

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROMAN HILDT,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
RICHARD F. SCOTTI, DISTRICT
JUDGE,

Respondents,

and

CITY OF HENDERSON,

Real Party in Interest.

CASE NO: 79605 Electronically Filed
Dec 06 2019 08:22 a.m.

DC Case No: C-19-359730-A Elizabeth A. Brown
Dept. No: II Clerk of Supreme Court

HMC Case No: 17CR012574
Dept. No: 3

**REAL PARTY IN INTEREST
CITY OF HENDERSON'S
ANSWERING BRIEF**

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ROUTING STATEMENT

The City of Henderson (Real Party in Interest) requests, pursuant to Nevada Rules of Appellate Procedure Rule No. 17(a)(11-12), that this case be retained and decided by the Nevada Supreme Court as these issues are a matter of first impression and raise questions of statewide importance.

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MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF THE ISSUES

- I. WHETHER THE ANDERSEN DECISION SHOULD BE APPLIED RETROACTIVELY TO PETITIONER'S FINAL CASE**
- II. WHETHER MUNICIPAL COURTS MAY LAWFULLY CONDUCT JURY TRIALS PURSUANT TO THE ANDERSEN DECISION**

STATEMENT OF THE CASE

On October 17, 2017, Roman Christopher Hildt (hereinafter "Petitioner") was charged with one (1) count of Battery Constituting Domestic Violence (Misdemeanor – NRS 200.481, 200.485, 33.018) in the Henderson Municipal Court. *See* Real Party in Interest's Appendix, p. 0001. On September 20, 2018, Petitioner filed a Motion for a Jury Trial, which was later denied by the Municipal Court on October 15, 2018. *See* Real Party in Interest's Appendix, pp. 0005-0006.

On March 25, 2019, the case proceeded to a bench trial before the Honorable Rodney Burr – Henderson Municipal Court Department 3. *See* Real Party in Interest's Appendix, p. 0007-0008. Thereafter, the court found Petitioner guilty of the charged offense, and Petitioner was ultimately sentenced on April 22, 2019. *See* Real Party in Interest's Appendix, p.0011.

Petitioner filed a Notice of Appeal to the Eighth Judicial District Court on April 2, 2019. *See* Real Party in Interest's Appendix, p. 0009. After full briefing and oral arguments on the appeal, the District Court denied Petitioner's appeal

and filed its "Order Denying Appeal and Remanding to Lower Court" on August 27, 2019. *See* Real Party in Interest's Appendix, pp. 0014-0015. Remittitur issued on September 5, 2019. *See* Real Party in Interest's Appendix, p. 0016. This Court issued its decision in Andersen v. Eighth Judicial Dist. Court in & for Cty. of Clark, 135 Nev. Adv. Op. 42, 448 P.3d 1120 (2019) on September 12, 2019. Thereafter, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-Conviction) or Alternatively Petition for Writ of Mandamus on September 13, 2019. The City of Henderson (Real Party in Interest) responds to the instant petition for writ of mandamus as follows.

STANDARD OF REVIEW

"A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion." Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (footnotes omitted); *see* NRS 34.160. Whether to consider a writ petition is within this Court's discretion, Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991), and a petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan v. Eighth Judicial Dist. Court, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

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Undoubtedly, mandamus is an extraordinary remedy. State ex rel. List v. County of Douglas, 90 Nev. 272, 524 P.2d 1271 (1974); Kussman v. Eighth Judicial Dist. Court In & For Clark Cty., 96 Nev. 544, 545, 612 P.2d 679, 679 (1980).

Further, the Nevada Constitution vests the district courts with final appellate jurisdiction in all cases arising in the municipal court. Tripp v. City of Sparks, 92 Nev. 362, 363, 550 P.2d 419, 419 (1976); Nev. Const. art. 6, § 6. And, this Court has “declined to entertain writs that request review of a decision of the district court acting in its appellate capacity unless the district court has improperly refused to exercise its jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner.” State v. Eighth Judicial Dist. Court (Hedland), 116 Nev. 127, 134, 994 P.2d 692, 696 (2000); Sparks v. Bare, 132 Nev. 426, 429–30, 373 P.3d 864, 866–67 (2016).

ARGUMENT

I. THE ANDERSEN DECISION DOES NOT APPLY RETROACTIVELY TO PETITIONER’S CASE

Petitioner requests that this Court vacate his misdemeanor conviction for battery constituting domestic violence (NRS 200.481, 200.485, 33.018) and ultimately remand his case back to the Henderson Municipal Court for a jury trial. While perhaps not directly, Petitioner argues that this Court’s decision in Andersen v. Eighth Judicial Dist. Court in & for Cty. of Clark, 135 Nev. Adv. Op.

