then and there willfully and unlawfully use force or violence upon the person of another, to-wit: Maribel Andersen, which included striking her about the face, with his open hand, thereby causing her to fall to the ground and bite her lip, and/or pushing her upon her body, thereby causing her to strike her head upon the floor, and/or grabbing and dragging her by the wrists.

Such conduct constituted domestic violence, as defined by NRS 33.018 in that at the time of the described conduct, the victim was a person with whom the Defendant is and/or was a spouse, and/or former spouse and/or any other person to whom he is related by blood or marriage and/or a person with whom is or was, actually residing and/or a person with whom has had or is having a dating relationship and/or a person with whom has a child in common and/or the minor child of any of those persons and/or his child.

COUNT B

BATTERY (Misdemeanor - LVMC 10.02.010 and NRS 200.481), in the manner following, to-wit: That the said Defendant, did then and there wilfully and unlawfully use force or violence upon the person of another, to-wit: Dustin Pascoe, which included striking him about his abdomen, with his fist, and/or struggling with him, thereby causing him to fall to the ground.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the City of Las Vegas, State of Nevada. Said Complainant makes this declaration on information and belief subject to the penalty of perjury.

Dated: May 14, 2015

CARLENE HELBERT

CARLENE HELBERT, Complainant

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1504244275 / JKP

EXHIBIT 3

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

****

DAVIS MONJE,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

CASE NO.: C-16-316727-A

DEPT. NO. 32

DECISION AND ORDER

On September 25, 2015, the Appellant, Davis Monje, was charged with one misdemeanor count of Driving Under the Influence. On April 12, 2016, the Appellant filed a Motion for Jury Trial, which the Las Vegas Justice Court denied on April 14, 2016. The Appellant was thereafter found guilty on July 13, 2016. On July 20, 2016, the Appellant filed a Notice of Appeal. The appeal came on for oral argument before this Court on March 15, 2017.

The Appellant appealed his conviction on the sole issue of the denial of his Motion for Jury Trial for a misdemeanor offense. The Appellant contends that the denial was in error because Article I, Section 3 of the Nevada Constitution provides that "[t]he right of trial by Jury shall be secured to all." The Appellant contends that this provision of the Nevada Constitution stands for the proposition that all misdemeanors in Nevada are entitled to jury trials. This Court disagrees.

The Nevada constitutional jury right provision secures the jury trial right as it was known at common law. *Blanton v. N. Las Vegas Municipal Court*, 103 Nev. 623, 633, 748 P.2d 494, 500 (1987) (citing *State v. Ruhe*, 24 Nev. 251, 52 P. 274, 277 (1898)). Thus, this constitutional provision is coextensive with that guaranteed by the federal constitution. *Id.* The Nevada Supreme Court has ruled where the maximum possible penalty is six months imprisonment or less, the offense is a petty offense, and the right to a jury trial does not attach. *State v. Smith*, 99 Nev. at 809, 672 P.2d at 633 (1983). Further, the Nevada Supreme Court has directly addressed the question of whether a person charged with a misdemeanor DUI is entitled to a jury trial in *Blanton v. N. Las Vegas Mun. Court*, 103 Nev. at 633, 748 P.2d at 500 (1987). In *Blanton*, the Nevada Supreme Court adopted a bright-line test for the misdemeanor jury trial issue, holding that petty offenses, i.e. offense punishable by incarceration of six months or less, are not eligible for jury trials. *Id.* This rule is identical to the federal rule. *Id.*

The *Blanton* Court considered the speed and inexpensive nature of bench trials, the chilling effect any other decision might have on DUI prosecution, the burden placed on rural potential jurors, the practical limitations of judicial officials in outlying areas of the state, and the governmental body best suited to institute such a change that would contravene over a hundred years of practice and procedure. *Id.* Further, collateral or speculative consequences of a conviction for such an offense do not change the maximum statutory penalty analysis. *See State v. Smith*, 99 Nev. at 809, 672 P.2d at 633 (1983)(holding "the principal criterion used in characterizing an offense as 'petty' or 'serious' is the severity of the maximum authorized penalty"); *see also Amezcua v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 130 Nev. Adv. Op. 7, 319 P.3d 602, 604 (2014)(restating the "petty offense" demarcation at six months and holding that collateral consequences of conviction are immaterial to jury trial analysis).

