

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROMAN HILDT,

Petitioner,

v.

THE HONORABLE RICHARD F.
SCOTTI, EIGHTH JUDICIAL
DISTRICT COURT JUDGE

Respondent,

CITY OF HENDERSON,

Real Party in Interest.

Electronically Filed
Sep 13 2019 03:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Nev. Supreme Ct. Case No.
Nev. Ct of App. Case No.

District Court Case No: C-19-339750-A
Dept. No: II

Henderson Municipal No: 17CR012574
Dept. No. III

PETITIONER'S APPENDIX

VOLUME I

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PETITIONER'S APPENDIX
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ORIGINAL

MUNICIPAL COURT OF THE CITY OF HENDERSON
IN THE COUNTY OF CLARK, STATE OF NEVADA

FILED

CITY OF HENDERSON, NEVADA,

Plaintiff,

vs.

ROMAN CHRISTOPHER HILDT,

Defendant.

CRIMINAL COMPLAINT

2017 OCT 26 P 2:49

CASE NO.

MUNICIPAL COURT
CITY OF HENDERSON

17CR012574 (PCN 1)

CLERK

Josh M. Reid, City Attorney

The defendant has committed the crime of:

BATTERY CONSTITUTING DOMESTIC VIOLENCE (Misdemeanor - NRS 200.481(1)(a), 200.485(1)(a), 33.018, Henderson City Charter, Section 2.140) within the City of Henderson, in the County of Clark, State of Nevada, in the manner following, that the said defendant, on or about October 17, 2017:

did willfully and unlawfully use force or violence against or upon the person of his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child, to-wit: Did grab Michelle Hildt and/or did push her, all of which occurred in the area of 337 Everett Vista Court.

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 Henderson, State of Nevada. Said Complainant makes this declaration on information and belief subject to the penalty of perjury.



Marc M. Schifalacqua, Esq.
Sr. Assistant City Attorney

Dated: October 17, 2017
CAO File #: 010680
PCN#: nvhp5108127C

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PW000001

ORIGINAL

FILED

2018 SEP 20 P 4: 0:

MUNICIPAL COURT
CITY OF HENDERSON

CLERK

MOT

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Nevada Bar #8765
ADAM M. SOLINGER, ESQ.
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Attorneys for Defendant ROMAN HILDT

HENDERSON MUNICIPAL COURT
CLARK COUNTY, NEVADA

CITY OF HENDERSON,

Plaintiff,

-vs-

ROMAN CHRISTOPHER HILDT

Defendant.

CASE NO.: 17CR012574

DEPT NO: 3

9/27/18@10am


MOTION FOR JURY TRIAL AND STAY

COMES NOW the Defendant, ROMAN HILDT, by and through his attorneys of record,
MICHAEL L. BECKER, ESQ. and ADAM M. SOLINGER, ESQ. and hereby files this Motion
for a jury trial.

This Motion is made and based upon all the papers and pleadings on file herein and oral
argument at the time set for hearing of this Motion. Counsel is aware that Nevada law does not
currently provide for jury trials in misdemeanor battery domestic violence offenses, but based
upon the consequences of conviction a jury of Mr. Hildt's peers should decide his guilty or
innocence.

///

1 DATED this 27th day of September 2018.

2
3 
4 ADAM M. SOLINGER, ESQ.
5 Nevada Bar Number: 13963
6 Attorneys for ROMAN HILDT

7 **NOTICE OF MOTION**


8 TO: STATE OF NEVADA, Attorney for Plaintiff and,

9 NICHOLAS VASKOV, ESQ. City Attorney, attorney for Plaintiff.

10 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Defendant,
11 ROMAN HILDT will bring the foregoing MOTION FOR JURY TRIAL on for hearing on the
12 27th day of Sept, 2018 at the hour of 10 a.m. in Department 3 of the Henderson
13 Municipal Court or as soon thereafter as the matter can be heard before the Court.

14 DATED this 27th day of September, 2018.

15 Respectfully submitted,

16 
17 ADAM M. SOLINGER, ESQ.
18 Nevada Bar No. 13963
19 2970 W. Sahara Avenue
20 Las Vegas, NV 89102
21 (702) 378-2407
22 Attorneys for ROMAN HILDT
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POINTS AND AUTHORITIES

Currently, the Nevada Supreme Court has held that there is no right to a jury trial under the laws of the state Nevada, the United States' Constitution, and the Constitution of the State of Nevada. *Amezcuca v. Eighth Jud. Dist. Ct. of Nevada*, 319 P.3d 602, 130 Nev. Adv. Rep. 7 (2014), *cert. denied*, 135 S. Ct. 59 (2014). However, the Nevada Supreme Court has set for argument a case with this exact issue. *See Anderson v. Eighth Jud. Dist. Ct.*, Case Number 75208 (2018) (order setting oral argument attached as Exhibit A). The argument there is that Nevada amended the law after *Amezcuca* such that the direct consequences of a battery domestic violence conviction are now much greater than they were previously. As a result, it no longer qualifies as a petty offense and therefore the right to a jury trial attaches.

Given the current status of that case, this case should be stayed pending the outcome of that appeal so that Mr. Hildt's right to a jury trial is preserved. In the alternative, this motion is made for purposes of preserving the record on appeal.

Dated this 2nd day of September, 2018.



ADAM M. SOLINGER, ESQ.
Nevada Bar No. 13963
Attorney for Defendant Roman Hildt

1 MICHAEL L. BECKER, ESQ.
Nevada Bar #8765
2 ADAM M. SOLINGER, ESQ.
Nevada Bar# 13963
3 LAS VEGAS DEFENSE GROUP, LLC
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5 (702) 331-2725- Telephone
(702) 974-0524 - Fax
6 Attorneys for Defendant ROMAN HILDT

7 HENDERSON MUNICIPAL COURT
8 CLARK COUNTY, NEVADA

9 CITY OF HENDERSON,)

10 Plaintiff,)

11 -vs-)

12 ROMAN CHRISTOPHER HILDT)

13 Defendant.)
14)

CASE NO.: 17CR012574

DEPT NO: 3

15 **RECEIPT OF COPY**

16 **RECEIPT OF COPY** of the above Motion is hereby acknowledged this 20 day of

17 Sept, 2018.

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19 CITY ATTORNEY'S OFFICE
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ORIGINAL

FILED

2018 SEP 20 P 4:02

MUNICIPAL COURT
CITY OF HENDERSON

CLERK

MOT

MICHAEL L. BECKER, ESQ.
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Attorneys for Defendant ROMAN HILDT

HENDERSON MUNICIPAL COURT
CLARK COUNTY, NEVADA

CITY OF HENDERSON,

Plaintiff,

-vs-

ROMAN CHRISTOPHER HILDT

Defendant.

CASE NO.: 17CR012574

DEPT NO: 3

9/27/18 @ 10am

MOTION TO SUPPRESS

COMES NOW the Defendant, ROMAN HILDT, by and through his attorneys of record, MICHAEL L. BECKER, ESQ. and ADAM M. SOLINGER, ESQ. and hereby files this Motion to suppress any statement he made to the police based upon the lack of a *Miranda* warning and because any statement made was not given freely and voluntarily.


This Motion is made and based upon all the papers and pleadings on file herein and oral argument at the time set for hearing of this Motion.

///

///

///

1 DATED this 20th day of September 2018.

2
3 
4 ADAM M. SOLINGER, ESQ.
5 Nevada Bar Number: 13963
6 Attorneys for ROMAN HILDT

7 **NOTICE OF MOTION**

8 TO: STATE OF NEVADA, Attorney for Plaintiff and,

9 NICHOLAS VASKOV, ESQ. City Attorney, attorney for Plaintiff.

10 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Defendant,


11 ROMAN HILDT will bring the foregoing MOTION FOR JURY TRIAL on for hearing on the

12 27th day of Sept, 2018 at the hour of 10 a.m. in Department 3 of the Henderson

13 Municipal Court or as soon thereafter as the matter can be heard before the Court.

14 DATED this 20th day of September, 2018.

15 Respectfully submitted,

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17 ADAM M. SOLINGER, ESQ.
18 Nevada Bar No. 13963
19 2970 W. Sahara Avenue
20 Las Vegas, NV 89102
21 (702) 378-2407
22 Attorneys for ROMAN HILDT
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I. FACTS

On or about October 17, 2017, at 11:18 P.M., police officers from the Henderson Police Department responded to 337 Everett Vista Court in Henderson, Nevada in response to an allegation of domestic violence. Officer Hansen was the first to arrive and contacted Roman Hildt outside of the house. Two other officers then arrived and they began to question Mr. Hildt. Discovery provided by the City makes no mention of any *Miranda* warning being given. Additionally, upon information and belief, Mr. Hildt was ultimately questioned by the three officers away from his residence and next to a police vehicle with all three officers surrounding him.

II. POINTS AND AUTHORITIES

Before the State can use a defendant's statements against him at court, the court must first hold a hearing outside the presence of the jury to determine whether *Miranda* requirements were complied with and the defendant's statement was voluntary. *Jackson v. Denno*, 378 U.S. 367 (1964). Pursuant to NRS 47.090,

Preliminary hearings on the admissibility of confessions or statements by the accused or evidence allegedly unlawfully obtained shall be conducted outside the hearing of the jury. The accused does not by testifying at the hearing subject himself or herself to cross-examination as to other issues in the case. Testimony given by the accused at the hearing is not admissible against the accused on the issue of guilt at the trial.

At this hearing, the court analyzes what the defendant told the police and the circumstances under which the statements were made. The court must make two determinations: (1) if *Miranda* warnings should have been provided to the suspect and, if so, whether such warnings were actually given; and (2) whether, after reviewing the totality of the circumstances, the statements were made voluntarily.

If the Court finds that a *Miranda* violation occurred, the statement cannot be used at trial except for impeaching the defendant should he elect to testify. *Harris v. New York*, 401 U.S. 222

1 (1971). However, if the Court finds the statements were not voluntarily given, they cannot be
2 used at trial for any purpose. *Mimey v. Arizona*, 437 U.S. 385, 401-02 (1978). The burden of
3 requesting a *Jackson v. Denno* hearing initially rests with the defendant. *See, Wilkins v. State*, 96
4 Nev. 267, 609 P.2d 309 (1980). Once the hearing has been requested, the burden then shifts to
5 the State to prove voluntariness by a preponderance of the evidence. *See, Falcon v. State*, 110
6 Nev. 530, 874 P.2d 772 (1984). Even where the Court permits a defendant's statements to be
7 heard by the jury, the jury may still render an independent judgment regarding the voluntariness
8 of the statements. *Carlson v. State*, 84 Nev. 534, 536, 445 P.2d 157, 159 (1968). *See also*,
9 *Dawson v. State*, 108 Nev. 112, 825 P.2d 593 (1992).

11 **A. MR. HILDT WAS IN CUSTODY AT THE TIME HE SPOKE WITH THE**
12 **POLICE.**

13 "It must be recognized that whenever a police officer accosts an individual and restrains
14 his freedom to walk away, he has 'seized' that person." *Terry v. Ohio*, 392 U.S. 1, 16 (1968). For
15 *Miranda* purposes, a defendant is in custody if he has been taken into custody "or otherwise
16 deprived of his freedom of action in any significant way." 384 U.S. 436, 444 (1966). In
17 determining whether an individual was in custody and entitled to the protections of *Miranda*,
18 "[t]wo discrete inquiries are essential to the determination: first, what were the circumstances
19 surrounding the interrogation; and second, given those circumstances, would a reasonable person
20 have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v.*
21 *Keohane*, 516 U.S. 99, 112 (1995); *see also, Rosky v. State*, 121 Nev. 184, 191, 111 p.3d 690,
22 695 (2005).

24 Here, though Mr. Hildt was not formally under arrest when he made his statements to the
25 police, he was effectively in police custody and therefore entitled to *Miranda* warnings. A

1 reasonable person in Mr. Hildt's position, outside on the sidewalk, in the dark, past 11:00 P.M.,
2 in late-October, prevented from returning to his residence by police, and surrounded by police
3 officers would not have felt free to leave.

4 **B. MR. HILDT WAS NOT *MIRANDIZED*.**

5 "The accused must be adequately and effectively apprised of his rights" to protect against
6 the inherently compelling pressures of an interrogation. *Miranda v. Arizona*, 384 U.S. 436, 467
7 (1966). "[W]hen *Miranda* warnings are inserted in the midst of coordinated and continuing
8 interrogation, they are likely to mislead and deprive a defendant of knowledge essential to his
9 ability to understand the nature of his rights and the consequences of abandoning them."
10 *Missouri v. Seibert*, 542 U.S. 600, 613-14 (2004). (internal quotations omitted). To determine if
11 midstream *Miranda* warnings are effective enough to accomplish their objective, the Court must
12 consider the following relevant facts: "the completeness and detail of the questions and answers
13 in the first round of interrogation, the overlapping content of the two statements, the timing and
14 setting of the first and the second, the continuity of police personnel, and the degree to which the
15 interrogator's questions treated the second round as continuous with the first." *Id.* at 615.

16 "[T]elling a suspect that "anything you say can and will be used against you," without
17 expressly excepting the statement just given, could lead an entirely reasonable inference that
18 what he has just said will be used, with subsequent silence being of no avail." *Missouri v.*
19 *Seibert*, 542 U.S. at 613. "[W]hen *Miranda* warnings are inserted in the midst of coordinated and
20 continuing interrogation, they are likely to mislead and 'depriv[e] a defendant of knowledge
21 essential to his ability to understand the nature of his rights and the consequences of abandoning
22 them.'" *Id.* at 613-14 (quoting, *Moran v. Burbine*, 475 U.S. 412, 424 (1984)). The Nevada
23 Supreme Court held in *Carroll v. State*, that midstream warnings did not properly advise the
24
25

1 defendant that he could terminate the interrogation despite previous inculpatory statements. 132
2 Nev. Adv. Rep 23, 371 P.3d 1023, 1025 (2016).

3 Here, there is no indication that Mr. Hildt was ever given a *Miranda* warning.

4 **C. DEFENDANT DID NOT WAIVE HIS *MIRANDA* RIGHTS AND HIS**
5 **STATEMENTS WERE NOT VOLUNTARY**

6 The Due Process Clause of the Fourteenth Amendment requires that an individual's
7 confession be a "product of a rational intellect and free will." *Passama v. State*, 103 Nev. 212,
8 213-14, 735 P.2d 321, 322 (1987), (quoting *Blackburn v. Alabama*, 361 U.S. 199, 208 (1960)).
9 Due Process requires inquiry into whether a defendant's will was overborne by the
10 circumstances surrounding the giving of a confession. *Dickerson v. United States*, 120 S. Ct.
11 2326, 2331 (2000). The State must show voluntariness by a preponderance of the evidence.
12 *Brimmings v. State*, 93 Nev. 434, 438 (1977); *Falcon v. State*, 110 Nev. 530, 534 (1994);
13 *Colorado v. Connelly*, 479 U.S. 157, 168 (1986).

14 A defendant's statements made during a custodial interrogation may be admitted at trial
15 only if *Miranda* rights were administered and validly waived. *Koger v. State*, 117 Nev. 138, 141,
16 17 P.3d 428, 430 (2001). "The courts must presume that a defendant did not waive his rights."
17 *North Carolina v. Butler*, 441 U.S. 369, 373 (1979). "Though informed of his *Miranda* rights,
18 unless the defendant knowingly and voluntarily waived them, statements made during custodial
19 interrogation are inadmissible." *Floyd v. State*, 118 Nev. 156, 171, 42 P.3d 249, 259 (2002).
20 "[T]he waiver must have been made with a full awareness both of the nature of the right being
21 abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412,
22 421 (1986).

23 Relevant factors in evaluating the voluntariness of a statement are: (1) the age of the
24
25


1 defendant; (2) lack of education or low intelligence of the defendant; (3) lack of advice regarding
2 constitutional rights; (4) length of detention; (5) nature of the questioning including the use of
3 repetition; and, (6) the use of physical or emotional punishment. *Passama*, 103 Nev. at 214
4 (1987).

5 In this case, Mr. Hildt was not read his rights ever per the information provided to the
6 defense. As a result, any statement he made to the police must be suppressed as given in
7 violation of *Miranda*. Additionally, Mr. Hildt did not voluntarily speak with the police and
8 therefore his statement should be suppressed.

9
10 **III. CONCLUSION**

11 Based on the foregoing, Mr. Hildt respectfully requests a *Jackson v. Denno* hearing to be
12 scheduled prior to trial to address the admissibility of his statements to police.

13 Dated this 24th day of September, 2018.

14
15 
16 _____
17 ADAM M. SOLINGER, ESQ.
18 Nevada Bar No. 13963
19 Attorney for Defendant Roman Hildt
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6 Attorneys for Defendant ROMAN HILDT

7 HENDERSON MUNICIPAL COURT
8 CLARK COUNTY, NEVADA

9 CITY OF HENDERSON,)
10)
Plaintiff,)
11)
-vs-)
12)
ROMAN CHRISTOPHER HILDT)
13)
Defendant.)
14)

CASE NO.: 17CR012574

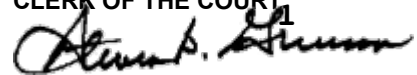
DEPT NO: 3

15 RECEIPT OF COPY

16 RECEIPT OF COPY of the above Motion is hereby acknowledged this 20 day of

17 Sept, 2018.

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19 CITY ATTORNEY'S OFFICE
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HEARING - March 25, 2019

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HENDERSON MUNICIPAL COURT

CLARK COUNTY, NEVADA

CITY OF HENDERSON

PLAINTIFF

vs.

ROMAN CHRISTOPHER HILDT

DEFENDANT

HENDERSON MUNICIPAL

Case No: 17CR012574

DISTRICT COURT No:

C-19-339750-A

HEARING

MARCH 25, 2019

PRESENT:

JUDGE: Hon. Rodney T. Burr

FOR THE CITY OF HENDERSON:

Elaine Mather, Deputy City Attorney

FOR THE DEFENDANT:

Adam Solinger -Defendant

TRANSCRIBED BY: HUMBERTO RODRIGUEZ

Lawyer Solutions Group
www.LawyerSolutionsGroup.com

PW000014

1 CLERK: Page two, Roman Hildt 17CR012574.

2 COURT: Alright and it is my understanding
3 this matter is proceeding to trial, is that correct?

4 MATHER: That's correct your Honor. I
5 believe the defense wanted to withdraw its motion,
6 is that correct Mr. Solinger?

7 SOLINGER: That's correct your Honor at
8 this time we will be withdrawing the suppression
9 motion. However, we are renewing our motion I guess
10 for jury trial. I understand it was previously
11 denied. The Nevada Supreme Court since that motion
12 has heard argument in the matter. I listened to the
13 three-judge panel. Obviously, you can (INAUDIBLE)
14 however you want. We don't have a decision yet but
15 none of them seem to express skepticism or any
16 indication that they were going to find any other
17 way. So, we are just making this record now to
18 preserve that right should they rule in our favor.

19 COURT: Alright, so, we'll show the motion
20 to dismiss --- a motion to suppress as withdrawn and
21 we'll note the request for jury trial which is
22 denied. Alright, and so are you ready to proceed?

23 SOLINGER: Yes, your Honor.

24 COURT: City?

25 MATHER: Yes, your Honor and before we

1 begin, I would like to amend the complaint. The
2 date, specifically on the complaint. It says that it
3 is October 17, 2017, but I would like to change the
4 date to October 16, 2017.

5 COURT: Alright.

6 MATHER: I indicated to Mr. Solinger prior
7 to beginning that at the city was going to do that.
8 I believe there is no objection. Is that correct?

9 SOLINGER: Your Honor there is no
10 objection I'll submit it. In candid the reports do
11 say the 16th throughout and I anticipated this in
12 coming.

13 COURT: Alright, thank you it will be
14 amended and first witness.

15 MATHER: City calls Michelle Hildt.

16 COURT: Alright then ladies and gentlemen
17 I am going to invoke the exclusionary rule. If
18 you're a witness under subpoena I'm going to ask
19 that you step outside the courtroom or if you don't
20 have a subpoena and you intend to testify you need
21 to step outside and when it's your turn to testify
22 the marshal shall summons you into court.

23 SOLINGER: Your Honor, they are my
24 client's parents they don't anticipate they will
25 testify at this proceeding as they weren't present.

1 They are just here to support.

2 COURT: Okay, thank you.

3 CLERK: Please raise your right hand. Do
4 swear or affirm that the testimony you are about to
5 give is the truth, the whole truth and nothing but
6 the truth?

7 MICHELLE: I do.

8 CLERK: You may be seated.

9 BAILIFF: You can move the chair up or down
10 if you want.

11 MICHELLE: Thank you.

12 BAILIFF: Shorter people. Just talk into
13 the microphone. I'll get you some water.

14 MATHER: May I use the lector your Honor.

15 COURT: Yes.

16 MATHER: Thank you. Good morning can you
17 please state your first and last name and spell
18 each.

19 MICHELLE: It's Michelle Hildt. M-I-C-H-
20 E-L-L-E, H-I-L-D-T.

21 MATHER: And Michelle do you know Roman
22 Hildt?

23 MICHELLE: I do.

24 MATHER: How do you know him?

25 MICHELLE: We were married for seventeen

1 years.

2 MATHER: Do you have any children in
3 common?

4 MICHELLE: We do, four.

5 MATHER: I'd like to draw your attention
6 back to October 16, 2017 at approximately eleven
7 o'clock at night. Do you recall where you were on
8 that date?

9 MICHELLE: I do.

10 MATHER: And, where were you?

11 MICHELLE: I was at our home at the time 3337
12 Evert Vista Court Henderson, Nevada.

13 MATHER: And was anyone else home at that
14 time?

15 MICHELLE: The kids and I were there. Our son
16 was in my room sleeping because he was sick.

17 MATHER: Okay and you say our son. What was
18 his name?

19 MICHELLE: Devin.

20 MATHER: Was the defendant present at the
21 time?

22 MICHELLE: Not at the time.

23 MATHER: Okay. Is the defendant present in
24 the courtroom today?

25 MICHELLE: He is.

1 MATHER: Can you please point to him and
2 describe something he is wearing.

3 MICHELLE: He's sitting right over there with
4 the blue shirt, blue jacket.

5 MATHER: May the record reflect that the
6 witness has identified the defendant your Honor.

7 COURT: It shall.

8 MATHER: Thank you. So, at approximately
9 eleven o'clock did anything unusual happen between
10 you at the defendant?

11 MICHELLE: Yes, I---

12 MATHER: Or prior to that time? When did
13 the defendant come over to the house?

14 MICHELLE: He came over the approximate
15 time that you mentioned that was elevenish ---

16 MATHER: Okay.

17 MICHELLE: And I was upstairs. I took a short
18 phone call and he was very upset because our son he
19 felt needed to be in his own bed even though he was
20 fast asleep in mine and safe.

21 MATHER: Okay.

22 MICHELLE: So, he approached me, and I was
23 upstairs taking a phone call.

24 MATHER: Okay. What was the stage of your
25 marriage at that time?

1 MICHELLE: We were in the process of divorce.

2 MATHER: Were you living together?

3 MICHELLE: We had been separated on and off.
4 He'd been at his folk's house.

5 MATHER: Did he live at the house at 337
6 Evert Vista Court?

7 MICHELLE: Not at that time.

8 MATHER: But he was there that evening you
9 testified?

10 MICHELLE: Yes, he would come and go as he
11 pleased.

12 MATHER: Were you aware he was coming over
13 that evening?

14 MICHELLE: I was not.

15 MATHER: So, what happened after you
16 indicated that you were on the phone with a friend.
17 What happened?

18 MICHELLE: Well he motioned me that he was
19 very upset that I was on the phone. So, I got off
20 the phone and we had an altercation, briefly.

21 MATHER: When you say altercation what type
22 of altercation?

23 MICHELLE: An argument about why I was on a
24 phone call while our child was sick even though he
25 was perfectly fine asleep in our --- in my bed.

1 MATHER: Okay.

2 MICHELLE: So, he ---

3 MATHER: And what was he saying about the
4 phone call?

5 MICHELLE: He claimed that I was on the phone
6 with a boyfriend and he was upset that I wasn't
7 tending to our child.

8 MATHER: Okay and what was your response to
9 that?

10 MICHELLE: That I would take a phone call and
11 it was brief. I wasn't on it long and Devin was
12 perfectly fine asleep.

13 MATHER: Okay, what happened next?

14 MICHELLE: I left the house because it was
15 just going to escalate. So, I left for about fifteen
16 -- twenty minutes.

17 MATHER: Do you recall where you went?

18 MICHELLE: I just drove to a nearby parking
19 lot and tried to cool down.

20 MATHER: Okay and then what happened?

21 MICHELLE: I went back, and he disabled the
22 garage and locked the door and wouldn't let me in.

23 MATHER: Okay hold on a second. So, you
24 came back from the park.

25 MICHELLE: Right.

1 MATHER: How long had you been gone about?

2 MICHELLE: About fifteen to twenty minutes.

3 MATHER: Okay. When you got home what did
4 you find as to the state of the house?

5 MICHELLE: He had locked me out basically.

6 MATHER: Okay and how did you come to find
7 that?

8 MICHELLE: I couldn't get in. I didn't---

9 MATHER: Okay how many ways did you try to
10 get in?

11 MICHELLE: The garage he disabled like I
12 said, and we have a safety lock at the top of the
13 door. So, if ---- you can't open it with a key.

14 MATHER: And when you say the top of the
15 door what door is that?

16 MICHELLE: The front door.

17 MATHER: Okay. So, you tried the garage
18 door and the front door.

19 MICHELLE: Front door and I was, yeah.

20 MATHER: And what did you do upon finding
21 out that you couldn't enter the house?

22 MICHELLE: I then, you know, rang the
23 doorbell and he eventually did let me in.

24 MATHER: Okay, and what happened when you
25 came in?

1 MICHELLE: I went straight to our room.

2 MATHER: And ---

3 MICHELLE: And I ---

4 MATHER: When you say our room. What room
5 was that in the house?

6 MICHELLE: The master bedroom.

7 MATHER: Okay and what happed once you got
8 there?

9 MICHELLE: I went in there and I closed the
10 door and locked it.

11 MATHER: Did you slam the door and locked
12 it?

13 MICHELLE: Possibly, I was angry. So, it is
14 possible I slammed it.

15 MATHER: Okay and where were the other
16 children at this time, once you came back?

17 MICHELLE: They were all upstairs.

18 MATHER: Okay. Were they as far as you are
19 aware in their beds?

20 MICHELLE: Yes.

21 MATHER: Okay, then what happened?

22 MICHELLE: Then he unlocked the door and
23 proceeded to say that he was going to stay the night
24 and he was going to stay in that room and I said I
25 would rather him not and as a matter a fact if he

1 had stayed over it was usually up in the loft or on
2 the couch and I said that he didn't have any right
3 to just come in and sleep in the bed and so that's
4 where the altercation you know continued to
5 escalate.

6 MATHER: Okay. Was there any physical
7 violence between the two of you at this time?

8 MICHELLE: At the time no.

9 MATHER: Okay, what happened then?

10 MICHELLE: I just explained to him that I
11 really wanted him to leave and you know he
12 maintained that it was his house too and you know
13 since we are in the process of divorce, I knew
14 legally I couldn't force him to leave. So, I just
15 asked him to sleep on the couch or go upstairs to
16 the loft and I probably asked him five or six times
17 and he wouldn't, and I said, "Do I need to call the
18 police and get them involved?" and he said, "Yeah,
19 go ahead".

20 MATHER: Okay and then what happened?

21 MICHELLE: The police came and ---

22 MATHER: Why did the police come?

23 MICHELLE: Well because I called, and I asked
24 them to ---

25 MATHER: Why did you call the police?

1 MICHELLE: Because I knew things were going
2 to escalate.

3 MATHER: Okay, did any physical violence
4 occur between the two of you after you called but
5 before the police arrived?

6 MICHELLE: He did end up leaving the bedroom
7 and I locked the door again and he unlocked it again
8 and then he ended up taking the door off the hinges
9 and —

10 MATHER: Did he say anything while he is
11 taking the door off the hinges?

12 MICHELLE: No, no.

13 MATHER: Okay.

14 MICHELLE: I was upset that he was taking
15 them off the hinges, but --- and I was trying to
16 grab a hold of the door.

17 MATHER: Okay.

18 MICHELLE: And he made a ---

19 MATHER: What did he do with the door was
20 it came off --- he took it off the hinges?

21 MICHELLE: He went into the garage.

22 MATHER: With the door?

23 MICHELLE: The door.

24 MATHER: Okay.

25 MICHELLE: And I followed him.

1 MATHER: And what did you do?

2 MICHELLE: I followed him and I ---we
3 basically did tug-a-war over the door and I tried to
4 get it to put it back on and then eventually he put
5 it down because he was getting so frustrated with me
6 because I kept pulling on it.

7 MATHER: Okay and then what happened?

8 MICHELLE: He grabbed ahold of my forearms.

9 MATHER: Okay and was it both of your
10 forearms or just one of them?

11 MICHELLE: Yes, it was both.

12 MATHER: Okay and can you show the Court
13 where he grabbed you on your forearm?

14 MICHELLE: Right here.

15 MATHER: And it appears for the record your
16 Honor the victim is indicating midway between her
17 wrist and elbow.

18 COURT: Yes.

19 MATHER: Prior to him grabbing you by the
20 forearms had you put your hands on him?

21 MICHELLE: No.

22 MATHER: Had you put your hands on the
23 door?

24 MICHELLE: The door, yes.

25 MATHER: After he put his hands on you

1 what--- did you put your hands on him?

2 MICHELLE: I pulled away and I, I might
3 of, you know, shoved trying to get away from him.

4 MATHER: Okay and then what happened?

5 MICHELLE: I proceeded to grab the door.
6 It was back and forth between --- just the goal was
7 to put the door back on.

8 MATHER: Did you put the door back on that
9 night?

10 MICHELLE: No, I did not. The police
11 ended up showing up before that happened.

12 MATHER: Okay, where were you when the
13 police showed up?

14 MICHELLE: We were both standing outside
15 the house in the driveway.

16 MATHER: How quickly after you called for
17 the police did they arrive?

18 MICHELLE: Pretty quickly, ten minutes
19 tops.

20 MATHER: Okay and did you have an
21 opportunity to speak to the police officers about
22 what occurred that night?

23 MICHELLE: I did.

24 MATHER: Courts indulgence please. After
25 the defendant grabbed you on your arms, what did he

1 do once his hands were on you?

2 MICHELLE: Well he was just trying to
3 stop me from grabbing the door.

4 MATHER: Okay did you move your body in any
5 direction?

6 MICHELLE: We shoved it back and forth
7 you know with me trying to get ahold of the door and
8 him trying to stop me.

9 MATHER: Okay. So, did he push you?

10 MICHELLE: No.

11 MATHER: Okay. Did all that you just
12 testify to occur within the City of Henderson?

13 MICHELLE: It did.

14 MATHER: Okay, court's indulgence please.

15 COURT: Um-hum.

16 MATHER: Courts indulgence.

17 COURT: Yes.

18 MATHER: Do you recognize what this
19 document is Michelle?

20 MICHELLE: I do.

21 MATHER: It's marked as city's proposed
22 exhibit 2. What is it?

23 MICHELLE: It's the statement that I
24 made that evening.

25 MATHER: Okay and when you say statement is

1 it oral or written?

2 MICHELLE: It was written.

3 MATHER: Okay. And you completed this
4 statement?

5 MICHELLE: I did.

6 MATHER: Okay, now would it be fair to say
7 that at the time you completed it your recollection
8 of what occurred back on October 16, 2017 was better
9 than it is today?