42, 448 P.3d 1120 (2019) should be applied retroactively to his case. Petitioner is mistaken.

Since Petitioner's conviction was final before Andersen was decided, the new procedural rule announced in Andersen would not apply to his conviction unless one of two narrow exceptions apply. However, since Andersen did not alter the range of conduct or punishment for the offense of battery constituting domestic violence and the right to a jury trial does not seriously diminish the accuracy of his conviction, Andersen would not retroactively apply to Petitioner's case.

While Andersen certainly pronounced a new constitutional rule of criminal procedure for some cases of battery constituting domestic violence charged under state law, the new rule in Andersen does not meet the narrow and well-defined exceptions of non-retroactivity. As such, the City of Henderson respectfully requests that this Court deny the issuance of the requested writ of mandamus.

A. Retroactivity Framework

When a decision of this Court or the U.S. Supreme Court results in a "new rule," that rule applies to all criminal cases pending trial or direct appeal. Griffith v. Kentucky, 479 U.S. 314, 328, 107 S.Ct. 708 (1987); Bejarano v. State, 122 Nev. 1066, 1076146 P.3d 265, 270 (2006). Generally, a new constitutional rule of criminal procedure is not retroactively applied to final convictions. Ennis v. State,

122 Nev. 694, 700, 137 P.3d 1095, 1099 (2006). The rationale for finality in criminal cases is strong.

The “application of constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system. **Without finality, the criminal law is deprived of much of its deterrent effect.** The fact that life and liberty are at stake in criminal prosecutions ‘shows only that conventional notions of finality’ should not have as much place in criminal as in civil litigation, not that they should have none.” Teague v. Lane, 489 U.S. 288, 309, 109 S. Ct. 1060, 1074–75 (1989) (emphasis added).

In Mackey v. United States, Justice Marshall Harlan stated “[n]o one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.” 401 U.S. 667, 691, 91 S. Ct. 1160, 1179 (1971). Further, given the “broad scope of constitutional issues cognizable” on collateral review, Justice Harlan argued that it is sounder, in adjudicating collateral petitions, “to apply the law prevailing at the time a conviction became final than it is to seek to dispose of [habeas] cases on the basis of intervening

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changes in constitutional interpretation.” Id. at 689, 91 S.Ct. at 1178; Teague v. Lane, 489 U.S. 288, 306, 109 S. Ct. 1060, 1073 (1989).

That being said, this Court has recognized two (2) very limited circumstances in which a new constitutional rule will be applied retroactively to final convictions. The new rule will only apply retroactively to final cases (*e.g.* not pending trial or direct appeal) if:

1. The rule establishes that it is unconstitutional to proscribe certain conduct as criminal or impose a type of punishment on certain defendants because of their status,
2. Or it establishes a procedure, without which the likelihood of an accurate conviction is seriously diminished.

Bejarano v. State, 122 Nev. 1066, 1076, 146 P.3d 265, 270 (2006); Ennis v. State, 122 Nev. 694, 700, 137 P.3d 1095, 1100 (2006).

B. Andersen announced a new rule of criminal procedure

“[A] rule is new ... when the decision announcing it overrules precedent, or disapprove[s] a practice this Court had arguably sanctioned in prior cases, or overturn[s] a longstanding practice that lower courts had uniformly approved.” Colwell v. State, 118 Nev. 807, 819-820, 59 P.3d 263, 472 (footnotes, internal quotation marks, citations omitted).

Conversely, a decision is not new if “it has simply applied a well-established constitutional principle to govern a case which is closely analogous to those which have been previously considered in the prior case law.” Id. at 819,

472. It is “too sweeping the proposition” to state that a rule is new “whenever any other reasonable interpretation of prior law was possible.” Id.

The Andersen decision undoubtedly overturned the longstanding precedent and practice of permitting bench trials for misdemeanor battery domestic violence offenses under state law. Prior to Andersen, case law firmly established that domestic battery charges were “petty,” as opposed to “serious” for jury trial purposes. *See, Amezcua v. Eight Judicial Dist. Court of State ex re. County of Clark*, 130 Nev. 45, 319 P.3d 602 (2014). The Andersen decision announced the new rule that first-offense domestic battery offenses are now “serious,” when, under state law, the defendant is subject to losing his/her rights to own and possess a firearm. Andersen, 448 P.3d at 1123. As such, Andersen sets forth a new constitutional rule of criminal procedure. However, Petitioner’s case was final when Andersen was announced. Thus, unless a narrow exception applies, Andersen would be not be applied to Petitioner’s case.