In this case, the Appellant was convicted of a misdemeanor DUI carrying a maximum incarceration penalty of six months or less. Therefore, under the case law, his Motion for Jury Trial was appropriately denied by the Las Vegas Justice Court. Pursuant to *Blanton*, *Smith*, and *Amezcua*, the Nevada Supreme Court has made it clear that the right to a jury trial does not attach to petty offenses, which are offenses that carry a maximum incarceration penalty of six months or less.

IT IS HEREBY ORDERED, Appellant's conviction is AFFIRMED and REMANDED back to the lower court for any further proceedings.

Dated this 4 day of May, 2017.

Rob Bare,
Judge, District Court, Department 32

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I or mailed or faxed a copy to:

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KELSEY BERNSTEIN, ESQ.
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Attorney for Respondent

Dated this 4th day of May, 2017.

Tara Moser
Judicial Executive Assistant, Dept. 32

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(702) 966-5310
Attorney for Appellant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Christopher Andersen,

Appellant,

vs.

City of Las Vegas,

Appellee.

DC Case No: A-16-746752-W
Municipal Court Case No: C1135328A
Municipal Court: 1

REPLY TO RESPONDENT'S ANSWERING BRIEF

COMES NOW Appellant, CHRISTOPHER ANDERSEN, by and through his attorney of record, MICHAEL D. PARIENTE, ESQUIRE, and replies to Respondent's Answering Brief.

DATED this 9th day of June, 2017.

Respectfully submitted,

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Attorney for Appellant

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MEMORANDUM OF POINTS AND AUTHORITIES

The City cites *United States v. Nachtigal*, 507 U.S. 1, 122 L. Ed. 2d 374 (1993) suggesting that a condition of probation prohibiting the possession of a firearm is tantamount to Mr. Christopher Andersen's lifelong loss of his Second Amendment right to possess a firearm even for self-defense. Nachtigal dealt with a condition of probation where the defendant convicted of DUI could not possess a firearm while on probation. Nachtigal's probation was for a fixed number of years. If convicted of Battery Constituting Domestic Violence, Mr. Andersen will forever be banned from possessing a firearm. The fact that the Nevada Legislature chose to deprive a fundamental right for a conviction of domestic violence and to punish that person with a felony can only mean the Nevada Legislature considers Battery Constituting Domestic Violence as a "serious" crime.

The City relies on *Blanton*, but ignores the relevant language where *Blanton* cautions hiding too many onerous penalties behind the 6-month incarceration term of imprisonment.

> A defendant is entitled to a jury trial in such circumstances only if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a "serious" one. This standard, albeit somewhat imprecise, should ensure the availability of a jury trial in the rare situation where a legislature packs an offense it deems "serious" with onerous penalties that nonetheless "do not puncture the 6-month incarceration line."

Blanton v. City of North Las Vegas, Nev., 109 S.Ct. 1289, 1293, 489 U.S. 538, 543 (U.S.Nev.,1989)

The United States Eighth Circuit Court of Appeals has held that a 15-year license revocation for a third conviction for DWI rebuts the presumption that a

maximum term of imprisonment of 6 months is petty.

> "The Supreme Court's analysis of the facts in Blanton supports our conclusion that adding the 15-year license revocation to the six month prison term resulted in a penalty severe enough to warrant a jury trial in this case. In Blanton a DWI conviction led to a penalty of up to six months imprisonment, a $1000 fine, a 90-day suspension of the offender's driver's license, and compelled attendance at an alcohol abuse education course. Because the maximum possible prison sentence did not exceed six months, the Court weighed the severity of the additional statutory penalties. The Court held that the $1000 fine was not "out of step" with a six month sentence, and that the required education course "[could] only be described as de minimis." 109 S Ct. at 1294 n. 9. With regard to the license suspension, the Court was unable to determine if the suspension ran concurrently with the prison term. But even if the suspension were consecutive, the court observed that the offender could obtain a restricted license after 45 days. A full suspension for 45 days and a partial suspension for another 45 days was not severe enough to raise sixth amendment concurs. Id. Far from ruling out consideration of license revocations, the Court's decision implies that license revocations are exactly the kind of "additional statutory penalties" we should consider. While a 90-day suspension was not severe enough to raise sixth amendment concerns, a 15-year revocation is a substantial burden on the offender that is completely "out of step" with a six month prison term. Upholding this conviction would permit the Nebraska legislature to defeat the right to a jury trial by keeping the prison sentence to no more than six months, while finding other severe penalties to punish what it considers to be a serious offense. We therefore conclude that Richter was denied his sixth amendment right to a jury trial.