10 MICHELLE: Yes.

11 MATHER: You indicated that you did not get
12 pushed after the defendant grabbed your forearms, is
13 that correct?

14 MICHELLE: Um-hum, I did.

15 MATHER: But was your body manipulated in
16 any way that you recall?

17 MICHELLE: Well the back and forth
18 shoving. I guess that would be considered
19 manipulating.

20 MATHER: Okay, so, when his arms were on
21 you, was he shoving your body?

22 MICHELLE: Yeah.

23 MATHER: Okay, okay. Pass the witness your
24 Honor.

25 COURT: Alright, cross?

1 SOLINGER: Your Honor, may I approach
2 the clerk to have these --- they did them double
3 sided when they printed.

4 COURT: Sure, sure.

5 SOLINGER: Good morning, how are you?

6 MICHELLE: I'm okay, how are you?

7 SOLINGER: Oh, I'm doing alright. I just
8 kind of wanted to clarify some of your testimony.
9 You had testified about a door shoving back and
10 forth and the city kind of took great length to have
11 you describe where you're saying my client grabbed
12 your wrist, but we didn't talk a lot of about the
13 door. So, during this struggle I guess for a lack of
14 a better term over the door how was the door kind of
15 positioned?

16 MICHELLE: Well he was carrying it like
17 this cause he had to take it off.

18 MATHER: Can I see it? I'm sorry. Okay.

19 SOLINGER: It's long way ---

20 MICHELLE: It's long, it's long way

21 SOLINGER: on hinges. It's not like you
22 guys were doing a three stooges' bit across the road
23 with glass, right?

24 MICHELLE: Right.

25 SOLINGER: Okay, so, it's up high and

1 he's grabbing it on both sides.

2 MICHELLE: Right.

3 SOLINGER: Where are you saying you're
4 grabbing it?

5 MICHELLE: I'm grabbing probably below,
6 or I don't know exactly if I was above or below his
7 hands, but I was pulling it as well.

8 SOLINGER: Gotcha, so, he is trying to
9 move one way as well ---

10 MICHELLE: And I'm trying to pull it the
11 other.

12 SOLINGER: Were you the same side door
13 as him or you guys ----

14 MICHELLE: We are opposite at that
15 point, yeah.

16 SOLINGER: Okay.

17 MICHELLE: And you had first testified
18 that my client came home at about eleven o'clock or
19 so?

20 MICHELLE: Um-hum.

21 COURT: Is that a yes?

22 MICHELLE: Yes, yes.

23 SOLINGER: They're recording everything
24 for the record. So, they don't catch um-hum and head
25 nods.

1 MICHELLE: Okay.

2 SOLINGER: Your son, Devin, I believe
3 was sick, right?

4 MICHELLE: Correct.

5 SOLINGER: Was there some type of a
6 prescription that he needed?

7 MICHELLE: I don't recall at the time.
8 That was a year and a half ago. Possibly he's had a
9 lot of ear infections.

10 SOLINGER: That's fair. So, he was sick?

11 MICHELLE: He was sick and asleep in my
12 bed.

13 SOLINGER: Was he running a fever?

14 MICHELLE: Yeah, it's hard to say it was
15 over a year and a half ago. Possibly, he was ill and
16 there is a possibility he was running a fever, yes.

17 SOLINGER: Okay and you said my client
18 came over at about eleven o'clock, right?

19 MICHELLE: Right.

20 SOLINGER: And then you guys had a, you
21 called it an altercation at first, right?

22 MICHELLE: Right.

23 SOLINGER: But then you changed it to an
24 argument or disagreement.

25 MICHELLE: It was a disagreement more so

1 at the beginning, yes.

2 SOLINGER: You left for about fifteen or
3 twenty minutes; I think?

4 MICHELLE: Correct, to just kind of let
5 the situation cool down.

6 SOLINGER: So, we are at about eleven
7 twentyish, give or take when you come back to the
8 house?

9 MICHELLE: Right.

10 SOLINGER: And that's when you find that
11 it's locked.

12 MICHELLE: Right.

13 SOLINGER: And so, you've tried the
14 garage door?

15 MICHELLE: Um-hum.

16 SOLINGER: And the front door?

17 MICHELLE: Correct.

18 SOLINGER: And you can't get in.

19 MICHELLE: Right.

20 SOLINGER: So, you start ringing the
21 doorbell.

22 MICHELLE: Right.

23 SOLINGER: And that's when you're saying
24 my client let you in?

25 MICHELLE: Right.

1 SOLINGER: Did any of the children wake
2 up through any of this commotion?

3 MICHELLE: They were definitely up in
4 their room. Awake, because they heard it all,
5 absolutely.

6 SOLINGER: And then from there you went
7 to the room and you conceded that you had slammed
8 the door and locked it. Right?

9 MICHELLE: Right.

10 SOLINGER: And how long did that take
11 you if you had to estimate?

12 MICHELLE: Simply walking from the front
13 door to my room? Maybe two minutes.

14 SOLINGER: I mean as far as getting in.
15 Right, cause it's fifteen to twenty minutes till you
16 get back to the house. I'm assuming he wasn't right
17 on the other side of the door to let you in. So, did
18 you ring once and then wait or did you just kind of
19 like ding, ding, ding, ding, ding, ding, ----

20 MICHELLE: I probably rung it more than
21 once. Obviously, he wasn't happy with me and he
22 locked me out. So, it would be safe to assume.

23 SOLINGER: So, you think maybe it would
24 be fair to say about eleven-thirty by the time you
25 get to your room with all the commotion and the

1 ringing and all that?

2 MICHELLE: Sure.

3 SOLINGER: And then after that the lock
4 get popped.

5 MICHELLE: Right.

6 SOLINGER: And the door is taken off the
7 hinges.

8 MICHELLE: Correct.

9 SOLINGER: And at that point you are
10 just verbally saying, "Don't do this. Just leave the
11 house".

12 MICHELLE: Well, at that point I
13 suggested if he insisted on staying. Like I said, we
14 were in the process of divorce and I knew I couldn't
15 legally make him leave. If he wanted to stay, he
16 could sleep on the couch or in the loft which is
17 where he'd slept for the previous two years.

18 SOLINGER: And how long did it take to
19 get the door off the hinges.

20 MICHELLE: Not long he's pretty quick at
21 it.

22 SOLINGER: Understood and then at that
23 point he carried the door to the garage (INAUDIBLE)

24 MICHELLE: Right, right.

25 SOLINGER: and you're kind of following

1 along telling him, you know, "Don't do this. You're
2 being ridiculous" things like that I assume?

3 MICHELLE: Right, um-hum.

4 SOLINGER: It's not until you get to the
5 garage that kind of this ---

6 MICHELLE: Right.

7 SOLINGER: Pinioning back and forth
8 starts taking place, right?

9 MICHELLE: Correct.

10 D And your testimony initially was that
11 he set the door down and then grabbed your wrist?

12 MICHELLE: At some point in the
13 altercation --- the back and forth he had to have
14 because he did grab my arms.

15 SOLINGER: Okay, so, he set the door
16 down and you were not holding the door at that
17 point?

18 MICHELLE: At that point, no.

19 SOLINGER: Okay and so, you kind of go
20 and reach for the door again.

21 MICHELLE: Right and he grabs ahold of
22 me. So, I can't get the door.

23 SOLINGER: So, I don't know your garage
24 and your set-up, but we are assuming the door had to
25 obviously lean against something ---

1 MICHELLE: Right.

2 SOLINGER: When he placed it down,
3 right? So, if this lectern is what it's being set
4 against and I'm Roman and I lean the door against
5 it, right? In relation to me if I were a clock,
6 twelve o'clock, nine o'clock, three o'clock, six
7 o'clock, where are you? Are you like in between me
8 and the door ---

9 MICHELLE: No, I am not in-between him
10 and the door.

11 SOLINGER: The right side, the left
12 side? Are you kind of behind in like a five o'clock
13 area?

14 MICHELLE: I precisely --- I can't
15 recall.

16 SOLINGER: Would it be helpful if you
17 kind of step down and tried approximate where you
18 were?

19 MICHELLE: I would say most likely I was
20 on the left or right of him.

21 SOLINGER: Okay and which way would have
22 been towards the house? If it's my right here or my
23 left here?

24 MICHELLE: It would have been ---
25 towards the house it would have been left.

1 SOLINGER: Okay, so, you're thinking
2 that you're towards the left?

3 MICHELLE: Probably, closest to the
4 doorway.

5 SOLINGER: Maybe about a foot and half
6 to fee diagonal from where the door is?

7 MICHELLE: Right.

8 SOLINGER: And Raman is right here. Like
9 kind of in front of you, I guess.

10 MICHELLE: Or I could have been on the
11 side. It all happened so quickly, it's hard to say
12 precisely where I was standing.

13 SOLINGER: So, it happened really fast,
14 correct?

15 MICHELLE: Yeah.

16 SOLINGER: And, so, the door is set down
17 and is Roman kind of facing towards you to try and
18 talk to you?

19 MICHELLE: He's trying to stop me. So,
20 it would be logical that he would turn and ---

21 SOLINGER: He's between you and the
22 door.

23 MICHELLE: Right.

24 SOLINGER: And you wanted to get that
25 door on at all cost.

1 MICHELLE: Right, I was going on After
2 the door and he grabbed a hold of me.

3 SOLINGER: Cause you were angry.

4 MICHELLE: Yes.

5 SOLINGER: That he was controlling you.

6 MICHELLE: Yes.

7 SOLINGER: You were upset, and you
8 thought that he had no right to do this.

9 MICHELLE: Right.

10 SOLINGER: Would it be fair to say that
11 you were kind of just, just not thinking rationally?

12 MICHELLE: Id' say it's safe to say we
13 were both not thinking very rationally at that time.

14 SOLINGER: Right, cause to you it was
15 about proving a point. You wanted to get that door.

16 MICHELLE: It was him proving a point
17 that he wasn't going to let me have the door.

18 SOLINGER: And so, you saw an
19 opportunity to kind of plunge really quickly to the
20 door.

21 MICHELLE: Right.

22 SOLINGER: But, Roman's right there as
23 you lunge for the door, right.

24 MICHELLE: Right, so, he's going to stop
25 me. Right.

1 SOLINGER: And you reach quickly
2 obviously because you want to try to beat him to it
3 and get away with it, right?

4 MICHELLE: Right.

5 SOLINGER: Did it happen really fast?
6 And at that point he grabs your wrist, right?
7 That's what you're saying?

8 MICHELLE: Right.

9 SOLINGER: And I believe the ---

10 COURT: One second. Let me make sure I
11 understand it. At one point before you reach the
12 door or after you reach the door, he grabs your
13 wrist?

14 MICHELLE: He grabbed my wrist before I
15 got to the door.

16 COURT: Okay.

17 SOLINGER: So, as you were lunging.

18 MICHELLE: Yes.

19 SOLINGER: You didn't have any touch of
20 the door at that point?

21 MICHELLE: No.

22 SOLINGER: He was --- if the door is
23 leaning here. You're lunging this way and you're
24 saying he kind of catches you?

25 MICHELLE: Right.

1 SOLINGER: And then he stops you.

2 MICHELLE: Right.

3 SOLINGER: And he (INAUDIBLE)
4 manipulating. It's really kind of a wishy-washy
5 word.

6 MICHELLE: Controlling me so I can't get
7 the door, obviously.

8 SOLINGER: And once he lets go things
9 are kind of over?

10 MICHELLE: I think at that point the
11 police show up and we went outside.

12 SOLINGER: Oh, wait. I didn't think you
13 called the police until after that altercation,
14 correct?

15 MICHELLE: The police had been called
16 while he was still in my room and refused to leave.

17 SOLINGER: Okay and as far as your wrist
18 and all that you said that there were some red marks
19 on them, I think?

20 MICHELLE: They were red from him
21 pulling and me pushing, yes.

22 SOLINGER: Your Honor may I approach the
23 clerk?

24 COURT: Yes.

25 SOLINGER: I had these marked as defense

1 exhibits "A, B and C" they are photos provided by
2 the city. They just printed them double sided. May I
3 approach?

4 COURT: Yes.

5 SOLINGER: I'm showing you what's been
6 marked as defense "A, B and C". Without saying what
7 these are do you recognize them?

8 MICHELLE: Yup, they're my hands.

9 SOLINGER: And is this a fair and
10 accurate representation of how they appeared that
11 night?

12 MICHELLE: They don't show up in the
13 pictures it's obvious that you can't see the
14 redness.

15 SOLINGER: But you acknowledge that
16 those are the pictures that were taken?

17 MICHELLE: They were.

18 SOLINGER: And as far as what the
19 pictures were able to capture it's your contention
20 that this doesn't fully accurately capture what you
21 perceive your wrist looked like?

22 MICHELLE: At the time when they were
23 taking the picture, I told the police I couldn't see
24 red on them, but they were sore, and I have MS and
25 so anytime I have a lot of friction against my skin

1 there is a burning sensation. So, I was feeling
2 that.

3 SOLINGER: So, you have particularly
4 sensitive skin due to your medical condition?

5 MICHELLE: I have a neurological
6 disease. So, yeah, it definitely makes my skin more
7 sensitive.

8 SOLINGER: So, something that may not
9 affect me per se would affect you?

10 MICHELLE: Right.

11 SOLINGER: So, if I were to squeeze my
12 blood comes back pretty quickly, but if you were to
13 just have a regular wrist hold.

14 MICHELLE: Well it wasn't just a regular
15 wrist hold. It was pretty tight.

16 SOLINGER: But there was no bruising?

17 MICHELLE: No.

18 SOLINGER: No broken bones.

19 MICHELLE: No.

20 SOLINGER: Just redness that's gone by
21 the time the police respond?

22 MICHELLE: Right and as they were taking
23 those pictures, they said there was nothing there.

24 SOLINGER: And --- Court's brief
25 indulgence.

1 COURT: Yes.

2 SOLINGER: You had said that you had
3 called the police initially in the bedroom, correct?

4 MICHELLE: I did.

5 SOLINGER: and that's what you believe
6 occurred?

7 MICHELLE: It has been almost two
8 years. So, from my recollection, yes.

9 SOLINGER: Would reviewing a copy of
10 your written statement refresh your recollection?

11 MICHELLE: Sure.

12 SOLINGER: I'm showing what was provided
13 by the city has been redacted (INAUDIBLE) and there
14 is other stuff on the back that (INAUDIBLE) set to
15 double sided so you can just ignore that. Read as
16 much or as little as you'd like and let me know when
17 your recollection is sufficiently refreshed.

18 MICHELLE: In my statement I state that
19 I called after the door.

20 SOLINGER: Procedurally is your
21 recollection sufficiently refreshed?

22 MICHELLE: Yes.

23 SOLINGER: May I approach and
24 (INAUDIBLE)

25 MICHELLE: Sure.

1 SOLINGER: Where we have and you
2 (INAUDIBLE) remember after reading your statement.

3 MICHELLE: Well, when it's been two
4 years ago that's tough to recall.

5 SOLINGER: No, I understand and so, it
6 wasn't until after that, that you called?

7 MICHELLE: Correct.

8 SOLINGER: So, under the timeline that
9 we've been kind of constructing as we go along. If
10 you're back in the bedroom by 11:30 and then the
11 door makes its way to the garage and then there's
12 the struggle over the door. You're probably looking
13 at about 11:50, 11:55 before the police are called?
14 Would you agree that, that's ---

15 MICHELLE: Sure, that seems reasonable.

16 SOLINGER: And if I were to tell you
17 that based on the call log, they were called much
18 closer to 11:30. Does that change when you believe
19 Roman came back to the residence?

20 MICHELLE: He most likely came after
21 his workout. So, whenever that happened at BOS and
22 it ended. He is like five minutes away from our
23 house. So, it would have been approximately around
24 eleven.

25 SOLINGER: And once he got there did it

1 go straight to this argument or ---

2 MICHELLE: Yes, he came right up in my
3 face when I was on the phone. Yelling at me as to
4 why I was on the phone and my son was down on my bed
5 asleep, safe.

6 SOLINGER: So, didn't go to the bedroom
7 and check on Devin?

8 MICHELLE: He ---- what he did is --- I
9 was upstairs so, I don't know if that's --- he
10 obviously did cause he knew I wasn't right next to
11 Devin.

12 SOLINGER: And based on your
13 recollection after the police left was Devin still
14 in your room or where did Devin end up?

15 MICHELLE: He was most likely still in
16 my room. When he is sick that's where he stays.

17 SOLINGER: Was he still wearing the same
18 pajamas that you put him in?

19 MICHELLE: I don't recall. I'm sure he
20 was I don't know why he would have changed his
21 pajamas.

22 SOLINGER: And previous to this about
23 six weeks prior was when you were first served with
24 divorce papers?

25 MICHELLE: I was served August. So, two

1 months prior.

2 SOLINGER: Okay and was any part of you
3 upset that he was --- that he hired counsel to
4 represent him in the divorce?

5 MICHELLE: No.

6 SOLINGER: You eventually hired your own
7 attorney, correct?

8 MICHELLE: Correct.

9 SOLINGER: And as part of consulting
10 with your attorney did, he encourage you to kind of
11 create a paper trail or anything like that?

12 MICHELLE: He did.

13 SOLINGER: And what did he advise you
14 specifically?

15 MICHELLE: Well there were several
16 incidents. This one just happened to end up in Roman
17 getting arrested.

18 SOLINGER: And when you say several
19 incidents, prior to this allegation you hadn't
20 called the police over at the residence, correct?

21 MICHELLE: I had several times.

22 SOLINGER: But there had been no arrest?

23 MICHELLE: No arrest previously.

24 SOLINGER: Did you --- courts ---strike
25 that. Court's brief indulgence. If I could just

1 consult with my client to be sure.

2 COURT: Sure.

3 SOLINGER: Just this one final point for
4 clarification. When my client arrived do you know if
5 the children were asleep or were they awake at that
6 point?

7 MICHELLE: My son was asleep; my
8 daughters were getting ready for bed. They were
9 upstairs with me.

10 SOLINGER: No further questions.

11 COURT: Redirect?

12 MATHER: Briefly your Honor. So, Michelle
13 you've testified several times that --- about times
14 that parts --- that part of this incident occurred
15 and what specifically occurred at one point in time
16 and another point in time. Are you certain of those
17 times? Saying that for example, saying that well,
18 that did happen at 11:50, 11:55? Are you certain?

19 MICHELLE: After two years I'm not
20 certain.

21 MATHER: So, you're giving us estimates of
22 times?

23 MICHELLE: Yes.

24 MATHER: Okay. Now the order, the flow of
25 what you testified to is that correct or did you

1 jump around?

2 MICHELLE: I jumped around because my
3 memory after two years is vague and ---

4 MATHER: Okay, okay. So, are you quite sure
5 that you did not put your hands on anything but the
6 doors?

7 MICHELLE: I am.

8 MATHER: Okay and are you --- how certain
9 are you that the defendant put his hands on your
10 arms to keep you from the door?

11 MICHELLE: I'm certain.

12 MATHER: Okay. Pass the witness.

13 SOLINGER: No re-cross.

14 COURT: Alright ma'am thank you for your
15 testimony. You are subject to recall so I am going
16 to ask that you wait outside the courtroom and if we
17 do need you the marshal will let you know alright.
18 Next witness.

19 MATHER: City calls Officer Garret Willard.

20 COURT: Wheeler?

21 MATHER: Willard.

22 COURT: Willard, okay. Willard.

23 CLERK: Please raise your right hand. So,
24 you swear or affirm that the testimony that you are
25 about to give is the truth, the whole truth and

1 nothing but the truth?

2 WILLARD: I do.

3 CLERK: Please be seated.

4 MATHER: Good morning.

5 WILLARD: Good morning.

6 MATHER: Can you please state your name and

7 spell your first and last name of the record?

8 WILLARD: Yeah, it's Garrett Willard G-

9 A-R-R-E-T-T, Last name is Willard W-I-L-L-A-R-D.

10 MATHER: Who do you work for?

11 WILLARD: City of Henderson Police

12 Department.

13 MATHER: How long have you worked for the

14 City of Henderson Police Department?

15 WILLARD: Since January 9, 2017. So, a

16 little over two years.

17 MATHER: Okay and what are your duties as -

18 -- working for the police department?

19 WILLARD: I'm a patrol officer.

20 MATHER: I'd like to draw your attention

21 back to October 16, 2017. At approximately 20:18

22 hours were you dispatched anywhere?

23 WILLARD: Yes, ma'am.

24 MATHER: And where were you dispatched to?

25 WILLARD: Don't have the exact address

1 memorized, but I can have it my report right here if
2 I can look.

3 MATHER: If you look at your report would
4 that refresh your recollection?

5 WILLARD: Yes.

6 MATHER: Your Honor may he review his
7 report?

8 COURT: Yes.

9 WILLARD: Thank you.

10 MATHER: Just let me know when you are
11 ready to answer.

12 WILLARD: Okay

13 MATHER: Did that refresh your memory?

14 WILLARD: Yes, ma'am.

15 MATHER: What is the address?

16 WILLARD: It was 337 Evert Vista Court.

17 MATHER: Is that in the City of Henderson?

18 WILLARD: Yes, ma'am.

19 MATHER: And when you arrived did you have
20 an opportunity to encounter any people at that
21 residence?

22 WILLARD: Yes.

23 MATHER: Who did you encounter?

24 WILLARD: The defendant Roman Hildt as well
25 as Michelle Hildt his now ex-wife.

1 MATHER: Ans is Roman Hildt present in the
2 courtroom today?

3 WILLARD: Yes, ma'am.

4 MATHER: Can you please point to him and
5 describe something he is wearing?

6 WILLARD: Yeah, he is sitting over there. He
7 wearing the I guess it's a navy-blue suit with the—

8 SOLINGER: Stipulate your Honor.

9 COURT: Alright, the record will reflect.

10 MATHER: Why were you called to that
11 address?

12 WILLARD: For a domestic battery
13 between a male and a female.

14 MATHER: When you arrived what did you
15 find?

16 WILLARD: We found the defendant Roman Hildt
17 he was already speaking with one of our I guess you
18 call him a partner, another squad mate, Joe Hanson.
19 He was talking to him right kind of under a light
20 pole and so we got out, myself and my FSO Marty
21 Carlavage and then we approached and began talking
22 with Joe and Roman.

23 MATHER: Okay and did you specifically
24 address questions to the defendant?

25 WILLARD: Not at first, but I did later on,

1 yes.

2 MATHER: Okay. Did you hear answers that
3 the defendant made prior to your questioning based
4 upon questions Officer Joe Hanson directed to him?

5 WILLARD: Yes, ma'am.

6 MATHER: And based on the statements of the
7 defendant prior to you questioning him wat did you
8 learn?

9 WILLARD: I learned that there was physical
10 altercation between Roman and his now ex-wife
11 Michelle.

12 MATHER: And that's based upon what the
13 defendant had sated?

14 WILLARD: That's correct.

15 MATHER: Okay and then at that point did
16 you direct questions to the defendant?

17 WILLARD: Yes.

18 MATHER: And what did you ask him?

19 WILLARD: Basically, reiterating his story.
20 As I mentioned in my report I was in field training.
21 So, I was coming to kind of take over from beginning
22 the whole investigation. So, I basically asked him
23 all of the investigative questions so I could
24 determine if there was battery that had occurred.

25 MATHER: And what did the defendant tell

1 you had happened?

2 WILLARD: So, he said that there was --- it
3 started off as a verbal argument which then
4 escalated into a physical argument.

5 MATHER: Between he and who?

6 WILLARD: Michelle his now es-wife.

7 MATHER: Okay, go ahead.

8 WILLARD: And so, what had happened was
9 again there was the verbal argument. It had kind of
10 proceeded to the point here it had become physical.
11 He ended up taking the door off of the bedroom and
12 then took the door down into the garage. At which
13 point Michelle attempted take the door back from
14 him. He claimed that he grabbed her arms to get them
15 away from the door and then pushed her back.

16 MATHER: Did he state at any time that
17 Michelle had put her arms or her hands on him?

18 WILLARD: No.

19 MATHER: Specifically, in relation to the
20 door. Did he tell you several time what occurred
21 specifically of the action of Michell and him in
22 relation to the door?

23 WILLARD: Yes.

24 MATHER: And what did he say?

25 WILLARD: At first, she said that he as

1 lunging at him and then later he basically changed
2 that to say that she was trying to get the door back
3 from him.

4 MATHER: Okay, so, at any point did he say
5 that --- you indicated he said, "She lunged at the
6 defendant" but he did not at that time say that she
7 had made physical contact with him.

8 WILLARD: No, just that she had lunged at
9 him.

10 MATHER: Okay, did he tell you what the
11 argument was about?

12 WILLARD: Yes, it was about one their
13 marital status and then two because he was upset
14 that her son and I don't recall his name at this
15 time, the young son was sick with a fever and he was
16 profusely sweating and he felt that she wasn't
17 tending to him and that she was on the phone I
18 believe with another man named Jim.

19 MATHER: Okay. Did he indicate whether he
20 was upset or not regarding her phone call with Jim?

21 WILLARD: He said he was upset about her
22 being on the phone with another man.

23 MATHER: Okay. Courts indulgence please.
24 Did you have an opportunity or at the time were
25 there any audio mobile video recordings made of your

1 contact with the defendant?

2 WILLARD: Yes.

3 MATHER: Did you have an opportunity to
4 review those mobile audios, video prior to court
5 today?

6 WILLARD: I did.

7 MATHER: And did those recordings fairly
8 and accurately capture the incident between
9 yourself, the other officers and the defendant?

10 WILLARD: Yes, ma'am.

11 MATHER: Your Honor at this time the city
12 would request that it or would like to play its
13 proposed exhibit one which is the officer's MAV.

14 COURT: Alright.

15 MATHER: Can you tell me who is walking
16 towards the two people in the center?

17 WILLARD: Who is walking there along the
18 left?

19 MATHER: Up here.

20 WILLARD: Oh, that's my FTO Marty Carlavage.

21 MATHER: And who's this?

22 WILLARD: That's myself.

23 MATHER: And who are the two people you're
24 in front of?

25 WILLARD: Officer Joe Hanson is the kind of

1 dark figure in the navy blue and then Roman the
2 defendant is kind of right there in front of me.

3 MATHER: Okay and in proximity to the power
4 box there you can see right here lite up with
5 lights.

6 WILLARD: Yes.

7 MATHER: Who was closest to that?

8 WILLARD: Roman.

9 MATHER: Okay.

10 VIDEO MAV PLAYED 23:18:05 to 23:29:29

11 MATHER: And so, at this point your Honor
12 the city would just reflect for the record that it
13 is stopped at 23:29:29 which would be 11:29 PM 29
14 seconds. And the start of the video was at 23:18:05.

15 COURT: Yes.

16 MATHER: and you indicated officer that
17 this fairy and accurately captured the conversation
18 between the portion that's been played?

19 WILLARD: Yes, ma'am.

20 MATHER: Okay, city would move to admit its
21 proposed exhibit one your Honor for that time frame.

22 SOLINGER: I'll submit to the extent
23 there is other officers which I don't believe are
24 subpoenaed and I believe will be here today to
25 testify but that it's I'm assuming it's being used

1 for purposed of my client's statement.

2 MATHER: Yes.

3 SOLINGER: I'll submit it your Honor.

4 COURT: Alright, submitted.

5 MATHER: Now you indicated officer that you
6 also spoke with Michelle Hildt, is that correct?

7 WILLARD: Yes, ma'am.

8 MATHER: And without saying anything
9 specifically that she told you did you find what you
10 heard from her consistent with what the defendant
11 stated?

12 WILLARD: Yes.

13 MATHER: And did you take any photos?

14 WILLARD: Yes.

15 MATHER: At the time you took the photos
16 did you observe any injury to Michelle?

17 WILLARD: Yes, there was redness on her
18 right forearm.

19 MATHER: And the other forearm?

20 WILLARD: I only remember, recall seeing the
21 redness on her right. We did photographer forearms
22 for her just to be through.

23 MATHER: And the photographs that were of
24 both arms did you have an opportunity to see them
25 prior to court today?

1 WILLARD: Yes.

2 MATHER: Did those photographs show the
3 redness that you observed in person at that time?

4 WILLARD: They did not.

5 MATHER: Okay. At the end of your
6 investigation what did you do?

7 WILLARD: As far as completing or
8 taking ---

9 MATHER: What action did you take?

10 WILLARD: We arrested Roman.

11 MATHER: Okay and why did you arrest him?

12 WILLARD: Because we did have probable cause
13 that a domestic battery had occurred between him and
14 Michelle.

15 MATHER: What was the probable cause that
16 you felt you had?

17 WILLARD: The admission that he had pushed
18 her and grabbed her arms, the redness that she had
19 and then her statements corroborated his statements.

20 MATHER: Okay, so, at any time ---I know we
21 haven't seen the whole complete recording of that
22 evening but at any time did he indicate to you that
23 she had put her hands on his body physically?

24 WILLARD: No.

25 MATHER: Okay, so, how many times do you

1 recall him telling you that she was coming for the
2 door and not for him.

3 WILLARD: Several times, I would say at
4 least three.

5 MATHER: And did all that you testified to
6 occur in the City of Henderson?

7 WILLARD: Yes.

8 MATHER: Pass the witness.

9 COURT: Cross.

10 SOLINGER: So, you've been an officer
11 for about two years not you said?

12 WILLARD: Yes, sir.

13 SOLINGER: How many domestic violence
14 investigations have you conducted?

15 WILLARD: I can't answer exactly I ---

16 SOLINGER: If you had to ball park it?

17 WILLARD: Maybe fifty.

18 SOLINGER: Okay and during the course of
19 that experience how many times have you dealt with
20 witnesses that give inconsistent statements?

21 WILLARD: I can't answer an exact number.

22 SOLINGER: But it's common?

23 WILLARD: I don't know if I would say
24 common, I mean it happens.

25 SOLINGER: Have you noticed that

1 sometimes a witness would change their testimony or
2 change their statement to you when they believe you
3 are going to arrest the other party?

4 WILLARD: I suppose, yeah.

5 SOLINGER: So, that's not uncommon for
6 that to happen?

7 WILLARD: I would agree with that, yeah.

8 SOLINGER: And so, you wrote a report
9 in this case, correct?

10 WILLARD: Correct.

11 SOLINGER: You actually used the phrase
12 lunging at him?

13 WILLARD: Correct.

14 SOLINGER: And later on, you write that
15 Michelle corroborated Roman's statements, correct?

16 WILLARD: Correct.

17 SOLINGER: And that includes that
18 lunging at him statement?

19 WILLARD: Let me make sure I understand the
20 question.

21 SOLINGER: That you agree that she
22 lunged, right?

23 WILLARD: Well I mean I put in the report
24 what was told to me. So, I'm not saying that I would
25 agree or disagree with anything. It's just what was

1 told to me.

2 SOLINGER: Sure, but you wrote that
3 Michelle corroborated Roman's statements, but you
4 didn't have a qualifier to say what part of the
5 statements were corroborated, correct?

6 WILLARD: Okay.

7 SOLINGER: Is that ---

8 WILLARD: That's agreed, yeah.

9 SOLINGER: And the city and you had
10 this kind of dialogue about how many times Roman
11 said lunged at me versus lunged at the door,
12 correct?

13 WILLARD: I don't know if that was the
14 exact dispute there, but ---

15 SOLINGER: Well she was asking you that
16 you gave my client a chance essentially to clarify
17 what he meant by lunged. Whether it was lunging at
18 him or lunging for the door.

19 WILLARD: Yes.

20 SOLINGER: And you said you thought
21 about three?

22 WILLARD: About three times that he said
23 that she came towards the like to grab the door from
24 him.

25 SOLINGER: Sure, and we watched the same

1 audio, right?

2 WILLARD: Correct.

3 SOLINGER: Would you take exception if I
4 were to say that it was lunged at me about four
5 times versus lunged at the door two times?

6 WILLARD: Okay, I would agree with you.

7 SOLINGER: And there is a question on
8 there and the City didn't have you identify whose
9 voice is whose. So, I'm sorry I don't know who asked
10 ---

11 WILLARD: I'll do my best to help you on
12 that, yeah.

13 SOLINGER: So, I don't know who asked
14 this questions, but I recall that there was a
15 question very close to the end there where someone
16 had asked Roman you know, "Were you able to grab her
17 arm before she got to you?"

18 WILLARD: I believe that was me. I am not
19 one hundred percent sure, but I believe I did ask
20 that.

21 SOLINGER: So, whoever asked that
22 question assuming it was you. You were trying to
23 clarify like, "Were you able to stop her from
24 getting you, right?"

25 WILLARD: Yeah, in trying to understand what

1 occurred. Basically, the action.

2 SOLINGER: And so, you have to use
3 force sometimes as part of your job, right?

4 WILLARD: Yes.

5 SOLINGER: And so, if somebody were to
6 like lunge for your gun belt or something like that,
7 you'd stop them right?

8 WILLARD: For my gun belt absolutely.

9 SOLINGER: And if somebody were to just
10 lung for you. Like grab towards your chest, your
11 arms you'd take some kind of action, correct?

12 WILLARD: Correct, but it would be in a
13 different context. Being that I'm a sworn officer.
14 If somebody is lunging at me it's for a different
15 reason.

16 SOLINGER: Sure, so, it's your opinion
17 that if somebody lunges at me, I actually have to
18 let them get me before I stop them?

19 WILLARD: No, I'm not saying that.

20 SOLINGER: With regards to kind of that
21 situation on the video it's fair to say that you
22 guys are all kind of surrounding him while you're
23 talking to him?

24 WILLARD: Define surround.

25 SOLINGER: Well there was one person

1 standing behind. It's one camera view so there is no
2 depth perception. Just trying to clarify the scene.
3 It looks like my client is at the stop or I guess
4 the street light like right under it?

5 WILLARD: Agreed, yes.

6 SOLINGER: And there is somebody --- if
7 this is the street light this phone there is
8 somebody to my left, I think. That's the first
9 officer, Officer Joe Hanson I think you said.

10 WILLARD: Correct, yup.

11 SOLINGER: Alright then you and your FTO
12 come and there is one of you in front of Roman and
13 one of you to his right.

14 WILLARD: Okay, yeah, I agree with
15 that.

16 SOLINGER: And then you guys do a pat
17 down. That's the whole nothing is going to stick me
18 and all that?

19 WILLARD: Correct and that's where the
20 screwdriver and all that comes in.

21 SOLINGER: Okay and then at no point did
22 anyone think to read him Miranda?

23 WILLARD: He wasn't in custody.

24 SOLINGER: I understand you didn't
25 arrest him, but you understand that custody is

1 defined whether or not a reasonable person would
2 feel free to leave under the same or similar
3 circumstances, right?

4 WILLARD: I understand.

5 SOLINGER: So, if he would have tried to
6 leave right there would you have tried to stop him?

7 WILLARD: Yes, we had reasonable
8 suspicion that a crime had occurred.

9 SOLINGER: So, he was in custody?

10 WILLARD: We was not in custody. We had
11 reasonable suspicion that a crime ---

12 SOLINGER: So, he was detained.

13 WILLARD: Correct.

14 SOLINGER: Okay. Court's brief
15 indulgence. You said that the photograph didn't
16 really capture the injuries, right?

17 WILLARD: That's right.

18 SOLINGER: And your claim is that there
19 was just redness on the right wrist?

20 WILLARD: On the right forearm.

21 SOLINGER: Right forearms. So, if like -
22 -- how many inches down from the wrist bone would
23 you say?

24 WILLARD: Maybe a guestimate. So, like where
25 your white stops. White goes to blue.

1 SOLINGER: Okay, right here.

2 WILLARD: Right around there, correct.

3 SOLINGER: Approximately four inches for
4 the record. Is that fair? Four, five inches.

5 WILLARD: Roughly, roughly it's hard to ---

6 COURT: Approximately.

7 SOLINGER: No, I'm just trying to get a
8 gage and when were those pictures taken?

9 WILLARD: They were taken ---I don't
10 remember the exact time frame, but they were taken
11 that night while we were on scene.

12 SOLINGER: Would you say they were taken
13 when you very first arrived? Towards the middle of
14 your investigation?

15 WILLARD: It would have been after I spoke
16 with Roman.

17 SOLINGER: Okay.

18 WILLARD: So, probably towards the middle.

19 SOLINGER: And how much longer do you
20 think you were on scene at that point?

21 WILLARD: Hard for me to remember exactly.

22 SOLINGER: Would reviewing the CAB log
23 refresh your recollection? May I approach?

24 COURT: Yes.

25 WILLARD: Just to give you an idea of when I

1 took them is what you're asking?

2 SOLINGER: Yeah.

3 WILLARD: Okay. Let's see here. This looks
4 slightly different than what we can pull up. So,
5 you're going to have to bear with me for a second
6 here. Yeah, so, looks like we arrived at 11:18. So,
7 let me try and find when we --- Are you looking for
8 an exact time or ---

9 SOLINGER: Just approximate.

10 WILLARD: Probably about --- I'm sorry what
11 was the question again?

12 SOLINGER: Approximately what time did
13 you take the photos?

14 WILLARD: Okay, approximately I would have
15 to say around 11:30 to 11:40 in that general frame.

16 SOLINGER: When did you leave the scene?

17 WILLARD: So, I went in route to the jail at
18 12:10 which would have been the next day. So,
19 October 17th.

20 SOLINGER: (INAUDIBLE)

21 WILLARD: Yeah, yeah.

22 SOLINGER: (INAUDIBLE) and before you
23 guys left the scene did anyone kind of recheck her
24 wrist?

25 WILLARD: No.

1 SOLINGER: And she denied medical
2 transport?

3 WILLARD: Correct.

4 SOLINGER: And you looked over and saw
5 no other apparent injuries or anything of that
6 nature?

7 WILLARD: Right, yup.

8 SOLINGER: No further questions.

9 COURT: Alright, thank you. Redirect?

10 MATHER: Yes, your Honor. Officer on cross
11 examination the defense dealt a little into the
12 question of officers surrounding the defendant and
13 you asked him to clarify surround. Can you testify
14 how many officers you observed in the MAV in the
15 presence of the defendant?

16 WILLARD: Yeah, so, there were at different
17 times up to three and then Sgt. Mitchel would come
18 over but was never really in the presence in my
19 opinion of the defendant ---

20 MATHER: Okay.

21 WILLARD: who was behind the vehicle like he
22 is now or near his vehicle.

23 MATHER: And as to the position of the
24 three officers how close were they in proximity to
25 the defendant's body?

1 WILLARD: I would say anywhere from roughly
2 guesstimating two to six feet. It would be a rough
3 estimate.

4 MATHER: And what was the tone of voice
5 that was used in the questioning of the defendant?

6 WILLARD: Very calm all across the board,
7 all officers.

8 MATHER: Now, you had mentioned in cross
9 examination the defendant had some screw drivers.

10 WILLARD: Yes.

11 MATHER: And was that prior to your
12 arrival?

13 WILLARD: It was known to Officer Hanson
14 prior to my arrival, yes, that he had those in his
15 position.

16 MATHER: Were those screwdrivers obtained
17 from the defendant in your presence?

18 WILLARD: They were.

19 MATHER: And why were they taken from the
20 defendant?

21 WILLARD: Because those are --- could be
22 considered a deadly weapon being an edged object.
23 So, we would take them from him for our and his
24 safety. Our being the officers.

25 MATHER: Okay, so, despite the fact that

1 there could have been an issue for officer safety
2 regarding two screw drivers in his possession did
3 the officers remain calm? Were their tone of voice
4 respectful or were they angry?

5 WILLARD: It was calm and respectful
6 throughout.

7 MATHER: Okay and Court's indulgence. What
8 was the stance that the officers took while the
9 defendant was being questioned?

10 WILLARD: It's what we call an interview
11 stance.

12 MATHER: Can you describe it for the court
13 please?

14 WILLARD: Yeah, so, it basically be feet
15 kind of shoulder width apart. Hands would be right
16 around the mid-section so you could write on a FI
17 card. Also, would be prepared to act if need be.
18 Which it wasn't in this case, but we would just kind
19 of casual stance while we are gathering information
20 at the investigative stage.

21 MATHER: Now, should officer --- did Office
22 Hanson contact the defendant by himself prior to
23 your arrival?

24 WILLARD: Yes.

25 MATHER: Should he have done that?

1 WILLARD: Hard to say whether he should
2 have or not. It's not safe to stand back and wait
3 because in the event that there is violent domestic
4 battery in my opinion you should go intervene that's
5 why we are officers. So, I wouldn't say it's should
6 have or shouldn't that's just what he did. I would
7 so the dame thing in his situation because we are
8 taught to intervene.

9 MATHER: Okay.

10 WILLARD: To save lives if we can.

11 MATHER: And you indicated the call being
12 for domestic battery?

13 WILLARD: Correct

14 MATHER: Do you have any knowledge based on
15 your training and experience how dangerous these
16 types of calls are for officer safety purposes?

17 WILLARD: Very dangerous.

18 MATHER: What can you tell the Court about
19 that?

20 WILLARD: I can tell you; you look at any
21 police statistics and some of the top ways police
22 officers are killed are by gun fire or other
23 violence related domestic violence.

24 MATHER: Court's indulgence please. And I
25 see in the MAV that a vehicle had approached where

1 the defendant and the three officers were with the
2 headlights on.

3 WILLARD: Correct.

4 MATHER: Do you know who brought that car
5 over?

6 WILLARD: Yeah, that was Sgt. James Mitchel.

7 MATHER: And why did he bring that over if
8 you know?

9 WILLARD: I don't know why exactly. I'd
10 assume for lighting, but I don't have an answer.

11 SOLINGER: Speculation.

12 COURT: Sustained.

13 MATHER: Court's indulgence please. Pass
14 the witness.

15 COURT: Alright.

16 SOLINGER: No re-cross.

17 COURT: Alright, officer thank you for
18 your testimony. We are going to ask you to wait
19 outside the courtroom cause you are subject to
20 recall. Alright?

21 WILLARD: Thank you, your Honor.

22 COURT: Thank you. Next witness.

23 MATHER: At this time your Honor city rest.

24 COURT: Alright. City rest.

25 SOLINGER: Court's brief indulgence.

1 Your Honor at this time my client's electing to
2 testify in his own defense.

3 COURT: Alright.

4 SOLINGER: I've advised him fully about
5 the pros and cons of that and he is choosing so
6 willing fully with no influence from me or
7 compulsion with any way shape or form.

8 COURT: Alright sir, and is that your
9 understanding?

10 ROMAN: Yes, Judge.

11 COURT: I'll also add to that, that you do
12 have constitutional right to not testify and should
13 you exercise it, it would not be held against you,
14 but as counsel indicates if you do testify you would
15 be subject to cross examination. Knowing all that
16 you wish to testify?

17 ROMAN: Yes, Judge.

18 COURT: Alright, go ahead and come forward
19 and be sworn please.

20 CLERK: Please raise your right hand. Do
21 you swear or affirm that the testimony that you are
22 about to give today is the truth, the whole truth
23 and nothing but the truth?

24 ROMAN: Yes.

25 CLERK: You may be seated.

1 SOLINGER: May I begin your Honor?

2 COURT: Yes.

3 SOLINGER: Can you please state and
4 spell your name for the record.

5 ROMAN: Roman Hildt. R-O-M-A-N, H-I-L-D-
6 T.

7 SOLINGER: Mr. Hildt on October 16 of
8 2017, it's obviously why we are here today, right?

9 ROMAN: Yes.

10 SOLINGER: And you had a chance to watch
11 the same video we all did with your statement?

12 ROMAN: Correct.

13 SOLINGER: Is there anything you would
14 change or add to that statement?

15 ROMAN: No.

16 SOLINGER: With regards to whether
17 Michelle was going towards the door or you, you gave
18 different answers at times. Why was that?

19 ROMAN: At the beginning of the police
20 investigation I was concerned that Michelle was
21 going to be arrested because she had been --- it had
22 been an escalated fight. I was concerned for the
23 welfare of my kids as well as myself. That night she
24 was acting uncommonly erratic and that's the reason
25 I had locked her out of the house when she left. She

1 had slammed a lot of stuff in the kitchen. I had to
2 --- after I got the kids to bed I had to mop up the
3 kitchen and some stuff that had fallen, but I had
4 texted her while she was gone and said when she
5 comes back text me when you're in the driveway and
6 I'll come out and we'll talk.

7 SOLINGER: Why did you go to the house
8 that night?

9 ROMAN: She had texted me when I was at
10 work. I work in North Las Vegas. So, it's about an
11 hour drive. She wanted me to pick up a prescription
12 that she had gotten from the doctor cause she had
13 taken Devin in that day. The prescription had been
14 called in to late, but I was close to the house, so
15 I went by anyway and I didn't go at eleven. I was
16 there closer to about eight o'clock. All the
17 children were still awake.

18 SOLINGER: And why didn't you leave
19 after taking care of your son?

20 ROMAN: Why did what?

21 SOLINGER: Why did you not leave after
22 taking care of your son?

23 ROMAN: I didn't feel comfortable leaving
24 them with her. She, she was acting very erratic that
25 night. I don't know if it was because of the phone

1 conversation she was having with this guy or ----
2 which I do know who it was. I had the phone records,
3 but I just wasn't --- I didn't feel safe leaving the
4 kids with her.

5 SOLINGER: And did you hear her call the
6 police?

7 ROMAN: Yes.

8 SOLINGER: Why didn't you leave after
9 that?

10 ROMAN: I hadn't done anything. I was in
11 the room when she called them.

12 SOLINGER: And when you say you hadn't
13 done anything what do you mean?

14 ROMAN: I didn't think, I didn't think a
15 crime had been committed. I didn't think I had used
16 excessive force. I didn't think defending myself was
17 a crime.

18 SOLINGER: And to be clear, when she
19 lunged, where did you think she was lunging towards?

20 ROMAN: She was lunging towards me.

21 SOLINGER: What part of you?

22 ROMAN: Like my mid-section.

23 SOLINGER: So, what did you do in
24 response?

25 ROMAN: Well, what had happened she had

1 slammed the door several times and she left the
2 master bedroom and had gone into the kitchen. That's
3 when I took the door off. She saw me carrying the
4 door out to the garage. There was no interaction
5 between she and I while I was taking the door off.
6 The officer had a hard time understanding why I toll
7 the door off. About two years prior we have a
8 teenage daughter and she went through the slamming
9 door phase and I took her door off for about a month
10 and I know it was juvenile and I shouldn't have done
11 it and maybe some of it was my male ego, but I gave
12 the same punishment to my wife when she had been
13 slamming doors. I was carrying the door out to the
14 garage more like a surf board. I wasn't carrying it
15 up and down. I had to go through three thresholds
16 and the only way I could get it out to the garage
17 was that way and then to open the garage door I
18 needed one hand free. When she saw me carrying the
19 door out to the garage, she followed me up there and
20 that's where the interaction happened. I couldn't
21 physically even grab her with both hands cause I was
22 still in control of the door. The door was in my
23 left hand and I grabbed her with my right hand, and
24 I didn't grab her with both hands and as soon as she
25 calmed down, I released her and then set the door

1 down and then we both went back in the house.

2 SOLINGER: So, you grabbed her wrist to
3 stop her from going after you again?

4 ROMAN: Yeah.

5 SOLINGER: Is there anything else that
6 you think is important for the Court to know?

7 ROMAN: I think it's important to know
8 that Michelle was diagnosed with MS in 2008. She has
9 a lot of cognitive limitations. She's extremely
10 forgetful. I mean a good example is today. She
11 forgot about the court date.

12 MATHER: And your Honor at this time the
13 city is going to object. This is all hearsay.

14 COURT: Sustained.

15 SOLINGER: No further questions.

16 COURT: Alright, cross?

17 MATHER: Yes, your Honor. So, Mr. Hildt you
18 had testified that you held the door a certain way
19 so you could control it through the house and get it
20 out to the garage. Is that right?

21 ROMAN: Yes.

22 MATHER: And you had heard the recording
23 where you admitted you were treating her like a
24 child taking the door off.

25 ROMAN: She was acting like a child that

1 night.

2 MATHER: Okay and you were treating her
3 like a child.

4 ROMAN: Correct.

5 MATHER: And so, you were trying to control
6 her too?

7 ROMAN: I was trying to protect my
8 children.

9 MATHER: But you were trying to control her
10 action. Were you not?

11 ROMAN: Absolutely because they were
12 erratic.

13 MATHER: Okay. So, can you please tell the
14 Court what is erratic?

15 ROMAN: Yelling at the top of your lungs.
16 Slamming pantries hard enough that food products
17 fall off inside. Cracking the door jamb because
18 you're slamming the master door too hard.

19 MATHER: And she did all this cause you
20 wanted her off the phone with Jim?

21 ROMAN: Yes.

22 MATHER: Okay, so, you're trying to control
23 her and you're describing the activity of an adult
24 woman who can talk to whoever she wants at whatever
25 hour of the night. You're trying to control that,

1 and she's upset, isn't she?

2 SOLINGER: Objection, relevance.

3 COURT: Overruled.

4 ROMAN: I was, I was---

5 MATHER: She's upset, isn't she?

6 ROMAN: I was upset that my five-year-old-

7 --

8 MATHER: I'm not asking you if you were
9 upset. I'm asking if she was upset. Prior to yelling
10 at the top of her lungs and slamming kitchen pantry
11 doors and all of that what you just testified to.

12 SOLINGER: Requires---

13 COURT: Over --- go ahead what's your
14 objection?

15 SOLINGER: Requires him to speculate as
16 to her state of mind. Michelle was up there. She
17 could have testified to this. I believe the city has
18 a rebuttal case and rather than ask Mr. Hildt what
19 his perception is I think it would be better to hear
20 it from her.

21 COURT: Well I mean a lay person can tell
22 if someone upset and he's describing some things.
23 So, overruled. You can answer.

24 MATHER: Please answer.

25 ROMAN: Can you restate the question?

1 MATHER: Yes, she was upset. She did all
2 the things that you just testified to yelling,
3 slamming, cranking things, spilling things because
4 she was angry you were trying to control who she
5 could talk to. Isn't that correct?

6 ROMAN: No.

7 MATHER: Didn't the actions that you just
8 testified to occur after you told her to get off the
9 phone with Jim.

10 ROMAN: I was upset that she wasn't
11 taking care of our kids.

12 MATHER: Isn't --- didn't these actions
13 occur after you told her to get off the phone with
14 Jim?

15 ROMAN: Jim was the distraction why she
16 wasn't taking care of the children.

17 MATHER: Please answer the question. Didn't
18 these actions take place after you told her to get
19 off the phone with Jim.

20 ROMAN: What actions are you referring to?
21 Her being (INAUDIBLE)

22 MATHER: Yelling at the top of her lungs,
23 slamming pantry, cranking things.

24 ROMAN: Yes.

25 MATHER: Okay.

1 ROMAN: Yes.

2 MATHER: You admitted in the recording you
3 heard that this was an ego thing for you, wasn't it?

4 ROMAN: Yes.

5 MATHER: And the ego thing was that she is
6 still living in the house that you two had? Is that
7 right?

8 ROMAN: Yes.

9 MATHER: And she had a new boyfriend before
10 the marriage is even completely dissolved. Is that
11 right?

12 ROMAN: Correct.

13 MATHER: Okay. And that's exemplified all
14 through this that you're trying to control her
15 because you in this MAV said that she's under your
16 roof and she needs to respect that. Is that right?

17 ROMAN: Yes.

18 MATHER: And like and you made a comparison
19 of how similar it is when your oldest teenager had
20 her bedroom door removed to why you took it off,
21 took the bedroom door off the master bedroom where
22 Michelle sleeps, right? Because you were trying to
23 control the behavior of your oldest daughter and now
24 you're trying to control the behavior of your ex-
25 wife, Michelle, isn't that right?

1 ROMAN: Yes.

2 MATHER: And you indicate don't he
3 recording that you were upset about her talking to
4 Jim.

5 ROMAN: I was upset that she wasn't taking
6 care of the house. I was upset that she was using
7 profanity. I was upset that our six-year-old son had
8 completely sweat through his clothes in the master
9 bedroom while she was upstairs.

10 MATHER: And you were upset that she had a
11 new boyfriend?

12 ROMAN: Absolutely.

13 MATHER: Okay.

14 ROMAN: Absolutely.

15 MATHER: Pass the witness.

16 SOLINGER: No re-direct your Honor.

17 COURT: Alright, sir, thank you for your
18 testimony. You may return to the table.

19 SOLINGER: Your Honor I think the
20 defense would move at this time for the admission of
21 the defense exhibits. I think both the city and
22 myself laid the sufficient foundation for them.

23 MATHER: What are the defense exhibits?

24 SOLINGER: The photos that were marked.

25 MATHER: I believe that there is not

1 sufficient foundation the witness testified that it
2 did not reflect what she had seen as redness on her
3 arms. So, they did not fairly and accurately show
4 anything.

5 COURT: Well that will go to the weight of
6 the evidence, but they're admitted.

7 SOLINGER: And the defense has no
8 further witness at this time your Honor, we rest.

9 COURT: Alright, any rebuttal?

10 MATHER: May I have a moment to consider
11 that your Honor?

12 COURT: Yes.

13 MATHER: Thank you. No, your Honor there is
14 no rebuttal.

15 COURT: Argument?

16 MATHER: Your Honor the city believes it's
17 proved its case today in the charge against the
18 defendant Roman Hildt of domestic battery. First, in
19 that he did grab Michelle Hildt and/or pushed her.
20 The relationship was they were married at the time.
21 They were going through divorce. So, back in October
22 16, 2017, Michelle testified that she was on the
23 phone and the defendant had come into the
24 (INAUDIBLE) the defendant had come into the home.
25 She was not sure if he had come just from picking up

1 anything, any type of drugstore items. He had some
2 into the home and she was on the phone and there was
3 a disagreement about that. That she had left for
4 approximately fifteen to twenty minutes. Drove down
5 to a close parking lot and then returned and found
6 that she could not enter the home anymore where she
7 lived, through the garage or through the front door.
8 Both the garage was inoperable, and it appeared that
9 the front door was locked as well. She rang the
10 doorbell several times if not repeatedly to get back
11 in and the defendant permitted her back in.
12 Children were awake at the time and Devin began ---
13 and it appears Devin was sick with some type of
14 illness. The witness Michelle Hildt's stated that
15 the defendant slept in the loft for the past two
16 years and it seemed when he insisted on sleeping in
17 the master bedroom that it was an unreasonable
18 request to her. So, she went into the bedroom and
19 closed the door. She admitted that she probably had
20 slammed it. The defendant came and removed the door
21 to the master bedroom and took it to the garage.
22 She followed him to the garage trying to get the
23 door and he set the door down and grabbed her wrist
24 and shoved her away. She was not grabbing for him.
25 She was grabbing for the door. She was upset and

1 felt that he had no right to do that and he was
2 trying to prove a point. She testified that he
3 grabbed her before she got to the door and he was
4 trying to control her actions. He testified that the
5 photographs that the defense had "A, B and C" did
6 not show the redness that she had seen on her arms
7 prior to the taking the photographs. As for Officer
8 Garrett Willard he testified that he was dispatched
9 on October 16, 2017, 33y Evert Vista Court in
10 Henderson in relations to a call to about a
11 potential domestic battery. He testified that
12 Officer Hanson was first on scene and that he and
13 his field training officer arrived shortly after and
14 spoke to the defendant. The defendant advised that
15 he has had a sick child and he had believed that his
16 wife was taking care of the sick child but when he
17 came home, he found her on the phone. The city
18 played the mobile audio video for Officer Garrett
19 Willard's vehicle and that was admitted. In the
20 course of listening to the vehicle the defendant
21 indicated that approximately 23:19 hours he was
22 going through a divorce. At 23:19:45 approximately
23 on the video he indicated that the phone call upset
24 him, and he told her to get off phone and she had
25 left for about twenty minutes after that. At

1 approximately 23:20:50, he said she lunged at me and
2 tried to get the door. He didn't say she lunged and
3 tried to get me that was trying to get the door. He
4 admitted at 23:21--- excuse me let me back up a
5 little bit. At 23:21 he said well Michelle can
6 never understand why I took the door off then better
7 than me and the officer was kind of incredulous like
8 you took the door off. Why would she understand
9 better than you since you're the one that took the
10 door off? At 23:21:40, he admitted, "Yeah, I'm
11 upset". At 23:21:50, again, "She lunged at me trying
12 to the door". 23:25:10, she was trying to grab the
13 door and I pushed her back. 23:22:45 the defendant
14 admits he treats his wife like a child. He admitted
15 on the witness stand that, "Yes, he tried to control
16 her that night". At 23:22 he stated that he took the
17 garage door, took it out and put it in the garage
18 because it would be hard for her to reach. At 23:24,
19 he indicated she was trying to grab the door. Not
20 she was trying to grab me. She was trying to grab
21 the door. At 23:25, "She was trying to grab the door
22 and I pushed her back". At 23:26, he indicated that,
23 "You're under my roof" and she needed to respect
24 that. At 23:27 and 30 seconds, "Yeah, it's about my
25 ego". So, what this boils down to is the defendant

1 and the victim's marriage is essentially over. She
2 is living at 337 Evert Vista and he come over
3 frequently. Tonight, or that night in question he
4 came over perhaps it was to bring some medication
5 for their sick child, but he doesn't like what he
6 hears. She's on the phone with a new guy and he
7 didn't like it. He testified he was upset by it; he
8 didn't like it and so he tried to control things.
9 Tells her to get off the phone and she acted
10 erratically. What mature adult woman in this day in
11 age would not be angry and yelling and slamming
12 things when a guy she is no longer interested in but
13 is still tethered to tells her who she can talk to
14 and what she can do and who treats her like a
15 child. The defendant admitted on the witness stand
16 that he acted like a juvenile. That it was his male
17 ego that got in the way that night and then one
18 inconsistent statement that he made in his testimony
19 is that he released her after grabbing her arms and
20 then set the door down. How could he grab her while he is
21 holding the door and then after he releases her arm
22 set the door down? That doesn't make any sense. The
23 door was down when he grabbed her arms cause she was
24 trying to get the door back in the house. City
25 believe that it's proved its case beyond a

1 reasonable doubt and ask that you find the defendant
2 guilty.

3 SOLINGER: Really glad we are not here
4 to decide whether or not my client is a jerk or an
5 "A" hole and that's not one of the charged counts.
6 What we are here to decide is whether or not there
7 was a reasonable use of force. Now, I don't think
8 that there is any disagreement that force was used
9 but battery requires the unlawful use of force or
10 violence. As Officer Willard testified there's
11 reasonable uses of force. If somebody grabs for his
12 gun belt, if somebody grabs for him, he even
13 conceded that if somebody grabs for a civilian, he
14 wouldn't expect them to stand idly by while it
15 happens. One thing to point out is that there is no
16 inconsistent statement because as my client
17 testified, he was holding the door surf board style
18 under his arm. Allowed her to stop her further
19 provocations and then once she was calm and not in a
20 fever state just about, that's when he set the door
21 down. So, there is no inconsistency there, but this
22 righteous indignation I think rightfully in the way
23 that everyone acted here is what is important to
24 focus on because we are trying to decide if there is
25 reasonable doubt as to his use of force in this

1 case, right? And what we have is kind of everyone
2 behaving badly. We have Michelle getting so worked
3 up about being told what to do, how to care for the
4 children that she has to go for a fifteen – twenty-
5 minute walkabout. During the course of that time
6 there is time to lick the door, disable the garage.
7 She doesn't contest that it's a long period of time.
8 In fact, one consistent thing throughout her
9 testimony is that she initially presents herself as
10 more of the victim. She says, "Well we had an
11 altercation". An altercation is usually used to
12 describe a fight. It's a euphemism for it, but when
13 pressed on it she concedes that it was not even an
14 argument but a disagreement and that sounds much
15 more civil and detrimental to these kids. None the
16 less what she does concede is that Roman was between
17 her and the door and what she was doing didn't make
18 sense. None was acting rationally because this door
19 wasn't about the door at this point. This door was
20 more of a symbolic gesture, a battle and she was
21 going to get to this door, she was going to grab it.
22 So, she admits that she lunged at Mr. Hildt that was
23 between her and the object of her pursuit.
24 Essentially she is out of control through this
25 because when she gets back after presumably calming

1 down her anger is renewed over the fact that the
2 door is locked and there is no way to get in and
3 despite her kids all being asleep, despite not
4 calling the police right then and there to say,
5 "Hey, I've been locked out of my house" she proceeds
6 to ring the doorbell over, and over, and over again
7 till she's let in at which point she says, "Well it
8 wasn't very long between when I got in to when went
9 to the room." So, presumably she's going in quickly,
10 she's slamming the door. Mr. Hildt is testifying how
11 she's slamming the door to the point that the door
12 frame is cracking even and that she's not calming
13 down. There is no calming the anger that is taken
14 place at this point. Now, I'm not trying to say what
15 he did was right taking the door. I'm not trying to
16 defend that because it's not something that can be
17 defended. The point here is that, that's not what's
18 at trial. That's not what we are here to decide. We
19 are here to decide whether or not the act of
20 grabbing her wrist to stop her trying to batter him
21 was a lawfully use of force and I don't see how it
22 could be anything other than that. The law does not
23 require us to wait for force to be used. Nevada is
24 not exactly a retreat state and even then, he is in
25 his own home. All he is trying to do is stop her

1 from harming him or based on what he testified to
2 with you know, her condition harming herself. What
3 she testified to MS is bruising easily. If she is so
4 much a fever state of, I'm going to get this door
5 damned rationality he is stopping her from hurting
6 herself. There is no use of force here that is even
7 disproportionate. So, it's not even an argument that
8 the city can make and you know once again according
9 to her testimony, he testimony was that no, there is
10 no pushing, there is no shoving and it take the city
11 impeaching her with her own statement. Having her
12 look at it and to say, well don't you see you said,
13 "Push". Well I guess he was holding my wrist and
14 there is a disagreement about whether or not it was
15 one, two wrists. It doesn't matter, that's beside
16 the point. If you grabbed one, you grabbed two it's
17 a use of force. That's not what's at stake here.
18 It's whether or not he was entitled to intercept the
19 hand that he believed was coming towards him. Now I
20 think what is more telling here is the MAV. Right,
21 and that's because one of the hallmarks of our
22 justice system is cross examination. It's why people
23 are entitled to defense attorneys. It's our job to
24 try and take the witness and gem them up and use
25 their own words against them. Didn't you say this,

1 didn't you say that? Because cross examination I
2 forgot who said it. There is a famous quote that
3 cross examination is the greatest engine create to
4 drive the truth and this was not a case where the
5 cross examine was unfortunately used by me. That's
6 something that Officer Willard did with his
7 questions because throughout all that Officer
8 Willard testified people change their testimony when
9 they realize one person is going to jail. Back and
10 forth, it's inconsistent the statement. Now, even
11 the if she was reaching for the door, she says that
12 my client was between her and the door. So, that
13 doesn't matter because his perception is what
14 matters, but Officer Willard's question that he
15 believes was him was, "Were you able to intercept
16 her before she got to you?" That's a cross
17 examination question. It's a leading question. You
18 were able to, yes or no? You disagree with it. His
19 answer is yes. Heat of the moment surrounded by law
20 enforcement officers his answer is, yes and so I
21 think that is the single best piece of evidence in
22 this case that the Court must consider. Which is
23 that when the Officer takes what argument it's going
24 to say and rephrases it in such a way my client's
25 statement is that he was able to intercept her arm

1 before it got to him and that shows that she was
2 lunging at him. So, despite inconsistency, despite
3 all that I think that contemporaneous admission
4 during the course of the MAV and I encourage the
5 Court to re-watch the MAV to see it and hear that
6 answer which is that he was able to because that
7 then implies that his perception she was going for
8 him. She was lunging at him. That's the word Officer
9 Willard used in his report. I didn't reach for him,
10 I didn't grab for him, I didn't try to get the door.
11 She lunged for it. It happened quickly; she doesn't
12 remember. She doesn't know the exact sequence of
13 events. She admitted that her recollection of the
14 time would be more consistent with what occurred
15 than today because it's a year and half later. She
16 doesn't remember anything about a prescription but
17 all of those are adherent and really what the Court
18 needs to focus on. What we need to decide is if that
19 lunging for my client was sufficient provocation
20 such that my client as entitled to grab her wrist to
21 stop the further use of force and there is no
22 allegation that things escalated from there. There
23 is no allegation that there was any pushing, shoving
24 anything after that. It's a single kind of moment
25 where she losses her cool. Where the city is getting

1 upset about the actions of my client and taking
2 every step to raise their voice to say, "How dare
3 you do this. This is an adult woman. How dare you
4 control her?" But that's not the point. I'll
5 conceive my client acted ridiculously. He acted like
6 an "A" hole that night but that's not what we're
7 deciding. We're deciding whether or not there was
8 sufficient provocation and the evidence show that
9 there was. She lunged for him; he grabbed her wrist
10 to stop the assault. Period, end stop, bottom line
11 that's the end of the story. The officer would have
12 done the same thing. He testified to it and it's the
13 same standard for everyone and so, I would say that
14 the city has not met its burden of proof beyond a
15 reasonable doubt because of the fact that it's clear
16 she lunged at him. Whether it was in her mind to get
17 the door, whether it was to get him. My client
18 perception is that it was to attack him, and he used
19 the bare minimum force necessary to stop that
20 further use of force and de-escalate the situation
21 and I implore the Court to find him not guilty.