Richter v. Fairbanks, 903 F.2d 1202, 1205 (8th Cir. Neb. 1990).

Nevada Legislature created an "additional statutory penalty" when it amended NRS 202.360 by adding to the list of prohibited persons those who have been convicted of Battery Constituting Domestic Violence. It is immaterial that the Legislature did not place this amendment under NRS 200.485. What matters is that the Nevada Legislature deemed those misdemeanants convicted of domestic violence as odious as convicted felons and drug addicts and thus unworthy of keeping their Second Amendment right to possess a firearm even for self-defense.

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CONCLUSION

This Honorable Court should grant Mr. Andersen's appeal, reverse the conviction, and remand this case to the Las Vegas Municipal Court Department No. 1 for a jury trial.

DATED this 9th day of June, 2017.

Respectfully submitted,

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Attorney for Appellant

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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.

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Christopher Andersen,

Appellant,

vs.

City of Las Vegas,

Appellee.

DC Case No: A-16-746752-W
Municipal Court Case No: C1135328A
Municipal Court: 1

REPLY TO RESPONDENT'S ANSWERING BRIEF

RECEIPT OF COPY

RECEIPT OF COPY of the **REPLY TO RESPONDENT'S ANSWERING BRIEF** is hereby acknowledged this 12 day of June, 2017.

CITY ATTORNEY'S OFFICE:

CITY ATTORNEY
CRIMINAL DIVISION

CITY ATTORNEY
200 Lewis Ave.
Las Vegas, NV 89101

Electronically Filed
2/28/2018 9:50 AM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

CHRISTOPHER LEE ANDERSEN, Appellant, vs. CITY OF LAS VEGAS, Respondent.	)	CASE NO. C-16-319933 DEPT. NO. XXXII **Transcript of Proceedings**

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE

ARGUMENT/DECISION

WEDNESDAY, JULY 5, 2017

APPEARANCES:

For the City: MATTHEW B. WALKER, ESQ.

For the Appellant: MICHAEL D. PARIENTE, ESQ.

RECORDED BY: CARRIE HANSEN, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

WEDNESDAY, JULY 5, 2017 AT 10:24 A.M.

THE CLERK: We're going to go to page 3. It's case number C319933, *Christopher Andersen versus City of Las Vegas.*

MR. PARIENTE: Good morning, Your Honor. Michael Pariente for the petitioner. He's not present. We respectfully ask if we can waive his presence.

THE COURT: All right. It's waived. Go on.

MR. WALKER: Matthew Walker for the City of Las Vegas, Your Honor.

THE COURT: All right. So, let's have a little bit of interactive court.

MR. PARIENTE: Well, Your Honor --

THE COURT: In other words, I'll give you the -- on a scale of one to 10, how much of this do you want me to cover with you? One being you just submit it and we leave, 10 being I give you the overall true view of what I think about everything from the briefs because I've read over and thought about this a couple of times now.

MR. PARIENTE: Your Honor, I will just -- I'm comfortable with just submitting on the briefs, I believe.

THE COURT: Okay. So, that would be one on the scale.

MR. PARIENTE: We'll give you a one, Judge.

THE COURT: All right. You got somewhere to be. Don't you?

MR. PARIENTE: Yeah --

THE COURT: Okay. Mr. Walker?

MR. PARIENTE: Well, I mean, I'm okay to argue. I have no problem with -- I have no time restrictions. I'm just saying --

THE COURT: Okay.

MR. PARIENTE: -- I think I've covered everything ad nauseam.

THE COURT: Fair enough. Okay.

MR. PARIENTE: Okay.

THE COURT: I'll give you that.

MR. WALKER: Likewise, Judge. I think we covered all the arguments in the brief. If the Court has concerns or questions, like Mr. Pariente said, we'd be more than happy to discuss it now. But a one sounds good to me, too.