22 MATHER: Your Honor the city would like to
23 point out of the Court's consideration that although
24 in their closing argument they state that we don't
25 know whether it was in her mind to get the door. She

1 testified that that was in her mind to get the door
2 and in fact at the time the police spoke to the
3 defendant shortly after this occurred it was in his
4 mind that she was trying to get the door because he
5 had repeatedly told the police, the door was down,
6 she was trying to get the door, I grabbed her hands
7 and another important factor hear is to consider the
8 control of the defendant upon the victim. He wants
9 to control who she talks to. He wants to control
10 whether there is a door on her bedroom or not. He
11 wants to control when she can come into her own
12 house when he locks the garage and locks her out on
13 the front door. The city believes that there is no
14 evidence presented that she was trying to hurt
15 herself that night. She was angry because he was
16 trying to boss her around and as he admitted treat
17 her like a child. We ask for a verdict of guilty.

18 COURT: Well the question come down to as
19 zeroed in, in the arguments. Was force reasonable?
20 Was the he entitled to use the force? What I believe
21 the evidence shows based on the testimony is and
22 based on the statement of the defendant to the
23 officers. I believe that the door was down at the
24 time and that the victim was trying to get the door
25 bac and at that point she was grabbed, pushed away

1 and that's when police were called. Thank goodness
2 it didn't escalate from there, but the question is
3 was it reasonable use of force for defense, self-
4 defense or was he using it again to try and control
5 the victim by way of taking the door away and she
6 was trying to get the door back and before she could
7 even get to the door her hands were grabbed and
8 pushed down or away. Was that reasonable to do? I
9 under those circumstances I don't think so. I think
10 both parties should have passed a step back before
11 any type of touching or battery took place. So, at
12 this time I am finding the defendant guilty of
13 battery. Sentencing?

14 MATHER: Your Honor, city is requesting a
15 on this case for sentence the minimums. Which would
16 be thirty days of jail, suspend all but two. I
17 believe he was taken into custody after the midnight
18 hour. It appears he was taken in at 00:04. So, we're
19 requesting that he be given credit for time served
20 for one day and the remaining day be served. That he
21 pays a fine of three hundred and forty dollars,
22 fines and fees actually of three forty. Domestic
23 battery counseling level one for once a week for
24 twenty-six weeks. Forty-eight hours of community
25 service. No further arrest or criminal citations for

1 one year. Indirect supervision for one year and the
2 victim has requested a no contact order with the
3 victim for that time frame except for any family
4 court orders.

5 COURT: Counsel?

6 SOLINGER: Your Honor, there is no
7 testimony about when my client was taken into
8 custody. I'm just going through the CAB log now.
9 Presumably, he was arrested, he was re-pat down
10 again. Then he was radioed in at 00:04 and so I
11 would argue that there is time. The pat down, the
12 double lock handcuffs before they rode him in the
13 car in due, I think it's on the fence on whether or
14 not it's before midnight. I'd ask you give him
15 credit for that day and essentially give him the two
16 days credit so that he doesn't have to serve
17 additional jail time based on that. Otherwise I'd
18 ask that, that condition be stayed until this
19 weekend so that he doesn't lose out on any work or
20 lose out on his job. Based on this I think the
21 statute allows for that and typically they allow for
22 reasonable delay before a sentencing. So, rather
23 than kick sentencing out for us to come back and do
24 this all over again I'd ask that you either give him
25 the day or alternatively let him serve the day this

1 weekend. As far as the requirements those are the
2 standard minimum requirements. I'm not quite sure
3 why the no contact is request. You know this case
4 has been pending since October of 2017. There has
5 been no issues, no notes since then. I think it's
6 just an undue punitive measure that doesn't make
7 sense at this point. You know there is a family
8 court order in place with regards to custody so they
9 would have to see each other and coordinate anyway.
10 I don't believe that they are having any kind of
11 social visitation or anything in that regard. So, I
12 am just not seeing the point other than being
13 vindictive for going to trial. So, I wouldn't want
14 to see a trial penalty imposed in this matter.
15 Sorry, I think that, that's really our only
16 objection would be due to the minimum number of days
17 in jail and either getting credit or getting to
18 surrender this weekend and the no contact. The rest
19 we don't take any issue with they are the minimum
20 requirements.

21 COURT: and---

22 MATHER: Your Honor, I was just checking
23 with the victim she does not wish to make a victim
24 impact statement.

25 COURT: Alright, that's what I was

1 wondering. Alright, thank you. Alright, well, it
2 will be a three forty fine. Domestic violence
3 counseling once a week for twenty-six weeks. No
4 further criminal arrest or citations for one year.
5 Indirect supervision for one year. No contact with
6 the victim Michelle Hildt now other than family
7 court orders to deal with that which means you have
8 to pass off custody some fashion. So, I don't know
9 how family court directed that take place, but like
10 I said other than what the family court has ordered
11 you follow the family court orders, but other than
12 that no contact and it will be thirty days
13 suspended. Yeah, we will give credit for one day.
14 What I'm going to do is get the additional day in
15 community service. So, it will be a total of ---

16 SOLINGER: Seventy-two I believe your
17 Honor.

18 COURT: Seventy-two hours of community
19 service and sir when can you have the fine paid?

20 CLERK: Judge he has cash bail posted.

21 COURT: Oh, great we got the cash bail
22 posted. So, we'll take that out of cash bail and
23 refund the difference and we'll give you referrals
24 for everything else, alright?

25 CLERK: Supervision expiration date March

1 23, 2020. Fines paid form cash bond. This concludes
2 criminal trials.

3 COURT: Thank you, appreciate. Oh, oh
4 let's just make sure ---

5 CLERK: Back on the record.

6 COURT: Alright sir, as a result of this
7 conviction you cannot own or possess a firearm. Do
8 you own or possess a fire arm?

9 ROMAN: Yes, your Honor.

10 COURT: Okay, so, you can pursuant to
11 statute transfer it to an individual or to a
12 licensed gun dealer. What would you like to do?

13 ROMAN: I'm not sure right now your Honor.

14 COURT: Now if you have a relative that
15 you'd like to transfer it to. I see you father in
16 court. I don't know if it's him.

17 ROMAN: I'll transfer the weapon to my
18 father.

19 COURT: Okay.

20 CLERK: And what was his name?

21 COURT: For the record what's his name? We
22 need to put it down of the record.

23 SOLINGER: Brief Court's indulgence.

24 COURT: Um-hum.

25 SOLINGER: Your Honor one thing for the

1 record. My client is a veteran as stated in the
2 MAV's. There is some disagreement right now about
3 whether or not (INAUDIBLE) qualify for Veterans
4 Court there was the recent Nevada Supreme Court
5 decision based on the Washoe County and my
6 understanding is that Downtown the District Veterans
7 Court has ruled that essentially on one with a
8 violent conviction can benefit from Veterans Court
9 because they struck down the prosecutors veto. They
10 found that, that unduly interfered with judicial
11 discretion and so I believe the interpretation
12 downtown currently is that there is no Veterans
13 Court with anyone with a violent offense because of
14 that I don't know if your Honor would consider him
15 for Veterans Court at this time given his status or
16 can provide briefing on the matter?

17 CLERK: And your Honor, he was offered
18 Veterans Court back in 2017 and it appears from the
19 information I have on February 15, 2018 he declined
20 Veterans Court specifically declined it. So, he went
21 through viewing the video and seeing what it's about
22 and he specifically declined it. So, once that's
23 declined it's my understanding once he rejects the
24 offer of it, he can't go back.

25 COURT: Well we do have a trial and a

1 verdict now. So, he wouldn't be able to do that.

2 SOLINGER: I believe the statute does
3 allow for that if the Court would entertain a motion
4 to reconsider on that bases with briefing?
5 (INAUDIBLE) for now and possibly transition to that,
6 but I do not believe under the battery domestic
7 violence statues specifically it does mention
8 veterans court and it would be to suspend sentences
9 and ---

10 COURT: Well I'll give you a chance to
11 brief it. I have no objection to that I mean if you
12 think that --- I'd have to look at the case and see
13 what --- Yes, let's brief it and we'll see what that
14 turns out. Could you have it ready in a couple of
15 weeks?

16 SOLINGER: Yeah, I could have an
17 associate draft it and then I'll obviously edit it
18 and review it from there, but, yes.

19 COURT: Alright and then Ms. Mathers what
20 do you think for response?

21 MATHER: A week after that I suppose. I
22 mean defense indicated that there is a current
23 decision form the Nevada Supreme Court that there is
24 no opportunity for a crime of violence to be in
25 Veterans Court.

1 SOLINGER: The representation is that
2 Supreme Court struck down the prosecutor's veto.
3 Saying that prosecutors don't get to decide whether
4 not somebody goes for Veterans Court because the
5 unduly interferes with it. Downtown in Eighth
6 Judicial District there is the Veterans Court Judge
7 there, I believe Judge Bell who has decided that,
8 that means that you can't have a violent offense and
9 be in Veterans Court but that wouldn't be binding
10 here because it's not an official decision that I'm
11 aware of. It's just a policy during stopping that
12 they rejected them. So, I'm not sure because it's
13 the inference to be made whether not it's severable
14 vs. non-severable that provision.

15 COURT: So, now is your argument that ---
16 because usually in Veterans Court people are
17 referred, they go through the program and then you
18 know eventually the record is sealed, but we know
19 he's declined it. We've had the trial we have the
20 verdict. You think knowing all that he can still go
21 through Veterans Court?

22 SOLINGER: For misdemeanors it's still a
23 possibility. I believe it's a --- cause the Veterans
24 Court Statue if I recall them correctly had a
25 distinction amongst what categories of offense

1 you're charged with and I believe for misdemeanors
2 there can be a finding of guilt if I'm not
3 (INAUDIBLE)

4 COURT: And still go?

5 SOLINGER: And still go. Whereas with a
6 felony or a gross misdemeanor you have to do it
7 without "a finding of guilt or adjudication" you
8 know I've done it in North Las Vegas Justice where
9 somebody did a stay on a Batt DV and still did
10 Veterans Court where there is a tree over there head
11 and so I just want the opportunity to brief it. I'm
12 not asking the Court order it today. I will withdraw
13 it once I go to the statutes because it's always poor
14 form to practice statutory law form memory.

15 COURT: Yeah. Let's do this because you're
16 going to look at it. I don't know we need to brief
17 it. Just let me know you looked at it and ---

18 SOLINGER: I'll file something ---

19 MATHER: I have the case right before me
20 your Honor.

21 COURT: Okay.

22 MATHER: If you want the and here
23 (INAUDIBLE) too. Defense indicates that if there is
24 a stay --- Well there's been sentencing. He's been
25 found guilty, there is not stay. It says the State

1 of Nevada vs the Second Judicial District Court and
2 Matthew Glen Hern and in this particular case.
3 Court's indulgence while I get to it. Apparently,
4 the legislature chose to state; In determining
5 whether an offense involved the use of threat, of
6 use of force or violence the district court, justice
7 court or municipal court as applicable shall
8 consider the facts and circumstances surrounding the
9 offense. Including without limitation whether the
10 defendant intended to place another person in
11 reasonable apprehension of bodily harm and then the
12 Court says, "The legislature chose to state that the
13 Court may not assign the defendant to the program
14 without the prosecuting attorney's stipulation. As
15 clarified the term may not unless expressly provided
16 otherwise abridges or removes a right, privilege or
17 power. So, in the context of NRS 176A.920--- excuse
18 me .290 subsection 2, I would interpret it as
19 abridging the court's discretion to assign
20 defendants to the program by requiring to seek input
21 from the prosecuting attorney when determining
22 whether to assign a defendant to the program. Such
23 an interpretation saves the statute from
24 unconstitutionality. So, apparently what the Court
25 was looking at according to --- from what I can

1 recall when we discussed it at our office, was that
2 granting the input and requiring the input if the
3 prosecutor agrees with it violates the separation
4 between the executive branch and the other branches
5 and so that brings the particular statute in
6 question back to a simple reading that the
7 particular case that results in the perhaps entrance
8 to the Veterans Court cannot be one of physical
9 violence. It's taking the language that gives a
10 prosecutor an opportunity to okay whether somebody
11 could go in out. So, it leaves the Court with just
12 the very basic language and there is --- this
13 interpretation is consistent with prior holdings
14 which negatively impact defendant must be construed.
15 There is no doubt that requiring the prosecutor to
16 stipulate to the assignment to the program would
17 negatively impact the defendant. I agree with ---
18 Oh, that's a --- So, there is a Judge agreeing with
19 colleagues --- I'm not sure, excuse me your Honor. I
20 am --- Oh, I'm reading a concurring opinion, please
21 excuse me. So, the Nevada --- This is the opinion,
22 the Nevada Separation of Powers Doctrine is violated
23 when a prosecutor is granted veto powers over
24 district courts sentencing decision. Because NRS
25 176(A).290(2) does precisely that, the district

1 court deemed it, correctly deemed it
2 unconstitutional. It also correctly determined that
3 the following language is severable unless the
4 prosecuting attorney re-stip's --- stipulates to the
5 assignment. According we deny the states petition.
6 So, taking out the language unless the prosecuting
7 attorney stipulates to the assignment leaves it that
8 somebody who has a conviction for force or violence
9 cannot come in and that's where we are today. It's
10 my understanding that the city is working with Judge
11 Stevens and his Veterans Court at the legislature to
12 get that straightened out, but as the defense
13 indicates this is not a state adjudication. This is
14 not any type of pending sentence. He's been
15 sentenced today. So, there is no benefit even if the
16 Veterans Court could possibly get into it. He has
17 rejected it; he's been sentenced and so that's his
18 choice. He made a decision as to how to proceed with
19 this case.

20 COURT: Yeah.

21 SOLINGER: And your Honor, just for the
22 record under the domestic battery statute which is
23 more specific than the general Veterans Court
24 Statute 200.485, if we go to down to subsection,
25 bear with me, subsection nine. If a person is

1 charged with committing battery, which constitutes
2 domestic violence, pursuant to Nevada Law a
3 prosecuting attorney shall not dismiss, blah, blah,
4 blah, blah, blah and then it goes on. The Court may
5 grant probation to or suspend the sentence to such a
6 person as set forth under other Nevada Law or Sub
7 "B" to assign a person a program of treatment of
8 Veterans or members of the military pursuant to
9 176(A).290 of the charges for the first offense
10 punishable as a misdemeanor. So, you have generally,
11 if you have more specific language you use that. So,
12 the battery domestic violent statute references
13 Veterans Court as a statute 176(A).290, says that
14 you can do it as a specific. So, the specific should
15 control more than that and as to the Court's
16 question about, you know, he's found guilty. He's
17 not found guilty, he's a stayed. Well 176(A).290(1)
18 says except as otherwise provided in subsection (2)
19 which is what the city just read the opinion based
20 on. If the defendant described under 176(A).280
21 tenders a plea of guilty, guilty, but mentally ill
22 or not contest to, or is found guilty or guilty, but
23 mentally ill of, any offense for which the
24 suspension of sentencing or granting the probation
25 not prohibited by statute. The district court,

1 justice court or municipal court as applicable may
2 without entering a judgment of conviction and with
3 the consent of the defendant suspend further
4 proceedings and place the defendant on probation
5 upon terms and conditions which must include the
6 attendance and successful completion of a program
7 established pursuant to 176(A).280 which is the
8 Veterans Court Statute. So, I understand the city's
9 argument that generally if this was a crime of
10 violence, battery, misdemeanor coercion or something
11 like that, that we'd have no argument here, but
12 because the battery domestic violence statute
13 specifically in subsection 9, subsection 2 or "B"
14 under that talks about domestic violence as a first
15 offense and being able to still go to Veterans Court
16 I still don't believe that, that opinion is
17 controlling for the matter whether or not Mr. Hildt
18 can go to Veterans Court. Nor, do I think that there
19 is a real dispute that it says right there, "or is
20 found guilty". Yes, he's been found guilty. What I'm
21 asking is because in misdemeanors we go straight
22 from trial to sentencing and rather than invoke that
23 reasonable delay to talk to him it had slipped my
24 mind that he was veteran and eligible to get a
25 chance to talk to him about that. I'm just asking

1 that we give him that chance that he is statutorily
2 entitled to.

3 COURT: Well there is also a police
4 consideration. I don't know if Judge Steven's ---
5 I'm sure he is familiar with the statue, but they do
6 have the policy if they are found guilty that they
7 don't accept individuals into Veterans Court.

8 SOLINGER: Judge ---

9 COURT: Hold on, hold on. That's what the
10 policy is now.

11 SOLINGER: But ask for the opportunity
12 to talk to him about that given the special
13 circumstances I don't think ---

14 MATHER: And we are guess it appears that
15 the law is currently not favorable to the defendant
16 because they took out the prosecutors approval
17 language and even with that gone he is isn't able
18 to go to the Veterans Court, but a year and half a
19 go he could have been considered for Veterans Court
20 and instead he's offered it and he rejects it.

21 SOLINGER: That's because he thought he
22 was not guilty and essentially the city's asking for
23 trial packs.

24 MATHER: And---

25 SOLINGER: He's is constitutionally

1 entitled to go to trial and make the city bare its
2 burden of proving beyond a reasonable doubt that he
3 is guilty as charged.

4 MATHER: And ---

5 SOLINGER: He shouldn't be punished for
6 exercising a constitutional right you know.

7 MATHER: And city would come back with
8 that, that, you know, certainly the defendant makes
9 choices as to how he wishes to proceed. He knows
10 that if he goes to trial, he may be found guilty and
11 he may have forsaken the opportunity he turned a
12 year and a half ago. Which apparently, he has and
13 now he wishes to (INAUDIBLE) for a better sentence.
14 City believes that it's not, not statutorily granted
15 him at this time. He has been sentenced today and
16 turn I believe has been selected of this weekend I
17 believe, had it not?

18 COURT: Converted 24 hours community
19 service.

20 MATHER: So, that's where he is.

21 COURT: Well, I've got to be honest with
22 you. I think the city is correct in everything
23 they've said, but I'm, you know, I'm willing to look
24 at the statue. I haven't looked at it in a while. I
25 haven't had reason to look at it. So, I think just

1 out of fairness I should look at that and consider
2 your argument. So, let's see today is Monday. Why
3 don't we come back Thursday at four for a decision,
4 alright? So, it's wither going to be, I mean I
5 understand both sides the argument and I've just got
6 to look at the statue.

7 SOLINGER: Okay.

8 COURT: And I'll apply the facts
9 accordingly. So, I'm willing to do that, because I
10 haven't looked at it in depth and, but being upfront
11 I think the city is correct in their interpretation,
12 but I'm willing to take a look at it and see what it
13 says. Alright?

14 SOLINGER: Okay.

15 CLERK: So, Judge just for clarification
16 are we --- is this going to be a recommended
17 sentence for right now? Because if not I need the
18 information for the firearms, and we need to set
19 appeals bail.

20 COURT: Yeah, now we do have, what we have
21 now is a conviction that's for sure.

22 CLERK: Right, so the sentencing we'll
23 just do recommended for right now?

24 COURT: Right and conviction whether you
25 go to Vet Court or here --- well---

1 CLERK: Cause when you go to Vet Court if
2 you are successful with it, it results in a
3 conditional dismissal.

4 COURT: That's true. We'll do everything
5 on Thursday. So, let's ---

6 CLERK: Do recommended for right now.

7 COURT: Right.

8 CLERK: Okay.

9 COURT: Then we will formally impose on --
10 -

11 CLERK: Should we do appeal bail now?

12 COURT: Yeah, the standard. What is it
13 three thousand cash surety?

14 CLERK: Yes.

15 COURT: Okay.

16 CLERK: This will be continued to March
17 28, 2019, 10AM, Department 3, for Judge Burr to
18 review the statute.

19 SOLINGER: Your Honor has all the
20 statutes form the record and all that, that we
21 cited? Do you require any supplemental briefing or
22 anything?

23 COURT: I'm sorry do I require what?

24 SOLINGER: Any supplemental briefing.
25 Cause we all cited the statues.

1 COURT: I'll let you know. I shouldn't,
2 just let me --- as long as I have you here, both of
3 you. What is the statute I'll be looking at? The
4 number?

5 SOLINGER: 176(A).290 would be the
6 Veterans Court Statute.

7 COURT: Okay.

8 SOLINGER: Obviously, the battery
9 domestic violence statute is 200.485 and the section
10 that I was citing to was subsection 9 and then
11 subsection (B) of subsection 9. That references
12 Veterans Court.

13 COURT: Alright, and the case name again?

14 MATHER: It is State of Nevada vs. Second
15 Judicial District Court and Matthew Glen Hern and
16 they were talking about 176(A).290.

17 COURT: Okay, great. Alright, so, I'll
18 take a look at that and --

19 CLERK: Judge are we going to do
20 appearance required?

21 COURT: Yes.

22 SOLINGER: Thank you.

23 MATHER: And your Honor in the interim is
24 the defendant is the defendant under a no contact
25 with the victim.

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COURT: **Yes.**

MATHER: **No further arrest or citations?**

COURT: **Yes.**

SOLINGER: **Thank you, your Honor.**

CERTIFICATE OF TRANSCRIBER**STATE OF NEVADA)****) ss.****COUNTY OF CLARK)****I HUMBERTO RODRIGUEZ, declare as follows:****That I transcribed AUDIO FILE presented.**

**I further declare that I am not a relative or
employee of any party involved in said action, nor a
person financially interested in the action.**

**Dated at Las Vegas, Nevada this 12th day of April,
2019.**

**/s/Humberto Rodriguez****HUMBERTO RODRIGUEZ**

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weight (1) 72:5	Willard's (2) 74:19;81:14	written (3) 16:1,2;31:10		23:19:45 (1) 74:22
welfare (1) 62:23	willing (4) 61:6;100:23;101:9, 12	wrote (2) 48:8;49:2		23:20:50 (1) 75:1
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				23:22 (1) 75:16

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75:13
23:24 (1)
75:18
23:25 (1)
75:21
23:25:10 (1)
75:12
23:26 (1)
75:22
23:27 (1)
75:24
23:29:29 (2)
44:10,13
24 (1)
100:18
25 (1)
1:13
28 (1)
102:17
29 (1)
44:13
290 (1)
94:18

3

3 (1)
102:17
30 (1)
75:24
3337 (1)
5:11
337 (3)
7:5;38:16;76:2
33y (1)
74:9

9

9 (4)
37:15;98:13;
103:10,11

Roman Hildt (Name)
337 Everett Vista Ct (Address)
Henderson, NV 89012 (City, State, Zip)
702-830-2669 (Phone)
Defendant

FILED

2019 APR -2 P 1:45

MUNICIPAL COURT
CITY OF HENDERSON
JPB CLERK

IN THE MUNICIPAL COURT OF THE CITY OF HENDERSON
IN THE COUNTY OF CLARK, STATE OF NEVADA

CITY OF HENDERSON,
Plaintiff

Case # 17 CR 012574

vs.

NOTICE OF APPEAL

Roman Hildt
Defendant

TO: The Honorable Judge of The Municipal Court of The City of Henderson, County of Clark,
State of Nevada, and

TO: Josh Reid, Henderson City Attorney

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that

Roman Hildt, the Defendant in the above-entitled action, does
hereby appeal to the Eighth Judicial District Court of the State of Nevada, in and for the
County of Clark, from a finding of guilty by the above Titled Court on
____/____/____ (Trial Date).

DATED THIS 25 DAY OF March, 2019.

Roman Hildt (Appellant)
337 Everett Vista Ct (Address)
Henderson, NV 89012 (City, State, Zip)

(Revised 04/15)



**Henderson Municipal Court
PO Box 95050 / 243 Water Street, 3rd Floor
Henderson NV 89009-5050
(702) 267-3300**

***** NOTICE *****

DATE: April 22, 2019
TO: District Court Clerk
FROM: LESLIE CLEMENTS, Henderson Municipal Court
SUBJECT: Transcription
RE: Case # 17CR012574/

There is no transcript of the above referenced trial included with this case. The transcript has not been RETURNED by the transcription agency. It was ordered by the court on 4/3/2019.

cc: City Attorney's Office – Criminal Division
ROBERT J GULLO, Atty For The Def



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

Offense Date 10/17/17

ASSESSED PAID CREDIT BALANCE

APPEAL
\$0.00

ATTY: GULLO, ROBERT J

1 DOMESTIC BATTERY, 1ST [50235]

SENTENCED

Date / Time / Dept	Event	Event Result	Event Notes
4/22/19 10:00 am D3	CTR	SENTENCED	
4/10/19 10:00 am D3	CTR	CONTINUED FOR SENTENCING	
4/4/19 2:00 pm D1	VET	CONTINUED	
3/28/19 10:00 am D3	CTR	CONTINUED	
3/25/19 10:00 am D3	CTR	EVENT HELD	
1/14/19 10:00 am D3	CTR	TRIAL CONT: DCA REQUEST	
10/15/18 10:00 am D3	CTR	TRIAL CONT: JOINT REQUEST	
9/27/18 10:00 am D3	CTR	MOTION CONTINUED	
7/23/18 10:00 am D3	CTR	TRIAL CONT: DEF ATTY REQUEST	
4/26/18 10:00 am D3	CTR	TRIAL CONT: DCA REQUEST	
2/15/18 2:00 pm D1	VET	MAINTAINED NOT GUILTY PLEA/ TRIAL RE-SET	
2/5/18 10:00 am D3	CTR	CONTINUED	
11/29/17 9:00 am D3	ARR	NOT GUILTY PLEA VIA FAX - TRIAL SET - CR	

10/17/17 CHARGE INITIATED AT THE HENDERSON DETENTION CENTER

crtrvram2

10/17/17 CASH BOND POSTED BY: MELVA HILDT
ADDRESS: 1642 SEBRING HILLS DR., HENDERSON, NV 89052
AMOUNT: \$3000
VIA: WINDOW
Charge #1: DOMESTIC BATTERY, 1ST Receipt: 741465 Date: 10/17/2017

ML2 3,000.00 3,000.00

10/17/17 COURT DATE SET:
Event: CRIMINAL ARRAIGNMENT
Date: 11/29/2017 Time: 9:00 am
Judge: BURR, RODNEY T Location: DEPARTMENT 3
Result: NOT GUILTY PLEA VIA FAX - TRIAL SET - CR

BML6

10/17/17 DEFENDANT IN CUSTODY-- BAIL NOTIFICATION SENT TO HDC

ML2

10/17/17 RETURN COURT DATE:
CONTINUANCE FORM
Sent on: 10/17/2017 13:00:44.00

ML2

10/17/17 Time spent in custody: 20.75 HRS
Arrest Date/Time: 10/17/17 @ 0004 HRS
Release Date/Time: 10/17/17 @ 2041 HRS

LMC

11/7/17 NOT GUILTY PLEA ENTERED VIA FAX ARRAIGNMENT
TRIAL SET IN DUE COURSE
Charge #1: DOMESTIC BATTERY, 1ST

BML6

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Date Printed: 4/22/19 2:09 pm

Page 1 of 11

DATE: 4/22/19
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PW000137



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
11/28/17	COURT DATE SET: Event: TRIAL Date: 02/05/2018 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3 Result: CONTINUED				LMC
2/5/18	REFERRED BY DEPT 3 FOR VETERAN'S COURT CASH BOND: STANDS				LMC
2/5/18	Court Note: Restricted				LMC
2/5/18	COUNTER: 10:06:54 / 10:48:30				LMC
2/5/18	COURT DATE SET: Event: VETERAN'S COURT Date: 02/15/2018 Time: 2:00 pm Judge: STEVENS, MARK J Location: DEPARTMENT 1				LMC
2/5/18	EVENT PARTICIPANTS: Court Location: DEPARTMENT 3 Check In: Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: BML6 - CLERK: Present HUBERT, THOMAS M - DEPUTY CITY ATTORNEY: Present LMC - CLERK: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Not Present ATTY BRANDON VERDE #14638 PRESENT FOR BECKER, MICHAEL L - Attorney for DEFENDANT: Not Present				LMC
2/15/18	DEFENDANT DECLINES VETERAN'S COURT / RETURN TO REFERRING DEPARTMENT				SDC2
2/15/18	DEFENDANT MAINTAINED NOT GUILTY PLEA/ TRIALSET APPEARANCE REQUIRED BOND: STANDS Charge #1: DOMESTIC BATTERY, 1ST				SDC2
2/15/18	COUNTER: 2:19:50				SDC2

Date Printed: 4/22/19 2:09 pm
Page 2 of 11

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HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
2/15/18	EVENT PARTICIPANTS	SDC2			
	Court Location: DEPARTMENT 1				
	Check In:				
	Judge: STEVENS, MARK J				
	Location: DEPARTMENT 1				
	Staff:				
	AMBROSE, JESSICA - ALTERNATIVE SENTENCING DIVISION: Present				
	BML4 - CLERK: Present				
	COOLEY, JEREMY - DEPUTY CITY ATTORNEY: Present				
	SCHNEIDER, LORAA - PRO TEM: Present				
	SDS - CLERK: Present				
	Prosecutors:				
	Parties:				
	HILDT, ROMAN CHRISTOPHER - DEFENDANT: Present				
	VERDE, BRANDON #14638 for BECKER, MICHAEL L - Attorney for DEFENDANT: Present				
2/15/18	COURT DATE SET:	LMC			
	Event: TRIAL				
	Date: 04/26/2018 Time: 10:00 am				
	Judge: BURR, RODNEY T Location: DEPARTMENT 3				
	Result: TRIAL CONT: DCA REQUEST				
4/26/18	ORAL MOTION FOR CONTINUANCE BY CAO / GRANTED	LMC			
	CASH BOND: STANDS				
4/26/18	COUNTER: 10:07:41 / 10:28:33	LMC			
4/26/18	COURT DATE SET:	LMC			
	Event: TRIAL				
	Date: 07/23/2018 Time: 10:00 am				
	Judge: BURR, RODNEY T Location: DEPARTMENT 3				
4/26/18	EVENT PARTICIPANTS	LMC			
	Court Location: DEPARTMENT 3				
	Check In:				
	Judge: BURR, RODNEY T				
	Location: DEPARTMENT 3				
	Staff:				
	BML6 - CLERK: Present				
	COOLEY, JEREMY - DEPUTY CITY ATTORNEY: Present				
	HANKS, ASHLEY - DEPUTY CITY ATTORNEY: Present				
	LMC - CLERK: Present				
	SCHULKE, KURT - PRO TEM: Present				
	Prosecutors:				
	Parties:				
	HILDT, ROMAN CHRISTOPHER - DEFENDANT: Present				
	ATTY BRANDON VERDE #14638 PRESENT FOR BECKER, MICHAEL L - Attorney for DEFENDANT: Not Present				
7/23/18	CONTINUED: STIPULATION FILED BY DEFENSE ATTY / GRANTED	MLH3			
	BOND: STANDS				

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PW000139



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
7/23/18	COUNTER: 10 10 06				MLH3
7/23/18	COURT DATE SET: Event: TRIAL Date: 10/15/2018 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3				MLH3
7/23/18	EVENT PARTICIPANTS: Court Location: DEPARTMENT 3 Check In Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: BML6 - CLERK: Present COOLEY, JEREMY - DEPUTY CITY ATTORNEY: Present MLH3 - CLERK: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Not Present BECKER, MICHAEL L - Attorney for DEFENDANT: Not Present				MLH3
9/20/18	MOTION FILED: MOTION FOR JURY TRIAL FILED BY MICHAEL L BECKER (Attorney) on behalf of ROMAN CHRISTOPHER HILDT (DEFENDANT)				ML2
9/20/18	MOTION FILED: MOTION TO SUPPRESS FILED BY MICHAEL L BECKER (Attorney) on behalf of ROMAN CHRISTOPHER HILDT (DEFENDANT)				ML2
9/20/18	COURT DATE SET: Event: TRIAL Date: 09/27/2018 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3 Result: MOTION CONTINUED				LMC
9/27/18	MOTION HEARINGS CONTINUED TO EXISTING TRIAL DATE OF 10/15/18, 10AM. D3 FOR CITY TO HAVE TIME TO FILE OPPOSITION. TRIAL STANDS. OPPOSITION DUE: 10/11/18 (CAO IN COMMUNICATION WITH DEFENSE COUNSEL) CASH BOND: STANDS				LMC
9/27/18	COUNTER: 10 07 14				LMC

Date Printed: 4/22/19 2:09 pm

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DATE: 4/22/19
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PW000140



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
9/27/18	EVENT PARTICIPANTS: Court Location: DEPARTMENT 3 Check In: Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: JMS17 - CLERK: Present LMC - CLERK: Present SCHIFALACQUA, MARC - DEPUTY CITY ATTORNEY: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Not Present BECKER, MICHAEL L - Attorney for DEFENDANT: Not Present	LMC			
10/15/18	MOTION HEARING HELD - MOTION FOR JURY TRIAL MOTION DENIED	LMC			
10/15/18	MOTION HEARING CONTINUED - MOTION TO SUPPRESS CONTINUED TO TRIAL DATE	LMC			
10/15/18	JOINT ORAL MOTION FOR CONTINUANCE / GRANTED CASH BOND: STANDS	LMC			
10/15/18	COUNTER: 10.24.11 / 10.43.13	LMC			
10/15/18	COURT DATE SET: Event: TRIAL Date: 01/14/2019 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3	LMC			
10/15/18	EVENT PARTICIPANTS: Court Location: DEPARTMENT 3 Check In: Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: COOLEY, JEREMY - DEPUTY CITY ATTORNEY: Present LMC - CLERK: Present MLH3 - CLERK: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Present ATTY ADAM SOLINGER #13963 FOR BECKER, MICHAEL L - Attorney for DEFENDANT: Present	LMC			
1/14/19	CONTINUED: STIPULATION FILED BY CAO / GRANTED CASH BOND: STANDS	LMC			
1/14/19	DEFENSE MOTION TO SUPPRESS CONTINUED WITH TRIAL	LMC			

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DATE: 4/22/19
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PW000141



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
1/14/19	COUNTER: 10.17.00				
		LMC			
1/14/19	COURT DATE SET: Event: TRIAL Date: 03/25/2019 Time: 10.00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3	LMC			
1/14/19	EVENT PARTICIPANTS Court Location: DEPARTMENT 3 Check In: Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: CMC8 - CLERK: Present LMC - CLERK: Present MATHER, ELAINE - DEPUTY CITY ATTORNEY: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Not Present BECKER, MICHAEL L - Attorney for DEFENDANT: Not Present	LMC			
3/25/19	MOTION TO SUPPRESS WITHDRAWN	MLH3			
3/25/19	ORAL MOTION BY DEFENSE FOR JURY TRIAL	MLH3			
3/25/19	MOTION HEARING HELD. MOTION DENIED.	MLH3			
3/25/19	TRIAL HELD SEE "FTR GOLD LOGNOTES" FOR DETAILS Charge #1: DOMESTIC BATTERY, 1ST	MLH3			
3/25/19	FOUND GUILTY Charge #1: DOMESTIC BATTERY, 1ST	MLH3			

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DATE: 4/22/19
COURT CLERK: [Signature]

PW000142



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
3/25/19	RECOMMENDED SENTENCE - 30 DAYS JAIL. SUSPEND 28 DAYS, 1 DAY JAIL TIME SERVED - \$305 + \$35 DOMESTIC BATTERY FEE (FINE TO BE PAID FROM CASH BOND) - 1 DAY JAIL CONVERTED TO 24 ADDITIONAL HOURS OF COMMUNITY SERVICE - DOMESTIC BATTERY COUNSELING - 48 HOURS COMMUNITY SERVICE - NO CONTACT WITH MICHELLE HILDT (EXCEPT FOR FAMILY COURT ORDERS) FOR CASE DURATION - PERMANENTLY SURRENDER, SELL OR TRANSFER FIREARM(S) FIREARMS TO BE SURRENDERED TO PERSON (TBD AT FINAL SENTENCING) - NO FURTHER ARRESTS/CITATIONS (ANY CRIMINAL CHARGE) FOR CASE DURATION VICTIM'S RELATIONSHIP TO DEFENDANT: SPOUSAL INDIRECT SUPERVISION 1 YEAR Charge #1: DOMESTIC BATTERY, 1ST	LMC			
3/25/19	CONTINUED FOR JUDGE BURR TO REVIEW STATUTE REGARDING VETERAN'S TREATMENT COURT. DEFENDANT HAS PREVIOUSLY DECLINED VTC AND REFUSED TO FILL OUT PAPERWORK WHEN OFFERED. APPEARANCE REQUIRED	MLH3			
3/25/19	CONDITIONS OF RELEASE: *STAND AS OF 4/22/19* - NO CONTACT WITH MICHELLE HILDT - NO USE / POSSESSION OF ALCOHOL, CONTROLLED SUBSTANCES, AND MARIJUANA (ADDED 3/28/19) - NO FURTHER ARRESTS OR CRIMINAL CITATIONS	LMC			
3/25/19	APPEAL: BAIL SET \$3,000 CASH OR BOND Charge #1: DOMESTIC BATTERY, 1ST	MLH3			
3/25/19	COUNTER: 10.49.40	MLH3			
3/25/19	COURT DATE SET: Event: TRIAL Date: 03/28/2019 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3	MLH3			
3/25/19	EVENT PARTICIPANTS: Court Location: DEPARTMENT 3 Check In: Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: JB1 - CLERK: Present MATHER, ELAINE - DEPUTY CITY ATTORNEY: Present MLH3 - CLERK: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Present BECKER, MICHAEL L - Attorney for DEFENDANT: Present	MLH3			

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DATE: 4/22/19
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PW000143



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
3/28/19	UPON REVIEW OF STATUTE REGARDING VETERAN'S TREATMENT COURT, JUDGE BURR DECIDES DEFENDANT MAY BE REFERRED TO VET COURT UPON FINDING OF GUILT.				LMC
3/28/19	REFERRED BY DEPT 3 FOR VETERAN'S COURT VETERANS TREATMENT SCREENING DATE: 4/2/19 1:45 IN DEPARTMENT 1 VETERAN'S TREATMENT COURT APPEARANCE: 4/4/19 1:45 IN DEPARTMENT 1 CASH BOND STANDS				LMC
3/28/19	COUNTER: 10 17 48 / 10 20 00				LMC
3/28/19	COURT DATE SET: Event: VETERAN'S COURT Date: 04/04/2019 Time: 2 00 pm Judge: STEVENS, MARK J Location: DEPARTMENT 1				LMC
3/28/19	EVENT PARTICIPANTS: Court Location: DEPARTMENT 3 Check In: Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: CRG - CLERK: Present LMC - CLERK: Present ROBERTS, COREY J - DEPUTY CITY ATTORNEY: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Present ATTY BAYLIE HELLMON #14541 FOR BECKER, MICHAEL L - Attorney for DEFENDANT: Present				LMC
4/2/19	APPEAL DOCUMENT FILED Charge #1: DOMESTIC BATTERY, 1ST				JJP5
4/2/19	APPEAL FILED - FEE \$25 Receipt: 825215 Date: 04/02/2019		25.00		JJP5 25.00
4/2/19	PREPARATION AND TRANSMITTAL OF TRANSCRIPT AND PAPERS ON APPEAL - FEE \$25 Charge #1: DOMESTIC BATTERY, 1ST Receipt: 825215 Date: 04/02/2019		25.00		JJP5 25.00
4/2/19	CASH BOND POSTED ON 10/17/17 HELD AS APPEAL BAIL POSTED				LMC
4/3/19	APPEAL TRANSCRIPT ORDERED				SYR
4/4/19	NOT ELIGIBLE FOR VETERAN'S COURT RETURN TO REFERRING DEPARTMENT FOR FINAL SENTENCING BOND STANDS				CMC8

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PW000144



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
4/4/19	COUNTER: 02:33:40				CMC8
4/4/19	COURT DATE SET: Event: TRIAL Date: 04/10/2019 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3				CMC8
4/4/19	EVENT PARTICIPANTS: Court Location: DEPARTMENT 1 Check In: Judge: STEVENS, MARK J Location: DEPARTMENT 1 Staff: AMBROSE, JESSICA - ALTERNATIVE SENTENCING DIVISION: Present CMC8 - CLERK: Present KJ - CLERK: Present REARDON, BRIAN - DEPUTY CITY ATTORNEY: Present ROBERTS, KENNETH M. - PUBLIC DEFENDER: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Present BECKER, MICHAEL L - Attorney for DEFENDANT: Not Present				CMC8
4/9/19	MOTION TO WITHDRAW AS COUNSEL OF RECORD FILED BY: MICHAEL L BECKER (Attorney) on behalf of ROMAN CHRISTOPHER HILDT (DEFENDANT)				RJ4
4/10/19	MOTION HEARING HELD. MOTION GRANTED				LMC
4/10/19	ATTORNEY, MICHAEL BECKER, WITHDRAWN FROM CASE Charge #1: DOMESTIC BATTERY, 1ST				LMC
4/10/19	ATTORNEY CONFIRMED - ROBERT GULLO #14531.				LMC
4/10/19	CONTINUED FOR SENTENCING JUDGE HILLMAN INFORMS ATTY GULLO THAT DEFENDANT FILED AN APPEAL. CLERK INFORMS JUDGE HILLMAN THE DEADLINE IS 4/15/19 FOR MUNICIPAL COURT TO SUBMIT THE APPEAL TO DISTRICT COURT. PER JUDGE HILLMAN, APPEAL TO BE CONTINUED WITH SENTENCING. CASH BOND (HELD AS APPEAL BAIL): STANDS				LMC
4/10/19	COUNTER: 10:26:40				LMC
4/10/19	COURT DATE SET: Event: TRIAL Date: 04/22/2019 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3				LMC

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DATE: 4/22/19
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PW000145



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
4/10/19	EVENT PARTICIPANTS				
	Court Location: DEPARTMENT 3				
	Check In:				
	Judge: BURR, RODNEY T				
	Location: DEPARTMENT 3				
	Staff:				
	BML6 - CLERK: Present				
	HILLMAN, ROGER - PRO TEM: Present				
	LMC - CLERK: Present				
	MATHER, ELAINE - DEPUTY CITY ATTORNEY: Present				
	Prosecutors				
	Parties:				
	BECKER, MICHAEL L - Event Attorney for DEFENDANT: Not Present				
	HILDT, ROMAN CHRISTOPHER - DEFENDANT: Not Present				
	GULLO, ROBERT J - Attorney for DEFENDANT: Present				
4/22/19	SENTENCED ***ALL CONDITIONS STAYED PENDING APPEAL*** - 30 DAYS JAIL, SUSPEND 28 DAYS, 1 DAY JAIL TIME SERVED - REMAINING 1 DAY JAIL CONVERTED TO 24 HOURS COMMUNITY SERVICE - \$305+35 - DOMESTIC BATTERY COUNSELING - 48 HOURS COMMUNITY SERVICE (PLUS ADDITIONAL 24 HOURS ABOVE = 72 HOURS TOTAL) - PERMANENTLY SURRENDER, SELL OR TRANSFER FIREARM(S) FIREARMS TO BE SURRENDERED TO PERSON (TO BE DETERMINED AFTER APPEAL DECISION) - NO FURTHER ARRESTS/CITATIONS (ANY CRIMINAL CHARGE) FOR CASE DURATION VICTIM'S RELATIONSHIP TO DEFENDANT: SPOUSAL INDIRECT SUPERVISION EXPIRATION DATE: 1 YEAR \$3,000 CASH BOND (HELD AS APPEAL BAIL) STANDS Charge #1: DOMESTIC BATTERY, 1ST	LMC			
4/22/19	**STAYED PENDING APPEAL** FINE/FORFEITURE \$200 + 105 ADMINISTRATIVE ASSESSMENT Charge #1: DOMESTIC BATTERY, 1ST	LMC	305.00		305.00
4/22/19	**STAYED PENDING APPEAL** DOMESTIC BATTERY ASSESSMENT FEE Charge #1: DOMESTIC BATTERY, 1ST	LMC	35.00		35.00
4/22/19	INDIRECT SUPERVISION ORDERED	LMC			
4/22/19	**SENTENCING CONDITIONS STAYED PENDING APPEAL DECISION: - \$340 FINE - 72 HOURS COMMUNITY SERVICE - DB CNSL - NO CONTACT WITH MICHELLE HILDT (*STANDS AS PRIOR CONDITION OF RELEASE ONLY*) - PERMANENTLY SURRENDER, SELL OR TRANSFER FIREARM: FIREARMS TO BE SURRENDERED TO PERSON - NFA/C (*STANDS AS PRIOR CONDITION OF RELEASE ONLY*) - INDIRECT SUPERVISION	LMC			

I HEREBY CERTIFY THAT THIS REPORT IS A TRUE COPY OF THE
ORIGINAL ON FILE AT THE HENDERSON MUNICIPAL COURT.

Date Printed: 4/22/19 2:09 pm

Page 10 of 11

DATE: 4/22/19
COURT CLERK: [Signature]

PW000146



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER
17CR012574 DOB: 9/11/71

DR# 17-19690

			ASSESSED	PAID	CREDIT	BALANCE
4/22/19	COUNTER: 10 14 07	LMC				
4/22/19	EVENT PARTICIPANTS: Court Location: DEPARTMENT 3 Check In: Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: BML6 - CLERK: Present LMC - CLERK: Present MATHER, ELAINE - DEPUTY CITY ATTORNEY: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Present GULLO, ROBERT J - Attorney for DEFENDANT: Present	LMC				
4/22/19	APPEAL SENT TO DISTRICT COURT APPEAL DOCUMENTS Sent on: 04/22/2019 13:53:03.18	LMC				
			3,390.00	3,050.00	340.00	0.00

I HEREBY CERTIFY THAT THIS REPORT IS A TRUE COPY OF THE
ORIGINAL ON FILE AT THE HENDERSON MUNICIPAL COURT.

DATE: 4/22/19
COURT CLERK: [Signature]

Henderson Municipal Court Sentencing Order

☒ Original ☐ Amended

Name: Huat, Roman

Fines:							
Case #	Original	Suspend	Imposed	Case #	Original	Suspend	Imposed
17CR012574	continued						
				Subtotal from today's fines			+
				Prior outstanding fine balance			+
				<input type="checkbox"/> Good Faith Payment <input type="checkbox"/> Credit for Time Served			-
				\$50 Payment Setup Fee			+
				Total: \$			

☐ Complete and Submit Traffic Safety School Completion Certificate by: ____/____/____ ☐ Level 1 ☐ Level 2 (Repeat Offenders)
☐ Pay your fine in full by: ____/____/____ ☐ Pay \$____ by ____/____/____ and balance by ____/____/____
☐ Time Payments: Monthly Minimum payment of \$____. **\$50.00 payment set-up fee will be added to total due.**
Beginning ____/____/____, until fine is paid in full ☐ Add to Existing Payments ☐ Payments Reset
Mail Payments to: Henderson Municipal Court, PO Box 95050 - MS621, Henderson, NV 89009
On-line payments: www.cityofhenderson.com/municipal_court/

☐ Present valid NV Driver's License to ☐ dismiss / ☐ reduce to \$_____ / ☐ to suspend fine/ ☐ amend to "No DL in Possession"
☐ Present valid Registration to ☐ dismiss / ☐ reduce to \$_____ / ☐ to suspend fine
☐ Present valid Insurance to ☐ dismiss / ☐ reduce to \$_____
☐ Present proof of _____ to ☐ dismiss / ☐ reduce to \$_____ / ☐ to suspend fine
 Present proof of the above to Customer Service Windows by: ____/____/____

☐ No Further Arrests/Citations ☐ Same / Similar ☐ Any Criminal for a period of _____ months / duration
☐ Complete the following by ____/____/____ ☐ Coroner's Visitation Program ☐ NV Vehicle Safety Program
☐ Victim's Impact Panel (You must provide the completion certificate on or before your return court date/completion date)
☐ D.R.I.V.E on ____/____/____ ☐ Other _____
 If completed by due date: ☐ Suspend \$ _____ ☐ Dismiss ☐ Amend to _____

WORK PROGRAM: Complete _____ hours at a **minimum rate of 5 hours per week** – One time setup fee applies. You must appear in person to the Special Programs and Services Bureau (SPS), located at 243 Water Street, Lower Level, Henderson, NV immediately following court or upon the first business day following your release from custody. Failing to appear at the Special Programs and Services Bureau, failing to comply with the court's order, or receipt of a non-compliant report may result in a Bench Warrant issued for your arrest. You must report to Special Programs and Services Bureau as directed throughout the term of Supervision. You must provide correct contact information to Special Programs and Services Bureau and report any changes of that information immediately.

☒ Your next court date will be for: VET COURT
☐ Arraignment ☐ Trial ☐ Sentencing ☐ Status Check ☐ Show Cause ☐ Attorney Status ☐ Good Faith Payment \$ _____
 on: 2/15/18 @ 1:45 AM / PM in Dept. 1/2/3
☒ Appearance Required ☐ Appearance Not Required if compliant with ALL orders
Failure to Appear for a required court appearance will result in a BENCH WARRANT being issued for your arrest.

***Comments:**

**FAILURE TO COMPLY WITH ANY ORDER OF THE COURT MAY RESULT
IN ADDITIONAL FEES AND/OR A BENCH WARRANT FOR YOUR ARREST**

Date: 2 / 5 / 18 Clerk by
Dept. 1 / 2 / 3
Original=Court / Yellow=SPS / Pink=Def Rev. 06/26/17



Henderson Municipal Court Sentencing Order

☒ Original ☐ Amended

Name:

Hildt, Roman

Fines:

Case #	Original	Suspend	Imposed	Case #	Original	Suspend	Imposed
17CR012574	cont.						
	(back to referring dept.)						
Subtotal from today's fines							+
Prior outstanding fine balance							+
<input type="checkbox"/> Good Faith Payment <input type="checkbox"/> Credit for Time Served							-
\$50 Payment Setup Fee							+
Total: \$							

☐ Complete and Submit Traffic Safety School Completion Certificate by: ____/____/____ ☐ Level 1 ☐ Level 2 (Repeat Offenders)☐ Pay your fine in full by: ____/____/____ ☐ Pay \$____ by ____/____/____ and balance by ____/____/____☐ Time Payments: Monthly Minimum payment of \$____. \$50.00 payment set-up fee will be added to total due.Beginning ____/____/____, until fine is paid in full ☐ Add to Existing Payments ☐ Payments Reset

Mail Payments to: Henderson Municipal Court, PO Box 95050 - MS621, Henderson, NV 89009

On-line payments: www.cityofhenderson.com/municipal_court/

☐ Present valid NV Driver's License to ☐ dismiss / ☐ reduce to \$____ / ☐ to suspend fine/ ☐ amend to "No DL in Possession"☐ Present valid Registration to ☐ dismiss / ☐ reduce to \$____ / ☐ to suspend fine☐ Present valid Insurance to ☐ dismiss / ☐ reduce to \$____☐ Present proof of ____ to ☐ dismiss / ☐ reduce to \$____ / ☐ to suspend fine

Present proof of the above to Customer Service Windows by: ____/____/____

☐ No Further Arrests/Citations ☐ Same / Similar ☐ Any Criminal for a period of ____ months / duration☐ Complete the following by ____/____/____ ☐ Coroner's Visitation Program ☐ NV Vehicle Safety Program☐ Victim's Impact Panel (You must provide the completion certificate on or before your return court date/completion date)☐ D.R.I.V.E on ____/____/____ ☐ Other: ____If completed by due date: ☐ Suspend \$____ ☐ Dismiss ☐ Amend to ____☐ **WORK PROGRAM:** Complete ____ hours at a **minimum rate of 5 hours per week** - One time setup fee applies

You must appear in person to the Special Programs and Services Bureau (SPS), located at 243 Water Street, Lower Level, Henderson, NV immediately following court or upon the first business day following your release from custody. Failing to appear at the Special Programs and Services Bureau, failing to comply with the court's order, or receipt of a non-compliant report may result in a Bench Warrant issued for your arrest. You must report to Special Programs and Services Bureau as directed throughout the term of Supervision. You must provide correct contact information to Special Programs and Services Bureau and report any changes of that information immediately.

☒ Your next court date will be for:☐ Arraignment ☒ Trial ☐ Sentencing ☐ Status Check ☐ Show Cause ☐ Attorney Status ☐ Good Faith Payment \$____

on: 4/26/18 @ 10:00 AM in Dept. 1 / 2 / 3

☒ Appearance Required☐ Appearance Not Required if compliant with ALL ordersFailure to Appear for a required court appearance will result in a **BENCH WARRANT** being issued for your arrest.

*Comments: _____

**FAILURE TO COMPLY WITH ANY ORDER OF THE COURT MAY RESULT
IN ADDITIONAL FEES AND/OR A BENCH WARRANT FOR YOUR ARREST**

Date: 2/15/18 Clerk: EMM4
Dept. 1 / 2 / 3
Original=Court / Yellow=SPS / Pink=Def Rev. 06/26/17

PW000149



Henderson Municipal Court Sentencing Order ☒ Original ☐ Amended

Name: Hildt, Roman

Case #	Original	Suspend	Imposed	Case #	Original	Suspend	Imposed
17CR012574	CONF						
Subtotal from today's fines						+	
Prior outstanding fine balance						+	
<input type="checkbox"/> Good Faith Payment <input type="checkbox"/> Credit for Time Served						-	
\$50 Payment Setup Fee						+	
Total: \$							

☐ Complete and Submit Traffic Safety School Completion Certificate by: ____/____/____ ☐ Level 1 ☐ Level 2 (Repeat Offenders)
☐ Pay your fine in full by: ____/____/____ ☐ Pay \$ ____ by ____/____/____ and balance by ____/____/____
☐ Time Payments: Monthly Minimum payment of \$ ____ \$50.00 payment set-up fee will be added to total due.
Beginning ____/____/____, until fine is paid in full ☐ Add to Existing Payments ☐ Payments Reset
Mail Payments to: Henderson Municipal Court, PO Box 95050 - MS621, Henderson, NV 89009
On-line payments: www.cityofhenderson.com/municipal_court/

☐ Present valid NV Driver's License to ☐ dismiss / ☐ reduce to \$ ____ / ☐ to suspend fine / ☐ amend to "No DL in Possession"
☐ Present valid Registration to ☐ dismiss / ☐ reduce to \$ ____ / ☐ to suspend fine
☐ Present valid Insurance to ☐ dismiss / ☐ reduce to \$ ____
☐ Present proof of ____ to ☐ dismiss / ☐ reduce to \$ ____ / ☐ to suspend fine
Present proof of the above to Customer Service Windows by: ____/____/____

☐ No Further Arrests/Citations ☐ Same / Similar ☐ Any Criminal for a period of ____ months / duration
☐ Complete the following by ____/____/____ ☐ Coroner's Visitation Program ☐ NV Vehicle Safety Program
☐ Victim's Impact Panel (You must provide the completion certificate on or before your return court date/completion date)
☐ D.R.I.V.E on ____/____/____ ☐ Other ____
If completed by due date: ☐ Suspend \$ ____ ☐ Dismiss ☐ Amend to ____

☐ **WORK PROGRAM:** Complete ____ hours at a **minimum rate of 5 hours per week** – One time setup fee applies
You must appear in person to the Special Programs and Services Bureau (SPS), located at 243 Water Street, Lower Level, Henderson, NV immediately following court or upon the first business day following your release from custody. Failing to appear at the Special Programs and Services Bureau, failing to comply with the court's order, or receipt of a non-compliant report may result in a Bench Warrant issued for your arrest. You must report to Special Programs and Services Bureau as directed throughout the term of Supervision. You must provide correct contact information to Special Programs and Services Bureau and report any changes of that information immediately.

☒ Your next court date will be for:
☐ Arraignment ☒ Trial ☐ Sentencing ☐ Status Check ☐ Show Cause ☐ Attorney Status ☐ Good Faith Payment \$ ____
on: 7/23/18 @ 10:00 AM / PM in Dept. 1 / 2 / 3
☒ Appearance Required ☐ Appearance Not Required if compliant with ALL orders
Failure to Appear for a required court appearance will result in a **BENCH WARRANT** being issued for your arrest.

*Comments:

FAILURE TO COMPLY WITH ANY ORDER OF THE COURT MAY RESULT IN ADDITIONAL FEES AND/OR A BENCH WARRANT FOR YOUR ARREST

Date: 4/26/18 Clerk BU
Dept. 1 / 2 / 3
Original=Court / Yellow=SPS / Pink=Def Rev. 06/26/17

PW000150

Description	COH V HILDT, ROMAN CHRISTOPHER, JUDGE RODNEY BURR, CAO ELAINE MATHER, CLERK MLH3 / JB1, DEFENSE ADAM SOLINGER		
Date	3/25/2019	Location	Department 3

Time	Sp	Note
10:50:21 AM	DE F	SUPPRESSION MOTION WITHDRAWN AND OM REGARDING JURY TRIAL
10:50:57 AM	JU DG E	MOTION DENIED
10:51:06 AM	CA O	COMPLAINT AMENDED TO DATE OF 10/16/17
10:51:30 AM	DE F	NO OBJECTION
10:51:35 AM	JU DG E	AMENDED
10:51:41 AM	CA O	CALLS WITNESS - MICHELLE HILDT
10:52:16 AM	CL ER K	SWEARS IN WITNESS
10:52:27 AM	CA O	DIRECT EXAMINATION
10:53:38 AM	WI TN ES S	IDENTIFIES DEFENDANT
10:53:50 AM	CA O	DIRECT CONTINUES
11:01:21 AM	CA O	MOVES TO MARK CAO EXHIBIT 2 - VICTIM STATEMENT
11:03:15 AM	CA O	DIRECT CONTINUES
11:03:41 AM	CA O	PASSES WITNESS
11:03:45 AM	DE F	CROSS EXAMINATION
11:11:27 AM	JU DG E	CLARIFICATION
11:11:33 AM	DE F	CROSS CONTINUES
11:12:51 AM	DE F	MOVES TO MARK DEFENSE EXHIBITS A, B, C - PHOTOS OF INJURIES
11:13:43 AM	DE F	CROSS CONTINUES
11:15:13 AM	DE F	SHOWS WITNESS CAO EXHIBIT 2 - VICTIM STATEMENT

11:15:59 AM	DE F	CROSS CONTINUES
11:20:32 AM	DE F	PASSES WITNESS
11:20:41 AM	CA O	REDIRECT
11:21:43 AM	CA O	PASSES WITNESS
11:21:47 AM	DE F	NO RECROSS
11:21:52 AM	JU DG E	EXCUSES WITNESS FROM THE STAND
11:21:59 AM	CA O	CALLS WITNESS - OFFICER GARRETT WILLARD
11:22:49 AM	CL ER K	SWEARS IN WITNESS
11:22:57 AM	CA O	DIRECT EXAMINATION
11:24:18 AM	WI TN ES S	IDENTIFIES DEFENDANT
11:24:29 AM	CA O	DIRECT CONTINUES
11:28:37 AM	CA O	SHOWS CAO'S EXHIBIT 1- OFFICER'S MAV
11:41:17 AM	CA O	VIDEO BEGINS AT 23:18:05 AND STOPPED AT 23:29:29
11:41:33 AM	CA O	DIRECT CONTINUES
11:41:40 AM	CA O	MOVES TO ADMIT CAO EXHIBIT 1
11:41:54 AM	DE F	SUBMITS
11:42:07 AM	CA O	DIRECT CONTINUES
11:44:09 AM	CA O	PASSES WITNESS
11:44:12 AM	DE F	CROSS EXAMINATION
11:51:27 AM	DE F	PASSES WITNESS
11:51:33 AM	CA O	REDIRECT

COH V HILDT, ROMAN CHRISTOPHER, JUDGE RODNEY BURR, CAO ELAIN Department 3

11:55:45 AM	DE F	OBJECTION
11:55:47 AM	JU D	SUSTAINED
11:55:50 AM	CA O	PASSES WITNESS
11:56:15 AM	DE F	NO RECROSS
11:56:23 AM	CA O	CITY RESTS
11:57:54 AM	DE F	DEFENDANT CHOOSES TO TESTIFY - ROMAN HILDT
11:58:09 AM	JU DG E	ADMONISHES DEFENDANT
11:58:49 AM	CL ER K	SWEARS IN DEFENDANT
11:58:54 AM	DE F	DIRECT EXAMINATION
12:03:50 PM	CA O	OBJECTION
12:03:54 PM	JU DG E	SUSTAINED
12:04:01 PM	DE F	PASSES WITNESS
12:04:06 PM	CA O	CROSS EXAMINATION
12:05:45 PM	DE F	OBJECTION
12:05:49 PM	JU DG E	OVERRULED
12:05:53 PM	CA O	CROSS CONTINUES
12:06:08 PM	DE F	OBJECTION
12:06:11 PM	JU DG E	OVERRULED
12:06:31 PM	CA O	CROSS CONTINUES

12:09:46 PM	CA O	PASSES WITNESS
12:09:52 PM	DE F	NO REDIRECT
12:10:13 PM	DE F	MOVES TO ADMIT DEF EXHIBITS A, B, C - JUDGE ADMITS THEM INTO EVIDENCE
12:10:38 PM	DE F	NO FURTHER WITNESSES - THE DEFENSE RESTS
12:10:58 PM	CA O	NO REBUTTAL
12:11:11 PM	JU DG E	REQUESTS CLOSING ARGUMENTS
12:11:12 PM	CA O	CLOSING ARGUMENT
12:19:14 PM	DE F	CLOSING ARGUMENT
12:27:46 PM	CA O	REBUTTAL TO CLOSING ARGUMENT
12:29:17 PM	JU DG E	RULING: FOUND GUILTY, SENTENCING: 30 DAYS JAIL, SUSPEND 28 DAYS JAIL, FINE \$305 + \$35 DOMESTIC BATTERY FEE, DOMESTIC BATTERY COUNSELING, 48 HOURS OF COMMUNITY SERVICE, NO CONTACT WITH MICHELLE HILDT EXCEPT FOR FAMILY COURT ORDERS FOR CASE DURATION, ORDER TO PERMANENTLY SURRENDER, SELL, OR TRANSFER FIREARM: (TBD)SURRENDER TO NO FURTHER ARRESTS OR CRIMINAL CITATIONS FOR CASE DURATION, INDIRECT SUPERVISION EXPIRATION DATE: 3/23/20 FINE PAID FROM CASH BOND. APPEAL BAIL: \$3,000
12:57:02 PM	JU DG E	CONTINUE FOR FINAL SENTENCING



HENDERSON MUNICIPAL COURT: SENTENCING ORDER

CITY OF HENDERSON,
Plaintiff

) Case #: 17CR012574
) DR #: 17-19640
) ☒ DOMESTIC BATTERY / ☐ DUI:
) ☒ 1st Offense / ☐ 2nd Offense
) ☐ OTHER (List Below):

VS.