THE COURT: Okay. Well, I have had the opportunity -- you guys can sit down and relax. I've had an opportunity to look over the briefs. And, Mr. Pariente, what I want to say to you is, along with a few other defense lawyers, I have, as an Appellate Court now for, I don't know, about three and a half years or something I've been doing this Wednesday Appellate Court, you know, I've seen other lawyers come in and start, probably over the

last six months, it might be a little bit more than that, asking for jury trials in these misdemeanor cases. I think Craig Mueller has done it; now I see that you've done it. And I do want to say to you -- and I know you'll believe this to be true, that, I mean, I have a respect for what you're trying to do. I have said in other cases -- and I just want you to know because I've said it in other cases on the record, that in a perfect world, if it were totally up to me, just if somebody said -- and I never want this to happen, by the way, but if somebody said that I could come up with whatever I wanted to come up with on this issue, I would say: Give them all jury trials. That's what I'd say, for a lot of reasons I don't need to give you another 10 minutes on, but I would do that if it were only up to me.

The thing about it though is it's not up to me. Unless it turns out that it is. Okay? But, really, I don't think it is up to me because of the fact that there's precedent that directs what I think I have to do. In other words, if it were an area of law that's such that I could comfortably come up with something along these lines, I'd be happy to do it. But it does seem to me that there's precedent that makes it pretty clear that ultimately it may be up to one of these Appellate Courts, either the Intermediate Court or the Nevada Supreme Court, should they

so desire to tweak this and start giving everybody jury trials.

To me, it's really clear enough to where ultimately, I think it would have to be up to them if they wanted to do something about it. And I say that because -- mainly because Mr. Walker, in his brief, has enlightened me, as he's done in other cases too, but this A-M-E-Z-C-U-A, I don't even know how to say that, but --

MR. PARIENTE: That was actually -- Your Honor, that was my case from years ago.

THE COURT: Yeah.

MR. PARIENTE: *Sergio Amezcua*.

THE COURT: *Amezcua*. Okay. And it seems to me that that's pretty much right on point with what we're talking about here. In the instance case, it's the same type of underlying case and maybe the only change is the idea that there's been an amendment of NRS 202.360 where the Nevada Legislature, in its wisdom, subsequent to that case, decided that possession of a firearm after a battery/domestic violence conviction would be something that would be affected. And I understand your argument that that, then, makes things rise to where the presumption under *Blanton* -- I think there is a presumption under the U.S. Supreme Court case *Blanton*, that the offense is petty. Your position, I know Mr. Pariente, is that that can be

overcome if certain additional statutory penalties are put in place that reflect the legislative determination that the offense is a serious one.

And, anyway, I guess I've said enough. What I'm really trying to say -- and I -- I'm not mentioning all the other cases because I know you guys submitted this, but what I'm trying to say to you, Mr. Pariente, is I respect -- I truly do respect what you're trying to do.

And, you know, what really comes to mind is it's a weird thing now, just pops into my head, who was that guy? I think it was somebody named Clarence Earl Gideon who, a long time ago, probably in the '60s, decided, you know, trying to represent yourself in a criminal case doesn't make a lot of sense, and I'm not a lawyer, Mr. Gideon says to himself, I think I should be afforded a free lawyer. And can you imagine when Clarence Earl Gideon first came up with that thought? The way everybody would have had to view that? You're crazy. This guy's crazy. Free lawyers to criminal defendants at the State expense or the City expense. What? Well, guess what? *Gideon versus Wainwright*, everybody gets a free lawyer because somebody did something and it made a significant change. And, really, that's what I think you're doing here. I'm not saying you're Gideon because you're probably better than Gideon.

MR. PARIENTE: Well, he had more of an impact than I've had. So --

THE COURT: Well, I mean, but that's how change happens. And, so, what I'm saying -- what I'm getting to is I do feel constrained to say that I'm going to agree more with what's in Mr. Walker's brief on the law than what's in yours. In other words, I have to affirm the conviction and make a finding that, as far as I see it, there's no right to a jury trial. And I'm getting to that because I'm saying -- I want to leave court today with Mr. Walker drafting the Order as opposed to me drafting the Order. That's really what I'm trying to accomplish. And, so, Mr. Walker, go ahead and draft the Order and give it to him to take a look at and --

MR. WALKER: Yes, Your Honor.