Hildt, Roman
Defendant

☒ Guilty; ☐ Nolo; ☐ Adjudication Stayed ☐ Submitted on the Record,
Pending: ☐ Dismissal; ☐ Amendment to

Total Fines/AA Fees Imposed: \$ 305 Fines/Fees Suspended if compliant: \$

☒ \$85 DB Assessment Fee ☐ \$60 Blood/Breath Test ☐ \$50 Time Payment Setup Fee; ☐ \$100 DUI Specialty Courts' Fee

Total Fines/Fees Due: \$ 340 Payments: \$ per month or fine due in full by/beginning

Mail to: Henderson Municipal Court, PO Box 95050 - MS621, 243 Water Street, Henderson, NV 89009 On-line: www.cityofhenderson.com/municipal_court/

THE ABOVE REFERENCED DEFENDANT IS HEREBY SENTENCED TO THE FOLLOWING:

SENTENCING CONDITIONS

☐ PROBATION / DIRECT SUPERVISION (See Agreement & Rules Form)

☒ PROBATION / INDIRECT SUPERVISION

You must appear in person to Special Programs and Services (SPS), located at 243 Water Street, Lower Level, Henderson, NV immediately following court or upon the first business day following your release from custody, unless your intake was completed prior to your release. Failing to appear at the Special Programs and Services office, failing to comply with the court's order or receipt of a non-compliant report from any agency may result in immediate arrest for Probation Violation or a Bench Warrant issued for your arrest. You must report to Special Programs and Services as directed throughout the term of Supervision. You must provide correct contact information to Special Programs and Services and report any changes of that information immediately.

Probation / Supervision Expiration Date: TBD

- ☐ DUI School
- ☐ Victim's Impact Panel
- ☐ Coroner's DUI Program
- ☐ Breath Ignition Interlock Device **
- ☐ Suspension of Registered Vehicles **
** Separate order required
- ☐ SCRAM Program weeks/months
☐ Install Prior to Release from Custody
☐ Report out-of-custody to SPS upon release for installation
- ☐ AA / NA / GA (or Acceptable Alternative)
☐ Sponsor required x/wk for wks
- ☐ DART Program
☐ weeks/month ☐ Duration
☐ Controlled Subst. including Marijuana
☐ Alcohol
- ☐ CAT Program weeks/months
- ☐ Coroner's Visitation Program (CVP)
- ☐ Restitution of \$

Payable to City of Henderson on behalf of:

☐ Via Monthly Payments \$
☐ In Full by/beginning / /
(Submit payment to SPS)

- ☒ Domestic Battery Counseling
(26 sessions, 1x/week)
- ☐ Long-Term Domestic Battery Counseling
(52 sessions, 1x/week)
- ☒ Surrender, Sell or Transfer Firearms
** Separate order required - Pending Appeal
- ☐ Anger Control Management
☐ Level 1 ☐ Level 2
- ☐ Substance Abuse Counseling (SAC)
☐ Outpatient SAC ☐ Inpatient SAC
☐ Intensive outpatient SAC
☐ Group / ☐ Individual
times/week for weeks
- ☐ Petit Larceny Class
- ☐ 8 Hour Drug & Alcohol Education Class
- ☐ High School Equivalency/College Classes
- ☐ Trespassed From:

☒ No Contact With: Michelle Hildt
After case duration ☐ months
W/ exception of Family Court

☐ Compliance with Conditions on Case(s)

- ☒ Jail sentence imposed: 30 days
Suspended/Pending: 28 days
Jail Time Served: 1 days
Balance of Jail Due: 1 days +24
Converted to: ☐ House Arrest ☒ Com. Svc
- ☐ House Arrest days
- ☒ Community Service 480 hours; 72 hrs to be completed at a min. rate of 4 hrs/week
- ☐ No Further Arrests or Criminal Cites
- ☐ Same/ Similar to Any Criminal
- ☒ Duration ☐ months/years
- ☐ One year or duration-whichever is longer
- ☒ No Possession / Use of Alcohol
- ☒ No Possession / Use of Controlled Substances - including Marijuana, unless a Nevada medical marijuana card is obtained
Submit to testing as deemed necessary by SPS
- ☐ No Weapons ☐ Submit to search of person, residence, vehicle, or property under your control, as instructed by SPS
- ☒ Other: Review Conditions of Release Stand per Judge Blair

☐ UNSUPERVISED / COURT ORDERED STATUS CHECKS

UNSUPERVISED PARTICIPANTS: You must provide the Court completion certificates/documentation for court ordered programs on or before your return court date. For a list of approved classes/programs please refer to <http://cityofhenderson.com/alternative-sentencing>

COURT DATES: ☒ None at this time ☐ Return Court Date: / / @ : AM / PM

Department 1 / 2 / 3 ☐ Appearance Required ☐ Appearance Not Required if compliant with ALL orders

It is hereby ordered this 22 day of April, 2019.

Original-Court / Yellow= SPS/ Pink=Defendant (121018)

Presiding Judge of the Henderson Municipal Court

Description	COH V HILDT, ROMAN CHRISTOPHER (CASE 17CR012574), JUDGE RODNEY T BURR, CAO ELAINE MATHER, CLERK LMC, DEFENSE		
Date	4/22/2019	Location	Department 3

COH V HILDT, ROMAN CHRISTOPHER (CASE 17CR012574), JUDGE RODNE Department 3

Time	Sp	Note
10:14:07 AM	CL ER K	CASE CALLED
10:14:28 AM	DE F	REQUESTS TO STAY THE SENTENCING PENDING THE APPEAL - PER JUDGE BURR, WILL CONTINUE WITH FORMAL SENTENCING BUT STAY ALL SENTENCING CONDITIONS.
10:14:44 AM	JU DG E	SENTENCED (CONDITIONS OF SENTENCING STAYED PENDING APPEAL): 30 DAYS JAIL, 28 DAYS SUSPENDED, 1 DAY JAIL TIME SERVED, REMAINING 1 DAY JAIL CONVERTED TO 24 ADDITIONAL HOURS COMMUNITY SERVICE; FINE \$340; DOMESTIC BATTERY COUNSELING: 26 SESSIONS; 48 HOURS COMMUNITY SERVICE (72 HOURS TOTAL ADDING 1 DAY JAIL CONVERSION); NO CONTACT WITH MICHELLE HILDT (EXCEPT FOR FAMILY COURT ORDERS) FOR CASE DURATION; PERMANENTLY SURRENDER, SELL OR TRANSFER FIREARM: TO BE SURRENDERED TO PERSON; NO FURTHER ARRESTS / CITATIONS (ANY CRIMINAL) FOR CASE DURATION; INDIRECT SUPERVISION FOR 1 YEAR. PER JUDGE BURR, CONDITIONS OF RELEASE STAND AS SENTENCING CONDITIONS ARE STAYED PENDING APPEAL. \$3,000 CASH BOND HELD AS APPEAL BAIL.

**DISTRICT COURT
CLARK COUNTY**

Electronically Filed
04/23/2019

Alvin S. Hemin
CLERK OF THE COURT

ROMAN CHRISTOPHER HILDT
APPELLANT,)

vs.)

CITY OF HENDERSON)

RESPONDENT.)

CASE NO. C-19-339750-A
DEPT NO. DEPT. 2
DOCKET NO.

RECORD ON APPEAL

HEARING DATE:
HEARING TIME:

5/23/2019
In Chambers

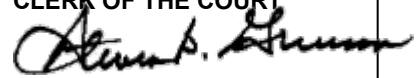
APPEAL FROM THE MUNICIPAL COURT
CITY OF HENDERSON
COUNTY OF CLARK, STATE OF NEVADA
CASE NUMBER 17CR012574

DATE: April 22, 2019

ROBERT J GULLO
1406 STACEY LANE
BOULDER CITY, NV 89005

NICHOLAS VASKOV
CITY ATTORNEY
243 WATER STREET
HENDERSON, NV 89015

PW000160



BREF

ADAM L. GILL, ESQ.
Nevada State Bar No. 11575
MICHAEL AISEN, ESQ.
Nevada State Bar No. 11036
723 South Third Street
Las Vegas, NV 89101
P: (702) 750-1590
F: (702) 548-6884
Attorneys for Defendant

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ROMAN HILDT,

Appellant,

vs.

CITY OF HENDERSON,

Respondent.

District Court Case No: C-19-339750-A
Dept. No: II
Henderson Municipal No: 17CR012574
Dept. No. III

Date of Hearing:
Time of Hearing:

APPELLATE BRIEF

COMES NOW Appellant, ROMAN HILDT, by and through his counsel of record ADAM L. GILL, ESQ., and MICHAEL N. AISEN, ESQ., and submits this Appellate Brief pursuant to JCRC 75 and NRAP 28.

DATED this 7th day of June 2019.

/s/ Michael N. Aisen

ADAM L. GILL, ESQ.
Nevada State Bar No. 11575
MICHAEL N. AISEN, ESQ.
Nevada State Bar No. 11036
723 South Third Street
Las Vegas, NV 89101
P: (702) 750-1590

TABLE OF CONTENTS AND AUTHORITIES

I.	Statement of the Issues Presented for Review	Page 2
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

I. STATEMENT OF ISSUES PRESENTED FOR APPEAL

Appellant, Roman Hildt (Appellant), files this Appeal alleging that the Honorable Rodney T. Burr erred by: (1) denying Appellant a jury trial; (2) overruling Appellant’s objection to the City’s line of questioning asking Appellant to speculate to the alleged victim’s state of mind; and (3) not finding Appellant’s conduct reasonable.

II. STATEMENT OF THE CASE

On or about October 16, 2017, Henderson Police responded to a call received from Michelle Hildt (Ms. Hildt) about an argument between her and her then husband, Appellant. After taking statements from Appellant and Ms. Hildt, Henderson Police arrested and charged Appellant with Battery Constituting Domestic Violence. On April 22, 2019, after a bench trial, judgment was entered by the Henderson Municipal Court in which the court found Appellant guilty of Battery

1 Constituting Domestic Violence – First Offense. Appellant subsequently filed a timely Notice of
2 Appeal on April 22, 2019. This Appellate Brief follows.

3 III. ARGUMENT

4 A. APPELLANT WAS DENIED HIS RIGHT TO A JURY TRIAL 5 AND A NEW TRIAL SHOULD BE ORDERED

6 Appellant moves to vacate his conviction because the court denied him his request for a jury
7 trial. On March 25, 2019, Counsel for Appellant renewed his motion for jury trial in order to preserve
8 Appellant's Sixth Amendment right. The Motion was denied.

9 The loss of fundamental rights that stem from a conviction for Battery Constituting Domestic
10 Violence, render the charge a "serious offense" entitling a defendant to the right to a jury trial.
11 Appellant distinguishes his case from *Amezcu* v. *Eighth Judicial District Court*, 319 P.3d 602 (Nev.
12 2014) due to the fact that NRS 202.360 has been amended subsequent to *Amezcu*. The changes
13 now subject Appellant to felony punishment, with up to 6 years in Nevada State Prison if he is
14 caught possessing a firearm subsequent to a conviction for Battery Constituting Domestic Violence.¹

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

16 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
17 person:

18 (a) Has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in
19 18 U.S.C. § 921(a)(33);

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

23 (c) Has been convicted of a violation of NRS 200.575 or a law of any other state that prohibits the same or
24 substantially similar conduct and the court entered a finding in the judgment of conviction or admonishment of rights
25 pursuant to subsection 5 of NRS 200.575;

26 (d) Except as otherwise provided in NRS 33.031, is currently subject to:

27 (1) An extended order for protection against domestic violence pursuant to NRS 33.017 to 33.100,
28 inclusive, which includes a statement that the adverse party is prohibited from possessing or having under his or her
custody or control any firearm while the order is in effect; or

(2) An equivalent order in any other state;

(e) Is a fugitive from justice;

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

(g) 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:

1 In 2015, the Nevada Legislature amended NRS 202.360 to deprive Nevadans of their Second
2 Amendment right to bear firearms if convicted in Nevada of Battery Constituting Domestic
3 Violence. On October 1, 2017, Senate Bill 124 was enacted, which requires persons convicted of
4 Battery Constituting Domestic Violence in violation of NRS 200.485 to permanently surrender, sell
5 or transfer any firearms they own, possess or for which they have custody. A person who fails to
6 comply with this new law faces prosecution for a Category B Felony, which carries a potential fine
7 of \$5,000 and incarceration in Nevada State Prison for 1 to 6 years.

8 The court erred in denying Appellant a jury trial consistent with his procedural due process
9 rights:

10 [O]nce it is determined that the Due Process Clause applies, ‘the
11 question remains what process is due.’ [Citation.]” (*Loudermill*,
12 supra, 470 U.S. at p. 541.) “[D]ue process is flexible and calls for
13 such procedural protections as the particular situation demands.”
14 (*Morrissey v. Brewer* (1972) 408 U.S. 471, 481 [33 L. Ed. 2d 484,
15 92 S. Ct. 2593].) “[I]dentification of the specific dictates of due
16 process generally requires consideration of three distinct factors:
17 First, the private interest that will be affected by the official action;
18 second, the risk of an erroneous deprivation of such interest through
19 the procedures used, and the probable value, if any, of additional or
20 substitute procedural safeguards; and finally, the Government's
21 interest, including the function involved and the fiscal and
22 administrative burdens that the additional or substitute procedural
23 requirement would entail.” (*Mathews v. Eldridge* (1976) 424 U.S.
24 319, 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).

18 Applying the first prong of the *Mathews* test to Appellant’s case, the private interest that
19 will be affected is great, as Appellant stands to permanently lose his Second Amendment right to
20 bear arms. The second prong is met, as there was a greater risk of an erroneous deprivation of
21 Appellant’s Second Amendment right by denying the motion for a jury trial. The risk is heightened,
22 as the burden of the prosecutor is minimized when only needing to satisfy one trier of fact, rather
23 than the many peers, who would sit on the jury. Third, the additional protection of a jury trial would

25 (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;

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

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

28 (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.

1 help reduce the risk that Appellant suffers an erroneous deprivation of his Second Amendment right.
2 Finally, the City's interest in fiscal and administrative burdens would be proportionately no greater
3 than those incurred by the overwhelming majority of states that provide jury trials for misdemeanors.

4 The loss of the right to possess a firearm makes a conviction for Battery Constituting
5 Domestic Violence a serious offense. The Court held that the right to possess a firearm for self-
6 defense is a fundamental right and cannot be abridged by the State. Specifically, the Court in
7 *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) held that the Second Amendment is a
8 fundamental right that is fully applicable to the States through the Fourteenth Amendment. Other
9 courts have recognized the right to a jury trial in cases where a defendant faces a lifetime prohibition
10 of possession of a firearm as consequence of a misdemeanor assault conviction not punishable by
11 more than six months. In *United States v. Smith*, the Court states:

12 Moreover, the categories of persons prohibited from
13 possessing firearms under 18 U.S.C. § 922(g) and the
14 penalties imposed under 18 U.S.C. § 924 for violating the
15 prohibition (10 years) demonstrate that Congress views the
16 prohibition as serious. *The Court finds that a lifetime*
17 *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.

18 *United States v. Smith* 151 F. Supp. 2d 1316, 1317-1318 (N.D. Okla. 2001) (italics added).

19 The fact that Nevada's Legislature has barred persons from owning or possessing firearms,
20 even for self-defense, for the rest of their lives and subjects them to felony prosecution punishable
21 up to 6 years if such persons have been previously convicted of domestic violence, demonstrates
22 that the Legislature "views the prohibition as serious." The Legislature chose to amend NRS
23 202.360 in 2015 to treat persons convicted of domestic violence the same as felons, by lumping
24 them in with the category of people who are permanently barred from possessing a firearm even for
25 self-defense. This step demonstrates a clear indication on the part of the Legislature that it believes
26 Battery Constituting Domestic Violence is a serious crime. Thus, this Court should find that the
27 Legislature's lifetime ban under threat of felony prosecution for possessing a firearm and for failure
28

1 to permanently surrender firearms, along with the possibility of six months of incarceration for the
2 misdemeanor conviction “entitles a Defendant to the common-sense judgment of a jury.”

3 In this case, Appellant provided notice under NRS 175.011, demanding his right to trial by
4 jury. If Appellant’s appeal is denied and his conviction of Battery Constituting Domestic Violence
5 in violation of NRS 200.481, NRS 200.485, and NRS 33.018 is affirmed, he faces the permanent
6 loss of his right to possess a firearm and up to 6 years in prison if he is caught owning or possessing
7 a firearm under NRS 202.360(2). *McDonald v. City of Chicago, supra*, held that the Second
8 Amendment right to bear arms is a fundamental right incorporated through the Fourteenth
9 Amendment to the States. Because a defendant’s Second Amendment right is at stake in a criminal
10 complaint of Battery Constituting Domestic Violence and because they face subsequent felony
11 prosecution under NRS 202.360(2) if caught owning or possessing a firearm, even for self-defense,
12 Appellant should have been afforded a jury trial.

13
14 **B. THE MUNICIPAL COURT ERRED IN OVERRULING**
15 **APPELLANT’S OBJECTION TO THE CITY’S LINE OF QUESTIONING ASKING**
16 **APPELLANT TO SPECULATE TO THE ALLEGED VICTIM’S STATE OF MIND**

17 Objections provide the trial court an opportunity to correct any potential prejudice and to
18 avoid a retrial. This opportunity for correction may also obviate the need for an appeal. *Ringle v.*
19 *Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004). According to the Federal Rules of Evidence
20 602, “a witness may testify to a matter only if evidence is introduced sufficient to support a finding
21 that the witness has personal knowledge of the matter.” This Rule is incorporated in Nevada through
22 NRS 50.025 (1)(a).

23 At trial, during the City’s cross-examination of Appellant, Appellant’s counsel raised an
24 objection to the line of questioning regarding the state of mind of Ms. Hildt on the date of the alleged
25 occurrence, around the time of the alleged battery. During testimony, the City asked the following
26 line of questioning:

27 MATHER: Okay. So, can you please tell the
28 Court what is erratic?

ROMAN: Yelling at the top of your lungs.

1 Slamming pantries hard enough that food
2 products fall off inside. Cracking the door jamb
because you're slamming the master door to
hard.

3 MATHER: And she did all this cause you
4 wanted her off the phone with Jim?

5 ROMAN: Yes.

6 MATHER: Okay, so, you're trying to control
her and you're describing the activity of an adult
7 woman who can talk to whoever she wants at
whatever hour of the night. You're trying to
8 control that, and she's upset, isn't she?

9 SOLINGER: Objection, relevance.

10 COURT: Overruled.

11 ROMAN: I was, I was---

12 MATHER: She's upset, isn't she?

13 ROMAN: I was upset that my five-year-old---

14 MATHER: I'm not asking you if you were
upset. I'm asking if she was upset. Prior to
15 yelling at the top of her lungs and slamming
kitchen pantry doors and all of that what you just
16 testified to.

17 SOLINGER: Requires---

18 COURT: Over --- go ahead what's your
objection?

19 SOLINGER: Requires him to speculate as
to her state of mind. Michelle was up there. She
20 could have testified to this. I believe the city has
a rebuttal case and rather than ask Mr. Hildt
21 what his perception is I think it would be better
to hear it from her.

22 COURT: Well I mean a lay person can tell
23 if someone upset and he's describing some
things. So, overruled. You can answer.

24 MATHER: Please answer.
25 (Hearing Transcript at 67-68, 121)

26 As stated in *Ringle v. Bruton*, objections allow the trial court to make corrections to any
27 errors that will likely cause a retrial of the matter. Here, Appellant was asked to speculate on the
28

1 state of mind of Ms. Hildt on the date of October 16, 2017. Ms. Hildt gave testimony of the date in
2 question and could have easily given testimony as to her own state of mind. However, the court
3 allowed this line of questioning and failed to make any corrections when counsel made a valid
4 objection. Appellant could not have known the actual motivation or reason for Ms. Hildt's behavior.

5 Personal knowledge of the matter is necessary in giving testimony of an individual's
6 behavior or conduct. Appellant did not have any personal knowledge of Ms. Hildt's state of mind at
7 the time of the occurrence, and the City presented no evidence to show that Appellant had personal
8 knowledge of the reason for Ms. Hildt's state of mind at the time of the occurrence. For anyone
9 other than Ms. Hildt to give testimony as to her state of mind would require speculation, unless that
10 individual is giving expert testimony. Thus, the line of questioning regarding Ms. Hildt's state of
11 mind should have been barred. Because the court allowed this line of questioning it erred in
12 overruling Appellant's objection, and he was prejudiced by the court's error.

13 The court's guilty verdict was accompanied by analysis that discusses the reasonableness of
14 Appellant's use of force. The level of Ms. Hildt's anger and the reason why she was angry must
15 have impacted the court's determination of the reasonableness of Appellant's use of force. It appears
16 from the court's analysis that the court relied on Mr. Hildt's testimony, including the testimony
17 elicited by the question from the City that was objected to and improperly not excluded. The court
18 diminished the objective significance of Ms. Hildt's conduct, as the admitted initial physical
19 aggressor (when she battered and assaulted Appellant by grabbing at the door in Appellant's
20 possession) by stating: "I think both parties should have passed a step back before any type of
21 touching or battery took place." (Hearing Transcript at 85, 121) This statement is the key portion of
22 the court's decision that leads to the conclusion that Appellant deserves a new trial. It also ignores
23 the testimony from both parties that acknowledges that Appellant attempted to take the non-violent
24 approach suggested by the court.

25 The court gives equal fault and responsibility to the parties for their emotional state prior to
26 the alleged battery. Had the court found Ms. Hildt's combative actions to be entirely her own
27 responsibility, this would have certainly led to a different analysis of whether Appellant's response
28

1 was reasonable. In that regard, of course there is a lesser likelihood of a finding of reasonable force,
2 if the party seeking that finding is being held responsible for escalating the likelihood of violent
3 conduct by the other party. By overruling the objection at issue, the court heard speculation that
4 Appellant was to blame for Ms. Hildt's erratic state of mind and resulting aggressive actions. This
5 ruling must be reversed and a new trial awarded to ensure the trier of fact not be prejudiced on such
6 a crucial part of the analysis.

7
8 **C. THE COURT ERRED IN NOT FINDING APPELLANT'S USE OF FORCE JUSTIFIABLE**

9 In determining whether force used is justifiable, NRS 193.230 states that "[l]awful resistance
10 to the commission of a public offense may be made: (1) [b]y the party about to be injured." It is
11 further well-established that a person is entitled to defend himself against unlawful threats under
12 NRS 193.240 which states, "[r]esistance sufficient to prevent the offense may be made by the party
13 about to be injured: (1) [t]o prevent an offense against his or her person, family or some member of
14 his or her family; (2) [t]o prevent an illegal attempt, by force, to take or injure property in his or her
15 lawful possession."

16 At trial, Ms. Hildt gave testimony in open court that,

17
18 MICHELLE: I was upset that he was taking
19 them off the hinges, but --- and I was trying to
20 grab a hold of the door.

21 MATHER: Okay.

22 MICHELLE: And he made a ---

23 MATHER: What did he do with the door was
24 it came off --- he took it off the hinges?

25 MICHELLE: He went into the garage.

26 MATHER: With the door?

27 MICHELLE: The door.

28 MATHER: Okay.

MICHELLE: And I followed him.

1 MATHER: And what did you do?

2 MICHELLE: I followed him and I ---we
3 basically did tug-a-war over the door and I tried to
4 get it to put it back on and then eventually he put
it down because he was getting so frustrated with me
because I kept pulling on it. (Hearing Transcript at 12-13, 121)

5 When looking at the conduct of Ms. Hildt, her actions constitute assault and battery. The
6 facts of this case present a textbook example of self-defense. It is clear that Ms. Hildt was the initial
7 aggressor when she followed Appellant to the garage and began to play "tug-a-war" with the door
8 trying to get the door back. During cross examination, Ms. Hildt admitted to going after the door on
9 multiple occasions after the "tug-a-war" incident in the following line of questioning:

10 SOLINGER: And, so, the door is set down
11 and is Roman kind of facing towards you to try and
talk to you?

12 MICHELLE: He's trying to stop me. So,
13 it would be logical that he would turn and ---

14 SOLINGER: He's between you and the
15 door.

16 MICHELLE: Right.

17 SOLINGER: And you wanted to get that
18 door on at all cost.

19 MICHELLE: Right, I was going on After
the door and he grabbed a hold of me.

20 SOLINGER: Cause you were angry.

21 MICHELLE: Yes.

22 SOLINGER: That he was controlling you.

23 MICHELLE: Yes.

24 SOLINGER: You were upset, and you
25 thought that he had no right to do this.

26 MICHELLE: Right.

27 SOLINGER: Would it be fair to say that
28

1 you were kind of just, just not thinking rationally?

2 MICHELLE: Id' say it's safe to say we
3 were both not thinking very rationally at that time.

4 SOLINGER: Right, cause to you it was
5 about proving a point. You wanted to get that door.

6 MICHELLE: It was him proving a point
7 that he wasn't going to let me have the door.

8 SOLINGER: And so, you saw an
9 opportunity to kind of plunge really quickly to the
10 door.

11 MICHELLE: Right.

12 SOLINGER: But, Roman's right there as
13 you lunge for the door, right.

14 MICHELLE: Right, so, he's going to stop
15 me. Right. (Hearing Transcript at 25-26, 121)

16 Ms. Hildt goes on further to admit that she was "lunging" for the door and during her lunge
17 Appellant caught her. (Hearing Transcript at 27, 121) Ms. Hildt's actions clearly demonstrate that
18 she was "aggressive" in trying to retrieve the door that was in Appellant's possession, and to do so
19 for the purpose of winning an argument. (Hearing Transcript at 25-27, 121) Ms. Hildt acknowledges
20 in her testimony that Appellant made multiple efforts at getting away from her that did not involve
21 force, which proved to be unsuccessful because Ms. Hildt wanted to "get the door at all cost."
22 (Hearing Transcript at 25, 121) As a result of Appellant's unsuccessful attempts to get away from
23 Ms. Hildt without using force, Appellant was again confronted with Ms. Hildt's actions that amount
24 to Assault and an attempted Battery. (Hearing Transcript at 25-27, 121) Appellant then protected
25 himself by using a "resistance sufficient" to prevent infliction or threat of bodily injury to himself.
26 (Hearing Transcript at 64-66, 121) Appellant admitted to holding Ms. Hildt's arm with minimal
27 force. (Hearing Transcript at 64, 121)

28 The lack of force is evident from the fact that Ms. Hildt had no indication of bruising or
signs of overly aggressive force on her arms in the photographs taken at the scene on the date of the
occurrence. (Hearing Transcript at 28-30, 121) Officer Willard also gave testimony that the

1 photographs taken at the scene on the date of the incident did not depict any redness. (Hearing
2 Transcript at 46, 121) The lack of marks on Ms. Hildt's arms are evidence that Appellant did not
3 use sufficient force to leave marks. (Hearing Transcript at 28-30, 121)

4 In applying the facts of this case to the statutory justification for using force, there could
5 hardly be a more appropriate case for a defendant to be found not guilty because their battery was
6 justified as a reasonable use of force. Here, Ms. Hildt was the primary aggressor who made several
7 attempts to physically accost Appellant to take something that he was holding. Appellant, who
8 would have been legally justified to prevent an assault or battery with reasonable force, still opted
9 to extricate himself from the situation without touching Ms. Hildt. After Ms. Hildt refused to stop
10 committing acts of violence against Appellant, Appellant held Ms. Hildt by the wrist using enough
11 force to prevent her from battering him while not using sufficient force to leave a mark detectable
12 by photograph. All of the statutory prongs for a valid defense were met. In fact, the evidence
13 justifying a not guilty verdict could be taken from Ms. Hildt's testimony alone. The court erred by
14 failing to follow Nevada's statutory guidance in determining that Appellant's use of force was not
15 reasonable.

16 IV. CONCLUSION

17 This Honorable Court should grant Appellant's petition and remand this case to Henderson
18 Municipal Court.

19 DATED this 7th day of June 2019.

21 /s/ Michael N. Aisen

22 ADAM L. GILL, ESQ.
23 Nevada State Bar No. 11575
24 MICHAEL N. AISEN, ESQ.
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DECLARATION OF COUNSEL

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

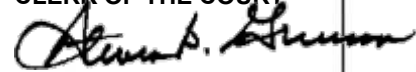
MICHAEL N. AISEN, ESQ., being first duly sworn under oath, subject to the penalty for perjury pursuant to Nevada law, and in conformity with N.R.S. 53.045, hereby deposes and says:

1. I, MICHAEL N. AISEN, ESQ., am the attorney of record for the Defendant, ROMAN HILDT in the above-entitled matter.
2. I am an attorney duly licensed to practice before all Courts in the State of Nevada;
3. I make this Affidavit based upon facts within my own knowledge, save and except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.
4. I make this Declaration in support of this Motion for Appeal.
5. I am more than eighteen (18) years of age and I am competent to testify as to the matters stated herein.
6. I have personal knowledge pertaining to the facts stated herein, or I have been informed of these facts and believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Michael N. Aisen
MICHAEL N. AISEN, ESQ.

Signed in conformity with N.R.S. 53.045 this
7th day of June, 2019 in Las Vegas, Nevada.



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10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

13 ROMAN HILDT,)	CASE NO:	C-19-339750-A
)	DEPT NO:	II
14 Appellant,)		
)	HEARING DATE:	August 8, 2019
15 vs.)	HEARING TIME:	9:00 a.m.
)		
16 CITY OF HENDERSON,)		
)		
17 Respondent.)		
)		

19 **RESPONDENT CITY OF HENDERSON'S ANSWERING BRIEF**

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3	85 Nev. 16, 449 P.2d 244 (1969)	9
4	<i>Maresca v. State,</i>	
5	103 Nev. 669, 748 P.2d 3 (1987)	9
6	<i>McNair v. State,</i>	
7	108 Nev. 53, 825 P.2d 571 (1992)	9
8	<i>Mejia v. State,</i>	
9	134 P.3d 722, 725, 122 Nev. 487, 487 (2006)	11
10	<i>Citing Koza v. State,</i> 100 Nev. 245, 250, 681 P.2d 44, 47 (1981)	
11	<i>quoting, Jackson v. Virginia,</i> 443 U.S. 307, 319 (1979)	
12	<i>Milton v. State,</i>	
13	111 Nev. 1487, 908 P.2d 685, 687 (1995)	11
14	<i>Nollette v. State</i>	
15	18 Nev. 341, 344, 46 P.3d 87, 89 (2002)	19, 21
16	<i>Palmer v. State</i>	
17	118 Nev. 823, 826, 759 P.3d 1192, 1194 (2002)	19
18	<i>Patton v. Henrikson</i>	
19	79 Nev. 197, 380 P.2d 916 (1963)	22
20	<i>Point v. State,</i>	
21	102 Nev. 143, 150, 717 P.2d 38 (1986)	9
22	<i>Sherman v. Southern. Pac. Co.</i>	
23	33 Nev. 385, 111 P. 416 (1910)	23
24	<i>State v. Rhodig,</i>	
25	101 Nev. 608, 610, 707 P.2d 549 (1985)	9
26	<i>State v. Smith</i>	
27	99 Nev. 806, 672 P.2d 631 (1983)	14
28	<i>Tellis v. State,</i>	
	85 Nev. 679, 679-680, 462 P.2d 526, 527 (1969)	9
	<i>United States v. Nachtigal</i>	
	507 U.S. 1, 122 L.3D 2D 374 (1993)	16, 17, 18, 22

STATUTES, CODES

Constitution of the United States of America

Article 1, Section 3	14
Sixth Amendment	14

United States Code

18 U.S.C. §3563(b)(8)	16
18 U.S.C. §921(a)(33)	20
18 U.S.C. §922(d)(8)	18
18 U.S.C. §922(g)(9)	22

Code of Federal Regulations

36 C.F.R. 4.23(a)(1)	16
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Nevada Revised Statutes

33.018	22
48.035	9
50.265	23
175.201	12
175.211	12
200.481	2
200.485	19, 20, 21
202.360	20, 21, 22

Miscellaneous

www.merriam-webster.com	24
Officer Willard's Mobile Audio Video (MAV)	31:21-23:22; 23:24

1 **Answering Brief to Appellant's Appeal of Guilty Verdict from Trial Conducted**
2 **Before the Honorable Judge Rodney T. Burr Municipal Court, Department 3,**
3 **Henderson Nevada**

4 COMES NOW, Appellant, CITY OF HENDERSON, by and through its
5 attorneys NICHOLAS G. VASKOV, City Attorney, and ELAINE F. MATHER,
6 Assistant City Attorney, and submits its Answering Brief.

7 This Answering Brief is based upon the pleadings, papers and records on file
8 herein and any evidence or oral argument presented to this Honorable Court at the
9 time of the hearing.
10

11 DATED this 8th day of July, 2019.

12 NICHOLAS G. VASKOV, ESQ.
13 CITY ATTORNEY

14 By: Elaine F. Mather
15 NICHOLAS G. VASKOV, ESQ.
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17 Nevada Bar No. 8298
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24 Attorney for Respondent
25 *CITY OF HENDERSON*
26
27
28

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **STATEMENT OF THE ISSUES**

- 4
5
6 1. Whether the Defendant had a right to a jury trial on a misdemeanor
7 domestic battery charge.
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9 2. Whether the Respondent's questioning of Appellant regarding
10 appearance of alleged victim related to alleged victim's state of mind.
11
12 3. Whether the trial court correctly found Appellant's use of force against
13 the alleged victim reasonable.

14 **STATEMENT OF THE CASE**

15 On October 16, 2017, Appellant, Roman Hildt ("Appellant") was arrested for
16 One Count of Battery Constituting Domestic Violence, a Misdemeanor in violation
17 of NRS 33.018, 200.481, in a Criminal Complaint filed on or about October 26,
18 2017. On February 5, 2018, Appellant requested an opportunity to apply for
19 admission to the Veteran's Court in Henderson. On February 15, 2018, Appellant
20 declined the opportunity to enter Veteran's Court. On March 25, 2019, a bench trial
21 was conducted in Henderson Municipal Court, the Honorable Rodney T. Burr
22 presiding. At the conclusion of the trial, Appellant was found guilty of Battery
23 against Michelle Hildt. Once found guilty, Appellant wanted another bite of the
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1 apple and wanted to apply to Veteran's Court again. On April 22, 2019, Appellant
2 was sentenced to 30 days of jail, suspending all but 1 day which was converted to 24
3 hours of community service, a fine of \$340, domestic battery level 1 classes, 48 hours
4 of community service, no contact with the victim, Michelle Hildt for 1 year, no
5 further arrests or criminal citations for one year and indirect supervision for one year.
6 Appellant filed a timely Notice of Appeal on April 22, 2019.
7

8 FACTS

9
10 The testimony and other admitted evidence showed the following:

11
12 Michelle Hildt had been married to Roman Hildt for 17 years on or about
13 October 17, 2017, the date of the incident, and they have four children in common.
14 TT, p. 4, ll. 25 through p.5, ll. 4. In the late night hours of October 16, 2017, she and
15 the Appellant were at the marital home at in Henderson. TT. p. 6, ll. 14-15. The
16 Appellant came to the marital home about 11 p.m. TT. p. 6, ll. 14-15. Michelle and
17 the Appellant were getting a divorce and the Appellant did not live at the marital
18 home, but came and went as he pleased. TT. p.7, ll. 5-11. Michelle was on the
19 phone with a friend and the Appellant became upset she was on the telephone. TT. p.
20 7, ll. 15-22. The Appellant argued with Michelle about why she was on the
21 telephone with a friend while one of their children was ill, but sleeping in her bed.
22 Safe. TT. p. 7, ll. 23-25 and p. 33, ll. 2-5. Michelle left the house to go for a drive
23 for about 20 minutes because she felt the argument may escalate. TT. p. 8, ll. 14-16.
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1 When she returned, the Appellant has disabled the garage door opener and locked the
2 front door to the home so she could not enter. TT. p. 8, ll. 21-22 and p. 9. ll. 1-21.

3
4 Eventually, the Appellant let Michelle into her home. TT. p. 9, ll. 22-23.

5 Michelle went to her room (the master bedroom) and likely slammed the door.
6 TT. p. 10, ll. 1-14. The Appellant unlocked the bedroom door, and proceeded to tell
7 Michelle that he was going to stay the night, in the master bedroom, despite the fact
8 that when he stayed over, he slept in the loft or on the couch. TT. p. 10, ll. 22-25 and
9 p. 11, ll. 1-5. Michelle was aware she could not force Appellant to leave, but
10 repeatedly asked him to sleep in the loft or on the couch, to which he refused. TT. p.
11 11, ll. 10-19. Michelle felt the argument was escalating and indicated to Appellant
12 she was going to call the police. TT. p. 11, ll. 17-19. Prior to the police arriving,
13 Appellant left the bedroom, and she locked the door behind him. TT. p. 12, ll. 6-7.
14 Appellant then returned to the bedroom and took the door off its hinges. TT. p. 12, ll.
15 7-8.

16
17 Appellant took the door to the garage and Michelle followed him. TT. p. 12,
18 ll. 19-25. They engaged in a tug of war over the door and Appellant eventually put
19 the door down and grabbed Michelle on her forearms. TT. p. 13, ll. 8-17. At no time
20 did she put her hands on him prior to him grabbing her on her forearms. TT. p. 13, ll.
21 19-21. When his hands were on her, he was shoving her body. TT. p. 16, ll. 20-22.

1 As a result of the grabbing of Michelle on her arms, both Michelle and Officer
2 Willard observed redness on the area she indicated Appellant grabbed. TT. p.28, ll.
3 18-21 and p. 45, ll. 17-18. Officer Willard and Michelle testified that the redness was
4 not captured in any photographs taken. TT. p. 30, ll. 20-23 and p. 46, ll. 2-4.
5 Michelle stated she had multiple sclerosis (MS) and she had soreness on her arms and
6 a burning sensation. TT. p. 29, ll. 24-25 through p. 30, ll. 1-2.
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9 On cross-examination, Michelle testified Appellant had not slept in the
10 bedroom with her for the past two years. TT. p. 22, ll. 15-17. Appellant grabbed her
11 arms after he set the door down. TT. p. 23, ll. 15-17. She then reached for the door
12 and Appellant grabs ahold of her so she cannot get the door. TT. p. 23, ll. 19-22.
13 Appellant's counsel asks Michelle if she was angry and upset because Appellant was
14 controlling her, and she believed he had no right to do this (keep her from the door)
15 and she agreed. TT. p. 26, ll. 3-9 and TT. p. 28, ll. Appellant was proving a point
16 that he would not let her have the door to her bedroom. TT. p. 26, ll. 16-17.
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19 The second witness the Respondent called was Officer Garrett Willard of the
20 Henderson Police Dept. TT. p. 37, ll. 8-19. He testified that he spoke to Appellant
21 during his investigation of the incident and the Appellant informed Officer Willard
22 that he took the door off of the bedroom and took it to the garage. TT. p. 41, ll. 8-12.
23 Michelle then tried to take the door back from him and he grabbed her arms to get her
24 away from the door and then pushed Michelle back. TT. p. 41, ll. 12-15. At no time
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1 did Appellant claim Michelle had put her arms or hands on him. TT. p. 41, ll. 16-18.
2 Appellant was upset because Michelle was on the telephone while their son was ill.
3 TT. p. 42, ll. 12-18. Specifically, he was upset about her being on the phone with
4 another man. TT. p. 42, ll. 21-22. Respondent played a portion of the mobile audio
5 video recording (MAV) and that portion from 23:18:05 to 23:29:29 was admitted into
6 evidence. The video using the time frame above was played at trial. During the
7 recording of the MAV, the Appellant admits he is upset. MAV at 23:21. When
8 questioned by Henderson police why he removed the door to the bedroom, his reply
9 is "Michelle could probably understand it better than me." MAV at 23:21. Appellant
10 stated, "She lunged at me and tried to take the door." MAV 23:21-23:22. Appellant
11 told police "I had already taken the door off and put it in the garage." 23:22.
12 Appellant was going to put it in a place in the garage where it would be hard for
13 Michelle to reach and put back on. MAV 23:22. Appellant told police first that he
14 grabbed her arm when she tried to grab him and he pushed her back. MAV 23:24.
15 Police then questioned him further as to whether she was trying to grab you or grab
16 the door and Appellant stated she was trying to grab the door. MAV 23:24.
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22 Officer Willard also spoke to Michelle and found her statements about the
23 incident were consistent with the statements from the Appellant as to what happened.
24 TT. p. 45, ll. 8-11. Officer Willard took photos because he observed redness on
25 Michelle's arms where Appellant had grabbed Michel, but the photos did not capture
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1 the redness he observed. TT. p. 45, ll. 13-25 and p. 46, ll. 1-4. Appellant told Officer
2 Willard that Michelle was lunging for the door, not for him, about three times. TT. p.
3 46, ll. 25 through p. 47, ll. 1-4. After Officer Willard's testimony, City rested. TT.
4 p. 60, l. 24.

5
6 Appellant chose to testify at his trial. TT. p. 61, ll. 1-25. Appellant testified
7 that he removed the bedroom door because Michelle slammed it several times. TT,
8 p. 64, l. 25 through p. 65, ll. 1-7. He admitted that it was juvenile behavior on his
9 part, but their daughter had slammed doors two years before, and he removed his
10 daughter's bedroom door for about a month. TT. p. 65, ll. 10-13. He wanted to give
11 "the same punishment to my wife". TT. p. 65, ll. 11-13. He admitted he was
12 carrying the door with one hand and grabbed Michelle with his right hand and "as
13 soon as she calmed down, I released her". TT. p. 65, 22-25.

14
15 On cross-examination, the Appellant admitted that he was trying to control his
16 wife that night. TT. p. 67, ll. 9-10. He claimed her actions were "erratic" because
17 she was yelling, slamming pantries, slamming a door hard enough to crack the door
18 jamb. TT. p. 67, ll. 15-18. He admitted she was upset because he was trying to
19 control a grown woman, who can talk to anyone she wants to on the telephone, at
20 whatever hour of the night. TT. p. 67, ll. 22-25 and p. 68, ll. 1-25 and p. 69, ll. 1-25.
21 However, it took several repetitions of the question to finally have an answer from
22 Appellant that her actions occurred after he told her to get off the phone. Appellant
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1 admitted that his behavior that night stemmed from it being “an ego thing” for him
2 because Michelle was still living in the marital home and had a new boyfriend before
3 the marriage was dissolved. TT. p. 70, ll. 2-12. He admitted that he stated to police
4 in the MAV that she was living under his roof and she needed to respect that. TT. p.
5 70, ll. 13-17. Appellant admitted he was trying to control her because of that. TT. p.
6 70, ll. 13-17, p. 70, ll. 23-25 through p. 71, ll. 1. Appellant admitted he was upset
7 that she had a new boyfriend. TT. p. 71, ll. 10-12.
8

9 **THE LOWER COURT’S RULING**

10
11 In finding the Appellant guilty of Battery, the lower court found aspects of the
12 Appellant’s testimony not credible and the Respondent proved its case beyond a
13 reasonable doubt.
14

15 **STANDARD OF REVIEW**

16 **A. Deference to Trial Judge**

17 Appellant is asking the District Court sitting in appellate review to be a new
18 fact finder and make different findings of fact in order to reverse his conviction. This
19 is not the role of an Appellate Court.
20

21 On appeal, it is the Appellate Court’s role to review the record of the lower
22 court to make a determination as to whether a trial court, acting reasonably, could
23 have been convinced beyond a reasonable doubt that appellant was guilty,
24 considering the evidence it had to consider. Cudzey v. State, 103 Nev. 575, 578, 747
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1 P.2d 233 (1987); Point v. State, 102 Nev. 143, 150, 717 P.2d 38 (1986); State v.
2 Rhodig, 101 Nev. 608, 610, 707 P.2d 549 (1985). In other words, where there is
3 substantial evidence in the record to support the verdict, it will not be overturned by
4 the appellate court. Tellis v. State, 85 Nev. 679, 679-680, 462 P.2d 526, 527 (1969);
5 Jefferson v. State, 108 Nev. 953, 840 P.2d 1234 (1992); LaPierre v. State, 108 Nev.
6 528, 836 P.2d 56 (1992); Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992);
7 McNair v. State, 108 Nev. 53, 825 P.2d 571 (1992).
8

9
10 Moreover, in reviewing cases that involve conflicts in testimony and demeanor
11 evidence, the law and good sense demand that a reviewing court treat the
12 discretionary rulings of the trial court with deference. Adams v. Lawson, 84 Nev.
13 687, 690, 448 P.2d 695 (1968).
14

15 Similarly, the decision to admit or exclude evidence is within the sound
16 discretion of the trial judge. Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578 (1992),
17 *citing* Halbower v. State, 93 Nev. 212, 215, 562 P.2d 485 (1977), and NRS 48.035.
18 In general, the lower court's discretionary power has been upheld upon review. *See*
19 *e.g.*, Maresca v. State, 103 Nev. 669, 748 P.2d 3 (1987); Lujan v. State, 85 Nev. 16,
20 449 P.2d 244 (1969).
21

22 **B. Appeal Limited to Review of Evidence Contained in Trial Record**

23
24 On appeal, a court “must confine its review to the facts shown in the record.”
25 Lee v. Sheriff of Clark County, 85 Nev. 379, 380, 455 P.2d 623, 624 (1969). The
26
27

1 parties are prohibited from "attempt[ing] to supply other facts in their briefs," in
2 excess of those contained in the record below.

3 4 **C. Credibility of Witnesses**

5 "Where conflicting testimony is presented, it is within the province of the [trier
6 of fact] to determine the weight and credibility to be given to the testimony." Keeney
7 v. State, 109 Nev. 220, 230-231, 850 P.2d 311, 318 (1993); *see also*, Doyle v. State,
8 112 Nev. 879, 921 P.2d 901 (1996). The Trial Judge had the opportunity to observe
9 the demeanor of all the witnesses as they testified and peruse the other evidence
10 before him.

11
12
13 The trier-of-fact determines which witnesses are credible and how much
14 weight, if any, that testimony carries. The Trial Judge properly carried out his duties
15 as fact finder. Based on the evidence before him which included testimony of the
16 victim, the Trial Judge felt convinced of appellant's guilt beyond a reasonable doubt.

17
18 The Court has discretion to allow testimony and to determine what weight to
19 give testimony. The Court in this instance heard all of the testimony and decided
20 which it was going to give weight to and which it was not, who was credible and who
21 was not. This resulted in the appellant's conviction, which was based strictly on the
22 evidence's weight. Based on the totality of the evidence before him, the Trial Judge
23 found respondent had proved its case beyond a reasonable doubt. Since there is more
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1 than substantial evidence in the record to support the verdict below, appellant's
2 conviction should be affirmed.

3 4 ARGUMENT

5 I. Sufficiency of the Evidence

6 In considering the sufficiency of the evidence, this Court must determine,
7 based on the record below, "whether *after viewing the evidence in the light most*
8 *favorable to the prosecution*, any rational trier of fact could have found the essential
9 elements of the crime beyond a reasonable doubt." Mejia v. State, 134 P.3d 722,
10 725, 122 Nev. 487, 487 (2006); *citing*, Koza v. State. Koza v. State, 100 Nev. 245,
11 250, 681 P.2d 44, 47 (1981) (emphasis added); *quoting*, Jackson v. Virginia, 443
12 U.S. 307, 319 (1979).

13 Evidence in a criminal case is sufficient when it, "taken as a whole, provides a
14 sufficient evidentiary foundation to support the verdict." Milton v. State, 111 Nev.
15 1487, 908 P.2d 685, 687 (1995). A trial court's findings of fact will not be set aside
16 unless they are clearly erroneous. Lisle v. State, 113 Nev. 540, 937 P.2d 473, 479
17 (1997). Where there is substantial evidence to support a verdict, it will not be
18 disturbed on appeal. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981);
19 Domingues v. State, 112 Nev. 683, 917 P.2d 1364, 1371 (1996); see also, Keeney v.
20 State, 109 Nev. 220, 850 P.2d 311 (1993).

1 The evidence put forth at trial clearly shows that Appellant committed the
2 offense of Domestic Battery. Here, when taken in a light most favorable to the
3 prosecution, there is no doubt that a trier of fact could have found Appellant guilty
4 beyond a reasonable doubt.
5

6 The trial judge used the correct legal analysis to find that the Appellant was
7 guilty of the charge of battery domestic violence.
8

9 The burden of proof in a criminal case is beyond a reasonable doubt. NRS
10 175.201 provides, "Every person charged with the commission of a crime shall be
11 presumed innocent until the contrary is proved by competent evidence beyond a
12 reasonable doubt; NRS 175.211 defines reasonable doubt as "one based on
13 reason. It is not mere possible doubt, but is such a doubt as would govern or control a
14 person in the more weighty affairs of life. If the minds of the jurors, after the entire
15 comparison and consideration of all the evidence, are in such a condition that they
16 can say they feel an abiding conviction of the truth of the charge, there is not a
17 reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
18 speculation.
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22 The trial court made detailed findings of fact before he rendered his decision in
23 the instant case. In those findings of fact, he demonstrated that he weighed all the
24 evidence carefully and came to the conclusion that Appellant was guilty.
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1 The lower court judge explained that he believed the Appellant's use of force
2 was not reasonable. TT. 84, ll. 18-25. The evidence showed that the door was down
3 at the time and Michelle was trying to get the door back, and at that point she was
4 grabbed by the Appellant and pushed away. TT. 84, ll. 23-25. The lower court judge
5 relied upon the testimony of all the witnesses, including the Appellant's testimony,
6 and relied upon the statements of the Appellant to the police. TT. p. 84, ll. 21-23.

7
8
9 The Appellant chose to testify at his trial. He chose to put his own credibility
10 to the test, and Judge Burr found it lacking since it varied from what he told police on
11 the date of the incident. The Appellant's testimony just does not ring true.

12
13 **A. Misdemeanor, First-Offense Battery Constituting Domestic Violence Is a**
14 **Petty Offense.**

15 The Amezcua case is the latest case in a long history of jurisprudence by both
16 This Honorable Court and the United States Supreme Court under which it is clear
17 that the Appellant is not entitled to a jury trial.

18
19 The Sixth Amendment of the United States Constitution generally guarantees
20 an individual the right to a jury trial. See also Duncan v. Louisiana, 391 U.S. 145,
21 149-150 (1968) (stating that this right is applicable to the States through the
22 Fourteenth Amendment). However, it is well settled law that the sixth amendment
23 right of trial by jury does not extend to every criminal proceeding. District of
24 Columbia v. Clawans, 300 U.S. 617, 624, 57 S.Ct. 660, 661, 81 L.Ed. 843 (1937).
25
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1 Consistent with this ruling, This Court held in State v. Smith, 99 Nev. 806, 672
2 P.2d 631 (1983) that where the maximum penalty is six months imprisonment or less,
3 the offense is "petty" and therefore the right to jury trial does not attach. Id. at 811.
4 In Smith, This Court noted that "despite the differences in languages of the
5 constitutional provisions," neither Article 1, Section 3 of the Nevada Constitution,
6 nor the Sixth Amendment of the United States Constitution, guarantee the right to
7 trial by jury for first offense DUI or any "petty" offenses. Id. at 810.
8

9
10 A few years later, in Blanton v. North Las Vegas Mun. Court, 103 Nev. 623
11 (1987), several defendants charged with DUI petitioned to claim their right to jury
12 trials in municipal courts. The defendants in Blanton argued that both Article 1,
13 Section 3 of the Nevada Constitution, and the Sixth Amendment to the United States
14 Constitution, guaranteed them the right to a jury trial. However, This Court found
15 that the right to a jury trial is not absolute under neither the United States
16 Constitution nor the Nevada Constitution, holding that the right to a jury trial "does
17 not extend to every criminal proceeding." See Id. at 629.
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21 This Court identified 'significant issues relating to serious financial,
22 administrative and policy concerns" that would arise from misdemeanor trials, and
23 concluded that such concerns should be addressed and "resolved by the legislature [,]
24 after it has conducted appropriate hearings and investigations regarding the
25 implications [...] of these types of trials. Id. at 636.
26

1 This decision was revisited shortly thereafter by the United States Supreme
2 Court in Blanton v. North Las Vegas, 489 U.S. 538, 103 L. Ed 2d 550 (1989) through
3
4 *Writ of Certiorari*. In Blanton, a unanimous Supreme Court found that Nevada's DUI
5 statute was not a serious crime such that the defendant was entitled to a jury trial:

6
7 It has long been settled that "there is a category of petty
8 crimes or offenses which is not subject to the Sixth
9 Amendment jury trial provision." In determining whether a
10 particular offense should be categorized as "petty," our
11 early decisions focused on the nature of the offense.... In
12 recent years, however, we have sought more "objective
13 indication of the seriousness with which society regards
14 the offense." "[w]e have found the most relevant such
15 criteria in the severity of the maximum authorized penalty
16 Following this approach, our decision in Baldwin
17 established that a defendant is entitled to a jury trial
18 whenever the offense for which he is charged carries a
19 maximum authorized prison term of greater than six
20 months. Blanton, 448 U.S. at 542, citations omitted.

21 The Blanton court then went on to establish a guideline for evaluating the
22 seriousness of an offense. It ruled that if the maximum jail time authorized by statute
23 does not exceed six months, there is a presumption that the offense is petty. This
24 presumption can be overcome, but only if "additional statutory penalties, viewed in
25 conjunction with the maximum authorized period of incarceration, are so severe that
26 they clearly reflect a legislative determination that the offense in question is a
27 'serious' one." Id. at 543. Nevertheless, it is a rare case where "a legislature packs an
28 offense it deems 'serious' with onerous penalties that nonetheless do not puncture the

1 6-month incarceration line." Id. In Blanton, the additional penalties of a driver's
2 license suspension for 90 days, an alcohol abuse education course, a \$1,000 fine and
3 community service were insufficient to overcome the presumption. Id. at 544.

4
5 The United States Supreme Court went on to apply this test in United States v.
6 Nachtigal, 507 U.S. 1, 122 L Ed 2d 374 (1993). In Nachtigal, the defendant was
7 charged with a DUI in a national park. If convicted of a DUI, a defendant could be
8 sentenced to up to six months in jail and a \$5,000 fine. Moreover, a defendant could
9 be placed on probation not to exceed five years. A person on such probation could be
10 subject to as many as 21 conditions of probation. And, especially pertinent to the
11 instant case, one such condition as set forth in 18 U.S.C. 3563(b)(8) is that a
12 defendant "refrain from possessing a firearm, destructive device or other dangerous
13 weapon."
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17 Nachtigal argued that the probation conditions meant that the crime of DUI in
18 a national park was a serious offense. The United States Supreme Court held that the
19 penalties Nachtigal faced were not sufficient to overcome the presumption, despite
20 the fact that a defendant could, as part of his probation, be ordered to not possess a
21 firearm. The United States Supreme Court stated:
22
23

24 Because the maximum term of imprisonment is six
25 months, DUI under 36 CFR 4.23(a)(1) is presumptively a
26 petty offense to which no jury trial right attaches. ... Nor
27 do we believe that the parole alternative renders the DUI
28 offense serious. Like a monetary penalty, the liberty

1 infringement caused by a term of probation is far less
2 intrusive than incarceration. The discretionary probation
3 conditions do not alter this conclusion; while they
4 obviously entail a greater infringement on liberty than
5 probation without attendant conditions, they do not
6 approximate the severe loss of liberty caused by
imprisonment for more than six months. Nachtigal, 507
U.S. at 4-5. Citations omitted. (Emphasis Added).

7 Given the Nachtigal ruling, it is clear that the United States Supreme Court
8 does not consider the potential loss of the right to possess a firearm upon conviction a
9 significant enough factor to overcome the Blanton presumption.
10

11 Furthermore, following the rationale laid out in the Nachtigal ruling, This
12 Court recently ruled in Amezcuca v. Eighth Judicial District Court, 319 P.3d 602
13 (2014), that collateral consequences, namely, those not explicitly authorized as
14 penalties under the charging statute, are not relevant to a "seriousness" analysis.
15

16 In Amezcuca, the defendant was charged with first-offense battery constituting
17 domestic violence. He filed a timely notice for jury trial, which was denied by the
18 Justice Court hearing the case. Amezcuca subsequently filed a petition for writ of
19 mandamus in the appropriate District Court, which was denied. His conviction was
20 affirmed on appeal by the District Court. Amezcuca then filed a petition for writ of
21 mandamus or writ of habeas corpus with This Honorable Court.
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1 In denying the petition, This Court reiterated that the right to a jury trial only
2 attaches to "serious" offenses, and that the penalties set forth for those offenses were
3 the bar upon which the "seriousness" of the offense was to be measured:
4

5 "[T]o determine whether the ... right to a jury trial attaches
6 to a particular offense, the court must examine 'objective
7 indications of the seriousness with which society regards
8 the offense.'" United States v. Nachtigal, 507 U.S. 1, 3, 113
9 S.Ct. 1072, 122 L. Ed. 2d 374 (1993) (quoting Blanton v.
10 N. Las Vegas, 489 U.S. 538, 541, 109 S. Ct. 1289, 103 L.
11 Ed. 2d 550 (1989)). The best objective indicator of the
12 seriousness with which society regards an offense is the
13 maximum penalty that the legislature has set for it. Id.
14 Although a "penalty" may include things other than
15 imprisonment, the focus for purposes of the right to a jury
16 trial has been "on the maximum authorized period of
17 incarceration." Id. (quoting Blanton, 489 U.S. at 542).
18 Taking this approach, **the Supreme Court has held that**
19 **an offense for which the period of incarceration is six**
20 **months or less is presumptively a "petty" offense** and a
21 jury trial is not constitutionally required. Id. We have
22 reached the same conclusion. Blanton, 103 Nev. at 633-34,
23 748 P.2d at 500-01. **The presumption may be overcome**
24 **"only by showing that the additional penalties, viewed**
25 **together with the maximum prison term, are so severe**
26 **that the legislature clearly determined that the offense is**
27 **a 'serious' one."** Nachtigal, 507 U.S. at 3-4 (quoting
28 Blanton, 489 U.S. at 543). Amezcua, 319 P.3d at 604.
(Emphasis added)

22 Amezcua argued that in addition to other consequences of his conviction, he
23 could potentially lose his gun rights under 18 U.S.C.A. §922(d)(8),¹ and that these
24

25 _____
26 ¹ "It shall be unlawful for any person ...who has been convicted in any court of a misdemeanor
27 crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or
28 affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which

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), This 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. This Court noted that this was in contrast to direct consequences that have automatic and immediate effect on the nature or length of a defendant's punishment. See Palmer, 118 Nev. at 826 (emphasis added).

This Court noted that the analysis was on the penalties in the Nevada Statute that proscribed the offense. See Amezcua, 319 P.3d at 605 (noting that the petitioner's analogy to a driver's license revocation failed because, unlike the additional penalties identified by the petitioner, the revocation considered was directly included in the ordinance). The only penalties that NRS 200.485(1) directly imposes, in addition to imprisonment of not less than 2 days but not more than 6 months, is a community service requirement of not more than 120 hours and a fine of \$1,000. Thus, This Court in Amezcua concluded: "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

has been shipped or transported in interstate of foreign commerce."

1 attaches.” Id. This Court added that there is further evidence that the Nevada
2 Legislature did not view this as a "serious" offense. Specifically, in the Legislature's
3 decision to afford the trial judge discretion to allow the defendant to serve the term of
4 imprisonment intermittently.² Id. at 606. This Court then found that Amezcua had
5 failed to overcome the Blanton presumption, and that the Nevada Legislature did not
6 view the misdemeanor battery constituting domestic violence as a "serious" offense.
7

8
9 Thus, to the extent that Appellant claims that the loss of the right to possess a
10 firearm makes a conviction for battery constituting domestic violence a serious
11 offense, the argument is entirely without merit.
12

13 Appellant’s reliance on the 2015 amendment to NRS 202.360, to illustrate that
14 there is a clear intent of the Legislature to make battery constituting domestic
15 violence a serious crime, is unsound because the Nevada Legislature was extremely
16 careful to track federal law so as not to expand the "seriousness" of the crime.
17

18 NRS 202.360(1)(a) states:

19
20 1. A person shall not own or have in his or her possession or under his or
21 her custody or control any firearm if the person:

22 (a) Has been convicted in this State or any other state of a misdemeanor
23 crime of domestic violence **as defined in 18 U.S.C. §921(a)(33)**. (Emphasis added)
24

25 ² Referencing NRS 200.485(1)(a): “. . .[A] person convicted of a battery which constitutes domestic
26 violence . . .is guilty of a misdemeanor and shall be sentenced to: imprisonment...for not less than 2
27 days, but not more than 6 months; and perform not less than 48 hours, but not more than 120 hours,
28 of community service.”