THE COURT: -- I'll, you know, send it on and who knows, maybe the next level Court will -- now that you've done what you have to do to get it there, at least conceptually. I mean, I know it's a writ type of thing. It's discretionary on their part. But, you know, I'll give you this, and maybe somebody will look at this transcript. I've see this come up now, two or three times, and it seems like it's another thing ripe for review, to me. And, so, there you go. As far -- I can't control whether the higher-level Courts decide to entertain writs and all that.

That's ultimately up to their discretion, of course, and I respect that. But if I were to have any sort of input, I'd say it's there. I mean, the law obviously has been petty offense, no jury trial, even for domestic violence cases for some time now. There has been some legislative activity, you know? So, it's -- may be an opportunity for them to revisit it. So, there you have it.

MR. PARIENTE: There is interest on the *Amezcua* case. I took that up to the U.S. Supreme Court twice, pretrial and post-conviction. And, actually, pretrial --

THE COURT: Yeah.

MR. PARIENTE: -- the U.S. Supreme Court ordered the State of Nevada to do an Opposition and to which I did a Reply. So, it certainly got someone's interest. That was many years ago. I've taken it about six times since then before the legislative change and had denied -- got some answer right away. But there was interest back then, I'm hoping to rekindle that interest with this case, given that it's after the legislative change to 202.360.

THE COURT: All right. Well, hopefully that same spirit that you had with *Gideon* happens with you. Who knows?

MR. PARIENTE: I will not give up the fight.

THE COURT: Mr. Walker, do you want to say anything?

MR. WALKER: No, Your Honor. I appreciate it. We'll draft the Order.

THE COURT: All right.

MR. PARIENTE: Thank you, Your Honor. I appreciate it.

PROCEEDING CONCLUDED AT 10:33 A.M.

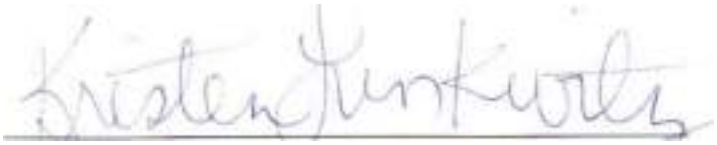
* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
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DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER ANDERSEN
Appellant-Defendant,
vs.
CITY OF LAS VEGAS
Respondent-Plaintiff.

CASE NO.: C-16-319933-A
DEPT NO.: 32
Municipal Court Case No:
C1135328A

ORDER DISMISSING APPEAL

This matter having come before the Court by way of an Appeal from the conviction of the Appellant-Defendant in the Municipal Court of the City of Las Vegas, the case being set for Argument and Decision on the merits of Appellant Defendant's Appeal on July 5, 2017, the Appellant-Defendant being not present and represented by Michael D. Pariente, Esq., the Respondent-Plaintiff represented by Matthew B. Walker, Deputy City Attorney, the Court having reviewed the briefs prepared by the parties:

THE COURT HEREBY FINDS that Blanton v North Las Vegas, 489 U.S. 538 103 L Ed 2d 550 (1989) and Amezcua v Eighth Judicial District Court, 319 P. 3d 602 (2014) are the governing authority when evaluating a demand for a jury trial.

///

☐ Non-Jury Disposed After Trial Start
☐ Non-Jury Judgment Reached
☒ Transferred before Trial
☐ Jury Disposed After Trial Start
☐ Jury Verdict Reached
☐ Other

JUL 19 2017

City of Las Vegas
Office of the City Attorney
P.O. BOX 3930
Las Vegas, Nevada 89127
702-229-6201

THE COURT HEREBY FINDS that pursuant to the aforementioned governing authority, Appellant-Defendant is not entitled to a jury trial when charged with misdemeanor Battery Constituting Domestic Violence.

THEREFORE, IT IS HEREBY ORDERED that Appellant-Defendant's conviction is affirmed, his Appeal is dismissed, and the case is remanded to Las Vegas Municipal Court Department 1 for further proceedings consistent with this Order.

DATED: July 28, 2017

DISTRICT COURT JUDGE

FOR BARE
DISTRICT COURT, DEPARTMENT 32

Submitted by:
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Reviewed as to form and content:
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