1 The Nevada Legislature amended NRS 202.360 in 2015 to include persons
2 convicted of first-offense battery constituting domestic violence as prohibited
3 persons. Appellant asserts that because this amendment now exposes (or, stated
4 more accurately, brings with it a collateral consequence), a person convicted of
5 battery constituting battery domestic violence to up to six years in prison (if
6 convicted of a new crime under NRS 202.360), it demonstrates " ...that the
7 Legislature "views the prohibition as a serious." See Appellate Brief, p. 5, ll. 21-22.
8
9

10 The mere fact that Nevada now provides a means for State agencies to
11 prosecute individuals for possessing a firearm based on a conviction for first-offense
12 battery constituting domestic violence through NRS 202.360 does not elevate NRS
13 200.485(1) into a serious offense. Quite simply it is not something that is a direct
14 consequence of a conviction under NRS 200.485(1), as it, by necessity, requires
15 some future conduct on the part of the Appellant or a government agency. See
16 Nollette v. State, 118 Nev. 341, 344 (2002) (noting that collateral consequences are
17 generally dependent on either the court's discretion, the defendant's future conduct, or
18 the discretion of a government agency)(emphasis added).
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22 The only difference between the state of the law when Amezcua was decided
23 and the state of the law today is that NRS 202.360 provides a separate entity the
24 jurisdiction to prosecute prohibited persons from possessing a firearm. Prior to 2015,
25 a person convicted of a first-offense battery constituting domestic violence was
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1 already prohibited from possessing a firearm under 18 U.S.C. §922(g)(9). Of
2 particular importance, the 2015 amendment did *not* expand the State's jurisdiction
3 beyond what had been already enumerated by the United States Code when Amezuca
4 was decided. In fact, NRS 202.360(1)(a) specifically limits the persons prohibited
5 from possessing a firearm due to a conviction of the misdemeanor crime of battery
6 constituting domestic violence exclusively to those domestic relationships defined in
7 the federal code, and not as defined in NRS 33.018. This Court was obviously aware
8 of that when it decided Amezcuca.
9

10
11 Lastly, the Nachtigal court has already ruled that potential loss of a firearm is
12 not severe enough of an "additional penalty" to overcome the Blanton presumption.
13 Therefore, even if This Court were to find that NRS 202.360 creates new penalties
14 for violations of NRS 200.485, under Nachtigal, such a finding would not be
15 sufficient to show the requisite Legislative intent that misdemeanor battery
16 constituting domestic violence was "serious" enough to warrant a right to a jury trial.
17
18

19
20 **B. Cross-Examination of Appellant's Testimony of Michelle Hildt Being**
21 **Upset was Not Testimony to Her State of Mind and Was Initially Elicited**
22 **on Direct Examination of Appellant.**

23 Appellate courts generally review a district court's evidentiary rulings for an
24 abuse of discretion. Chavez v. State, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009)
25 Percipient witness' testimony as to what was observed and conclusions based on their
26 observations are admissible. Patton v. Henrikson, 79 Nev. 197, 380 P.2d 916 (1963)
27
28

(A non-expert witness may testify to rate of speed of moving vehicle if he is of ordinary intelligence and has had an adequate opportunity to observe vehicle at time in question); Sherman v. Southern Pac. Co., 33 Nev. 385, 111 P. 416 (1910) (A non-expert may testify to the speed of a train). Also, a percipient witness may testify as to their observations based on the perception of the witness and if it is helpful to a clear understanding of the witness or the determination of a fact in issue. NRS 50.265.

The Nevada Supreme Court recognized that a lay witness can testify about the mental state of a person.

“In this state and in virtually every other jurisdiction in the United States a lay witness (1) having had adequate opportunity for observation, may (2) after stating the facts, (3) give his opinion as to the sanity or insanity of the person involved, whereupon (4) the weight to be given to his testimony is a matter for the jury’s determination. In determining the sufficiency of the witness’ observation of the person whose sanity is in question, no court and no text writer, out of the hundreds of cases considered, has seen fit to lay down a rule of law, other than that (6) it lies in the sound discretion of the trial judge, and that (7) the appellate court will not interfere with the exercise of that discretion, unless (8) there has been an abuse thereof. We adhere to the unanimous opinion of this court on the appeal to the effect that there was no such abuse of discretion by the trial court.” Butner v. State, 67 Nev. 436, 439-440, 220 P.2d 631, 633 (1950).

Here, Appellant testified that Michelle Hildt slammed doors, pantries and cracked a door jamb by slamming a door. TT. p. 67, ll. 15-18. The parties had been married for 17 years and had four children together. TT, p. 4, ll. 25 through p.5, ll. 4.

1 Once Appellant characterized his wife's actions as "erratic" (TT. p. 67, ll. 11-12),
2 City questioned Appellant as to whether his wife was upset, and Appellant's trial
3 counsel objected, stating it went to Michelle's state of mind. TT. p. 68. Overruling
4 the objection was proper. TT. p. 68, ll. 21-23. The Appellant then attempted to be
5 nonresponsive to questioning. Appellant responded, "No" to the question, "She did
6 all the things that you just testified to, yelling, slamming, cranking things, spilling
7 things because she was angry you were trying to control who she could talk to. Isn't
8 that correct?" TT. p. 69, ll. 1-6. Then, the Respondent had to ask the same question
9 three times before Appellant provided an answer: Didn't the actions that you just
10 testified to (the slamming, yelling etc.) occur after you told her to get off the phone
11 with Jim? TT. p. 69, ll. 7-9, 12-14, 17-19. Finally, he stated, "Yes". TT. p. 70, ll. 1.

12 Appellant was attempting to present the slamming of the doors and cabinets as
13 "erratic" behavior. Synonyms to erratic are strange, peculiar, odd, or outlandish.
14 <https://www.merriam-webster.com/dictionary/erratic#synonyms>. Basically,
15 Appellant was trying to call his wife a nutcase that night. Your wife and mother of
16 your children is an adult, who has the right to be friends with whomever she wants, to
17 speak to whomever she wants. It is completely understandable that Michelle would
18 be upset at her husband's controlling behavior and she would slam doors and cabinets
19 and yell.
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Respondent sought testimony from Appellant that Michelle was upset, thus her slamming of doors and cabinets. After 17 years of marriage, it is easy to conclude that Appellant has sufficient knowledge of his wife to testify as to whether her actions indicated she was upset with the Appellant because he is controlling or attempting to control who she talks to and when she talks to them, before Appellant removed the door to the bedroom where she slept. Further, Michelle Hildt herself testified that she was upset by the Appellant's behavior towards her the night in question. TT. p. 26, ll. 3-9.

The Appellant has provided no facts that rise to the level of abuse of discretion by the trial judge's decision to permit the questioning objected to by Appellant. Since it is within the sound discretion of the trial court judge to determine if the testimony is admissible and there has been no showing of abuse of discretion, the Court should affirm the trial judge's decision. Even if such facts existed, the admission of the Appellant's testimony would be harmless error as Michelle testified that she was upset by Appellant's actions towards her.

C. Trial Court Judge Correctly Found Appellant to Have No Justifiable Use of Force upon Michelle Hildt.

Appellant argues that his use of force against his wife was justifiable. However, Judge Burr found that his actions were clearly not justifiable.

/////

Michelle testified that Appellant removed the door to the room where she slept without Appellant for the last two years. TT. p. 22, ll. 15-17. Both testified Appellant moved the door to the garage and she followed. TT. 12, ll. 19-25 and TT. p. 65, ll. 18-20. Appellant admitted removing the bedroom door to give her "the same punishment" as he had given his daughter when the daughter slammed doors. TT. p. 65, ll. 11-13. In the garage, a tug of war went on between the two of them, Michelle wanting the door and Appellant wanting to teach her a lesson. TT. p.13, ll. 8-17 and p. 65, ll. 11-13. Appellant put the door down and grabbed Michelle on her forearms and pushed her away. TT. p. 13, ll. 8-17; p. 16, ll. 20-22. She suffered injury and pain exemplified by redness observed by both Officer Willard and Michelle Hildt, and a burning sensation. TT. p. 28, ll. 18-2; p. 45, ll. 17-18 and p. 29, ll. 24-25 through p. 30-ll. 1-2.

The Appellant's own statements to Officer Willard showed he grabbed Michelle. Officer Willard testified that Appellant's statements to police that night indicated Appellant grabbed Michelle and pushed her from the door. MAV 23:24. Appellant's testimony on the stand differed from his statements to police in October 2017. In October 2017, Appellant told police Michelle lunged at him and tried to take the door MAV 23:21-23:22 and MAV 23:24. Appellant's statements changed at trial and instead Appellant testified Michelle was lunging for him, not the door. TT. p. 64, ll. 20.

1 “Where conflicting testimony is presented, it is within the province of the [trier
2 of fact] to determine the weight and credibility to be given to the testimony.” *Keeney*
3 *v. State*, 109 Nev. 220, 230-231, 850 P.2d 311, 318 (1993); *see also, Doyle v. State*,
4 112 Nev. 879, 921 P.2d 901 (1996). The Trial Judge had the opportunity to observe
5 the demeanor of all the witnesses as they testified and peruse the other evidence
6 before him.
7

8
9 The trier-of-fact determines which witnesses are credible and how much
10 weight, if any, that testimony carries. The Trial Judge properly carried out his duties
11 as fact finder. Based on the evidence before him which included testimony of the
12 victim, the Trial Judge felt convinced of Appellant’s guilt beyond a reasonable doubt.
13

14 The Court has discretion to allow testimony and to determine what weight to
15 give testimony. The Court in this instance heard all of the testimony and decided
16 which it was going to give weight to and which it was not, who was credible and who
17 was not. This resulted in the Appellant’s conviction, which was based strictly on the
18 evidence’s weight. Based on the totality of the evidence before him, the Trial Judge
19 found Respondent proved its case beyond a reasonable doubt. Since there is more
20 than substantial evidence in the record to support the verdict below, Appellant’s
21 conviction should be affirmed. In determining who to believe, the trial court judge
22 must assess the credibility of the witnesses. After hearing the testimony of Michelle
23 Hildt, Officer Willard and the Appellant himself, it is clear the trial court judge
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1 placed greater weight upon Michelle's and the Officer's testimony than the
2 Appellant's testimony at trial which contradicted his statements to police as they
3 investigated the incident. The record clearly shows the Trial Judge did not find the
4 Appellant's testimony credible at trial and that Michelle's effort to reach for the door
5 to her bedroom did not justify Appellant to grab her arms.
6

7
8 **CONCLUSION**

9 The Appellant's Opening Brief fails to present any valid reason for this Court
10 to reverse the Trial Judge's decision upon close examination of the record. For the
11 aforementioned reasons, the City of Henderson respectfully requests that this Appeal
12 be denied and remanded to the lower court for further prosecution.
13

14 DATED this 8th day of July, 2019.

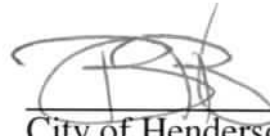
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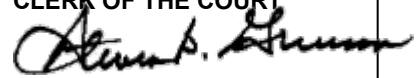
CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of July, 2019, I served a true and correct copy of the foregoing ***RESPONDENT CITY OF HENDERSON'S ANSWERING BRIEF*** via Odyssey, the Eighth Judicial District Court's e-filing and service system and addressed as follows:

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ROMAN HILDT,

Appellant,

vs.

CITY OF HENDERSON,

Respondent.

District Court Case No: C-19-339750-A
Dept. No: II
Henderson Municipal No: 17CR012574
Dept. No. III

Date of Hearing: August 8, 2019
Time of Hearing: 9:00 a.m.

APPELLATE'S REPLY BRIEF

COMES NOW Appellant, ROMAN HILDT, by and through his counsel of record ADAM L. GILL, ESQ., and MICHAEL N. AISEN, ESQ., and submits this Appellant's Reply Brief pursuant to JCRCP 75 and NRAP 28.

DATED this 23rd day of July 2019.

/s/ Michael N. Aisen

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

I. INTRODUCTION

Roman Hildt ("Appellant") moves to vacate his conviction for Misdemeanor Battery Constituting Domestic Violence (NRS 200.485). Mr. Hildt requests this Honorable Court grant his petition to set aside the judgment of conviction entered on April 22, 2019 because the Henderson Municipal Court denied him his request for a jury trial. Mr. Hildt subsequently filed a timely Notice of Appeal on April 22, 2019. Mr. Hildt filed his Brief on June 12, 2019. Respondent filed an Answering Brief on July 8, 2019. This Appellant's Reply Brief follows. The City contends that Mr. Hildt is asking for the District Court's appellate review be "a new fact finder". (Respondent's Brief page 8, line 18). However, this is not the case. Mr. Hildt argues the loss of fundamental

1 rights due to a conviction for domestic violence is a “serious offense” entitling a defendant the
2 right to a jury trial.

3 II. ARGUMENT

4 A. THERE WAS INSUFFICIENT EVIDENCE TO PROVE APPELLANT’S GUILT 5 BEYOND A REASONABLE DOUBT

6 In *Nolan v. State*, the Supreme Court of Nevada determined that “The standard of review
7 [when analyzing the sufficiency of evidence] in a criminal case is ‘whether, after viewing the
8 evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found
9 the essential elements of the crime beyond a reasonable doubt.’” Additionally, “it is the jury’s
10 function, not that of the court, to assess the weight of the evidence and determine the credibility of
11 witnesses.” *Nolan v. State* 122 Nev. 363, 377, 132 P.3d 564, 573 (2006).

12 The Supreme Court of Nevada has determined that it is the “jury’s function” to “assess the
13 weight of evidence” and to “determine the credibility of witnesses”. *Supra*. The City contends the
14 trial judge used “correct legal analysis” (Respondent’s Brief page 12, line 7) and weighted “all the
15 evidence” and “carefully” came to a conclusion of guilt. (Respondent’s Brief page 12, line 22).
16 The City further contends that the trial judge “found [Mr. Hildt’s testimony] lacking since it varied
17 from what he told police on the date of the incident.” (Respondent’s Brief page 10, line 13). In this
18 matter, Mr. Hildt did not have the benefit of having the evidence of his case and the credibility of
19 witnesses be determined by the jury, (as it is the “jury’s function” *supra*) because there was no
20 jury trial. Moreover, Mr. Hildt’s alleged “lacking” testimony does not give rise to the City proving
21 his guilt beyond a reasonable doubt. The City failed to provide the evidence necessary to prove
22 that there was no doubt to Mr. Hildt’s guilt and relied solely on the trial judge’s legal analysis.
23 Had Mr. Hildt been afforded his requested jury trial, the jury would have been able to perform its
24 function of weighing the evidence [or lack thereof] presented by the City at trial and determining
25 the credibility of the witnesses to find Mr. Hildt’s guilt or innocence.

26 Therefore, because Mr. Hildt was denied the proper function of the jury when his request
27 for jury trial was not granted, Mr. Hildt has been prejudiced and his case should be remanded to
28 the lower court for a jury trial.

1 **B. ROMAN HILDT HAS BEEN PREJUDICED BY DENIAL OF JURY TRIAL**

2 **1. MISDEMEANOR FIRST OFFENSE BATTERY CONSTITUTING**
3 **DOMESTIC VIOLENCE SHOULD BE DEEMED A “SERIOUS**
4 **OFFENSE” WHEN IT COMES TO THE PENALTIES SURROUNDING**
5 **THE CHARGE**

6 The City argues this Honorable Court’s holding in *Amezcuca v. Eighth Judicial Dist. Court*
7 *of State ex rel. Cty. of Clark*, 130 Nev. Adv. Op. 7, 319 P.3d 602, 604 (2014) supports its position
8 that the loss of Mr. Hildt’s Second Amendment Right to Bear Arms through NRS 202.360 “does
9 not elevate NRS 200.485(1) into a serious offense”. (Respondent’s Brief page 21, line 11).

10 The City also argues that “quite simply” the loss of Mr. Hildt’s Right to Bear Arms “is not
11 something that is a direct consequence of a conviction under NRS 200.485(1). (Respondent’s
12 Brief page 21, line 14). The City further argues that in *United States v. Nachtigal*, 507 U.S. 1, 122
13 L. Ed 2d 374 (1993), the “potential loss” of the right to bear a firearm is “not severe enough” to
14 overcome the presumption laid out in *Blanton v. North Las Vegas*, 489 U.S. 538, 103 L. Ed 2d 550
15 (1989). (Respondent’s Brief page 22, line 12).

16 The City is incorrect on both fronts. NRS 200.485, the Battery Constituting Domestic
17 Violence statute in Nevada, bars a person convicted of domestic violence from owning or
18 possessing a firearm. The loss of Mr. Hildt’s gun rights is automatic because under NRS
19 200.485(10):

20 “In every judgment of conviction or admonishment of rights issued
21 pursuant to this section, the court shall: (a) Inform the person
22 convicted that he or she is prohibited from owning, possessing or
23 having under his or her custody or control any firearm pursuant to
24 NRS 202.360; and (b) Order the person convicted to permanently
25 surrender, sell or transfer any firearm that he or she owns or that is in
26 his or her possession or under his or her custody or control in the
27 manner set forth in section 5 of this act.” Nev. Rev. Stat. Ann. §
28 200.485(10) (italics added)

29 NRS 200.485(10), not only strips Mr. Hildt of his Second Amendment rights for self-
30 defense, but requires the person convicted of Battery Constituting Domestic Violence under NRS
31 200.485 to immediately give up all his or her firearms. There is no other misdemeanor statute in
32 Nevada where a conviction for a misdemeanor results in the loss of a fundamental, constitutional

1 right – the Second Amendment. The City misstates the consequences of a conviction under NRS
2 200.485 by arguing that the deprivation of Mr. Hildt’s Second Amendment right is not a direct
3 consequence of the conviction: “[q]uite simply, it is not something that is a direct consequence of
4 a conviction under NRS 200.485(1), as it, by necessity, requires some future conduct on the part
5 of the Appellant or a government agency.” (*supra*). NRS 200.485(10) has no “future conduct”
6 component to it. The impact of NRS 200.485(10) is immediate resulting in the instantaneous loss
7 of Mr. Hildt’s and any other Nevadan’s Second Amendment Right to Bear Arms. The City
8 disingenuously appears to argue that one can violate NRS 200.485(1) but not lose his or her
9 Second Amendment Right under NRS 200.485(10). However, this is just not true.

10 The City makes light of Mr. Hildt’s Second Amendment right to defend himself and his
11 family when it asserts, “... Appellant has not sufficiently shown the requisite intent of the
12 Legislature that the penalties he is facing are so “serious” to warrant a right to a jury trial.
13 (Respondent’s Brief page 22, line 16). This is not true because Mr. Hildt is also facing the
14 immediate and permanent loss of his Second Amendment right to possess a firearm even for self-
15 defense as spelled out in NRS 200.485(10) which was added by the Legislature after *Amezcu*,
16 *supra*. “The [six- month petty offense] presumption may be overcome only by showing that the
17 additional penalties, viewed together with the maximum prison term, are so severe that the
18 legislature clearly determined that the offense is a ‘serious’ one.” *Nachtigal*, 507 U.S. at 3–4, 113
19 S.Ct. 1072 (quoting *Blanton*, 489 U.S. at 543, 109 S.Ct. 1289). *Amezcu v. Eighth Judicial Dist.*
20 *Court of State ex rel. Cty. of Clark*, 130 Nev. Adv. Op. 7, 319 P.3d 602, 604 (2014).

21 The loss of Mr. Hildt’s Second Amendment Right to Bear Arms – even for self-defense –
22 is that additional penalty, viewed together with the maximum prison term, is so severe that the
23 Nevada Legislature clearly determined [by the implementation of NRS 200.485(10)] that Battery
24 Constituting Domestic Violence is a serious one and not a petty offense. Thus, Mr. Hildt should
25 have been granted a jury trial.

26 **C. APPELLANT WAS CROSS-EXAMINED AS TO VICTIM’S STATE OF MIND**
27 **WHICH WAS NOT ELICITED ON DIRECT**

28 The City argues that Mr. Hildt gave testimony of Ms. Hildt being “erratic” when he

1 testified of Ms. Hildt “slamm[ing] doors, pantries and cracked a door jamb by slamming the
2 door,” classifies as a state of mind reference. (Respondent’s Brief page 23, line 23). Therefore,
3 when the City cross-examined Mr. Hildt regarding whether Ms. Hildt was “upset” and counsel
4 objected, the overruling was proper. (Respondent’s Brief page 24, line 2). The City contends that
5 Mr. Hildt was trying to, “call his wife a nutcase that night.” (Respondent’s Brief page 24, line 20).
6 The City further contends that “17 years of marriage is sufficient that [Mr. Hildt] had knowledge
7 that his wife was upset” (Respondent’s Brief page 25, line 2). And that admission of Mr. Hildt’s
8 testimony would be “harmless error” because Ms. Hildt testified she was upset. (Respondent’s
9 Brief page 25, line 18) However, this is not true.

10 The City attempts to paint Mr. Hildt as this controlling monster who was trying to “call his
11 wife a nutcase that night.” (*supra*). The City’s statements coupled with the fact that the court
12 overruled Mr. Hildt’s objection shows that the error in allowing the questioning to continue was
13 more than merely harmless.

14 **D. THE TRIAL JUDGE ERRED IN FINDING APPELLANT’S FORCE WAS NOT**
15 **JUSTIFIABLE**

16 The United States Supreme Court has previously held that self-defense is a fundamental
17 right. “Self-defense is a basic right, recognized by many legal systems from ancient times to the
18 present, and the Heller Court held that individual self-defense is ‘the central component’ of the
19 Second Amendment right.” Heller, 554 U.S., at —, —, 128 S.Ct. 2783, 171 L.Ed.2d 637.
20 *McDonald v. City of Chicago*, Ill., 561 U.S. 742, 744, 130 S. Ct. 3020, 3023, 177 L. Ed. 2d 894
21 (2010). The City argues that the trial judge “properly carried out his duties” and that based on the
22 evidence presented and the testimony given, the trial judge was convinced of Mr. Hildt’s guilt
23 beyond a reasonable doubt. (Respondent’s Brief page 27, line 10). The City contends that the trial
24 judge’s decision was supported by the fact that the trial judge heard “all the testimony” and
25 determined “who was credible and who was not.” (Respondent’s Brief page 22, line 12).

26 The trial judge gave a brief explanation of his decision and in his explanation the trial
27 judge stated, “I think both parties should have passed a step back before any type of touching or
28 battery took place.” (Hearing Transcript page 85, line 9). Here, it is clear that the trial judge gave

1 fault to both parties, however Mr. Hildt was the person given the greatest fault, even though he
2 was the only party attempting to de-escalate the situation. Ms. Hildt acknowledges in her
3 testimony that Mr. Hildt made multiple efforts at getting away from her that did not involve force,
4 which proved to be unsuccessful because Ms. Hildt wanted to “get the door at all cost.” (Hearing
5 Transcript page 25, line 16). Mr. Hildt carried the door to the garage and Ms. Hildt followed him
6 to the garage where she made attempts to get the door. (Hearing Transcript page 22, line 22). Mr.
7 Hildt is not the aggressor, yet it is determined that his actions were unreasonable compared to the
8 actions of Ms. Hildt, who aggressively attempted to get the door from Mr. Hildt. The City argues
9 that Mr. Hildt’s testimony was different than the statements given to Henderson Police on the
10 night of the incident, however that is not true.

11 During his statements to Henderson Police, Mr. Hildt stated that, “she lunged at me to try
12 to get the door back, but she did not hit me.” (MAV at 23:20:51). Then the Officer asked the
13 question, “explain to me how she lunged at you while you were taking the door off.” (MAV
14 23:22:34). Mr. Hildt’s response was, “I had already taken the door off and I put it in the garage
15 and I was going to put it where we put the other doors.” (MAV 23:22:37). The Officer then asked,
16 “did she make any contact with your body at all; where did she touch you at?” (MAV 23:24:25).
17 Mr. Hildt goes on to explain, “I grabbed her arm as she was trying to grab me, and I pushed her
18 back.” (MAV 23:24:30). The City is firm on its contention that the trial judge determined that the
19 other witnesses’ testimony was credible because Mr. Hildt’s testimony changed from the
20 statements made to Henderson Police on the night of the incident. However, the City failed to
21 provide proof of inconsistent statements made by Mr. Hildt. In reviewing the statements made to
22 Henderson Police on the night of the incident, there is more evidence demonstrated as to Mr.
23 Hildt’s reasonable use of force to justify his actions than presented at trial.

24 Therefore, the trial judge should have concluded that Mr. Hildt’s actions were justifiable
25 and concluded that the City did not meet the burden of proof beyond a reasonable doubt for a
26 conviction.

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III. CONCLUSION

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5

This Honorable Court should grant Appellant's petition and remand this case to Henderson Municipal Court for a jury trial.

6

DATED this 23rd day of July 2019.

7

8

/s/ Michael N. Aisen

9

MICHAEL N. AISEN, ESQ.

Nevada State Bar No. 11036

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ADAM L. GILL, ESQ.

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DECLARATION OF COUNSEL

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

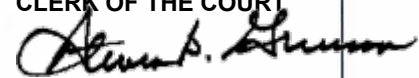
MICHAEL N. AISEN, ESQ., being first duly sworn under oath, subject to the penalty for perjury pursuant to Nevada law, and in conformity with N.R.S. 53.045, hereby deposes and says:

1. I, MICHAEL N. AISEN, ESQ., am the attorney of record for the Defendant, ROMAN HILDT in the above-entitled matter.
2. I am an attorney duly licensed to practice before all Courts in the State of Nevada;
3. I make this Affidavit based upon facts within my own knowledge, save and except as to those matters alleged upon information and belief, and at to those matters, I believe them to be true.
4. I make this Declaration in support of this Motion for Appeal.
5. I am more than eighteen (18) years of age and I am competent to testify as to the matters stated herein.
6. I have personal knowledge pertaining to the facts stated herein, or I have been informed of these facts and believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Michael N. Aisen
MICHAEL N. AISEN, ESQ.

Signed in conformity with N.R.S. 53.045 this
23rd day of July, 2019 in Las Vegas, Nevada.



1 **NEO**
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3 Assistant City Attorney
4 Nevada Bar No. 10399
5 243 S. Water Street, MSC 711
6 Henderson, NV 89015
7 (702) 267-1370
8 Attorney for Respondent
9 CITY OF HENDERSON

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 ROMAN CHRISTOPHER HILDT,

11 Appellant,

12 vs.
13

14 CITY OF HENDERSON,

15 Respondent.

Case No: C-19-339750-A

Dept No. 2

NOTICE OF ENTRY OF
ORDER DENYING APPEAL
AND REMANDING TO LOWER
COURT

16
17 PLEASE TAKE NOTICE that, on the 27th day of August, 2019, this Court
18 entered an Order Denying Appeal and Remanding to Lower Court in this matter. A
19 true and correct copy is attached.

20 DATED this 27th day of August, 2019.

21 CITY OF HENDERSON

22
23 

24 ELAINE F. MATHER, ESQ.

25 Assistant City Attorney

26 Nevada Bar No. 10399

27 243 S. Water Street, MSC 711

28 Henderson NV 89015

Attorneys for Respondent

CITY ATTORNEY'S OFFICE
CITY OF HENDERSON
243 S. WATER STREET, MSC 711
HENDERSON, NV 89015



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 27th day of August, 2019, I caused to be
3 served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER
4 DENYING APPEAL AND REMANDING TO LOWER COURT via Odyssey, the
5 Eighth Judicial District Court's electronic filing and service system, and addressed as
6 follows:

7 Michael Aisen, Esq.
8 mike@aisengill.com

9 Andrea Simmons
10 andrea@aisengill.com

11
12
13
14 _____
15 City of Henderson Employee

CITY ATTORNEY'S OFFICE
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Steven D. Grierson

1 **ORDM**

2 **ELAINE F. MATHER, ESQ.**

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6 Henderson, NV 89015

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Attorneys for Respondent

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **ROMAN CHRISTOPHER HILDT,**

11 Appellant,

12 vs.

13 **CITY OF HENDERSON,**

14 Respondent.

) Case No: C-19-339750-A

) Dept No. 2

) **ORDER DENYING APPEAL**
) **AND REMANDING**
) **TO LOWER COURT**

15
16 This matter came before this Court on August 8, 2019, with MICHAEL
17 AISEN, ESQ., present for Appellant and ELAINE F. MATHER, ESQ., present for
18 Respondent. Following argument, and review of case law, this Court finds that the
19 Supreme Court did not view the permanent loss of Second Amendment rights as
20 rising to the level of seriousness that would allow the court to afford the right to a jury
21 trial. There was sufficient evidence presented to Judge Burr and the evidence could
22 not be re-weighted. Therefore,

23 IT IS HEREBY ORDERED that this Appeal is DENIED, the same hereby is
24 DISMISSED, and it is further,

25 ORDERED, ADJUDGED AND DECREED that the conviction in Henderson
26 Municipal Court Case No. 17CR012574 is AFFIRMED, and this case is

27 **/////**

<input type="checkbox"/> Application Dismissed	<input type="checkbox"/> Summary Judgment
<input checked="" type="checkbox"/> Judgment by the Court	<input type="checkbox"/> Judgment by Jury
<input type="checkbox"/> Judgment by Judge	<input type="checkbox"/> Judgment by Jury
<input type="checkbox"/> Judgment by Judge	<input type="checkbox"/> Judgment by Jury

MH

1 REMANDED to the Henderson Municipal Court for further proceedings. Bond, if
2 any, returned to Respondent.

3 DATED this 21st day of August, 2019.

4
5 
6 DISTRICT COURT JUDGE
7 MH

8 Respectfully submitted.

9 By: Elaine F. Mather
10 ELAINE F. MATHER, ESQ.
11 Nevada State Bar No. 10399
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13 Henderson, NV 89015
14 Attorney for Respondent
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FILED

SEP - 5 2019

DISTRICT COURT
CLARK COUNTY, NEVADA
* * *

Steven D. Grierson
CLERK OF COURT

Roman Christopher Hildt,
Appellant(s),

-VS-

Henderson City of,
Respondent(s)
)

Case No.: C-19-339750-A
Department 2
Municipal Court, Las Vegas Township
MC Case No.: 17CR012574; C339750

REMITTITUR

To: Municipal Court, Henderson Township, Clerk of Court

Pursuant to the rules of this Court, enclosed are the following:

Certified Copy of Minute Order
Eighth Judicial District Court File

DATED: August 27, 2019

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: *E Vargas*
Elizabeth Vargas, Deputy Clerk of the Court

cc: Hon. Judge Burr, Municipal Court, Henderson Township
Robert Gullo, Esq., Attorney for Roman Christopher Hildt, Appellant(s)
Elaine Mather, Esq., Attorney for Henderson City of, Respondent(s)

RECEIPT FOR REMITTITUR

RECEIVED of Steven D. Grierson, CEO/Clerk of the Court, the above REMITTITUR

MUNICIPAL COURT, HENDERSON TOWNSHIP

By: 
Deputy Clerk of the Court

PW000223