C. Petitioner’s conviction was final when Andersen was announced

Once a conviction becomes final, a new procedural rule generally will not be applied retroactively. “A conviction becomes final when judgment has been entered, **the availability of appeal has been exhausted**, and a petition for certiorari to the Supreme Court has been denied or the time for such a petition has expired.” Colwell v. State, 118 Nev. 807, 820, 59 P.3d 463, 472 (2002) (emphasis

added); Ennis v. State, 122 Nev. 694, 704, 137 P.3d 1095, 1101 (2006) (holding that a conviction is final “for purposes of retroactivity analysis when the availability of direct appeal to the state courts had been exhausted and the time for filing a petition for writ of certiorari has elapsed or a timely petition has been finally decided.”)

Colwell further explained that, pursuant to the U.S. Supreme Court’s analysis in Teague, trial and direct appellate courts can only be expected to follow the law existing at the time of their decisions. Therefore, once a conviction becomes final in the trial and appellate court(s), the conviction generally should not be disturbed by retroactively applying a new rule. Colwell, 118 Nev. at 817, 59 P.3d at 470.

The Nevada Constitution vests the district courts with **final** appellate jurisdiction in all cases arising in the municipal court. Tripp v. City of Sparks, 92 Nev. 362, 363, 550 P.2d 419, 419 (1976); Nev. Const. art. 6, § 6. And, as a general rule, this Court has “declined to entertain writs that request review of a decision of the district court acting in its appellate capacity unless the district court has improperly refused to exercise its jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner.” State v. Eighth Judicial Dist. Court (Hedland), 116 Nev. 127, 134, 994 P.2d 692, 696 (2000); Sparks v. Bare, 132 Nev. 426, 430, 373 P.3d 864, 866–67 (2016). Further, a

municipal court conviction, once appealed to and decided by the district court, “is not subject to further review by appeal to this court.” Tripp v. City of Sparks, 92 Nev. 362, 363, 550 P.2d 419, 419 (1976) (emphasis added); Stilwell v. City of N. Las Vegas, 129 Nev. 720, 722, 311 P.3d 1177, 1178 (2013).

Thus, once a district court affirms the judgment of conviction on a municipal court case and issues the remittitur, the appeal is entirely final. “An appeal concludes and appellate jurisdiction ends upon the issuance of the remittitur from the appeal from this Court to a district court.” Branch Banking & Trust Company v. Gerrard, 134 Nev. 871, 874, 432 P.3d 736, 739 (2018). The remittitur “terminate[s] the case below as to all issues settled by the judgment.” Cerminara v. Eighth Judicial Dist. Court, 104 Nev. 663, 665, 765 P.2d 182, 184 (1988) (“Upon receipt of this court's remittitur, it was the duty of the district court to comply with the mandate of this court without variation”). And “[t]he purpose of a remittitur, aside from returning the record on appeal to the district court, is twofold: it divests this court of jurisdiction over the appeal and returns jurisdiction to the district court, and it formally informs the district court of this court's final resolution of the appeal.” Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1134 (1998).

The remittitur carries the same finality in other jurisdictions. *See e.g.*, Gallenkamp v. Superior Court, Court of Appeal, Fifth District, California, 221

Cal.App. 3d 1, 279 Cal.Rptr. 346 (1990) (“... the essence of remittitur is the returning or revesting of jurisdiction in an inferior court by a reviewing court.”); Kohle v. Sinnett, 136 Cal.App.2d 34, 37, 288 P.2d 139 (1955) (the reviewing court loses jurisdiction at the time of remittitur and the inferior court regains jurisdiction); Brandon v. Caisse, 172 Ill.App.3d 841, 122 Ill. Dec. 746 (1988) (judgment affirmed on appeal was final upon issuance); Begley v. Vogler, 612 S.W.2d 339, 341 (Ky. 1981) (a remittitur directs the return of a matter to the lower court and on its issue or filing in the lower court, that court is reinvested with jurisdiction in the matter); Chase Manhattan Bank v. Principal Funding Corp., 2004 UT 9, 111, 89 P.3d 109 (2004) (across these jurisdictions, one effect remains in common: the remittitur “gives the trial court such jurisdiction as it needs to implement the appellate court's decision in the matter” and the judgment is final upon issuance of the remittitur).

Andersen's new procedural rule was established *after* Petitioner's conviction became final. The Henderson Municipal Court found the Petitioner guilty of battery constituting domestic violence on March 25, 2019 and imposed his sentence and judgment on April 22, 2019. *See* Real Party in Interest's Appendix, pp. 0007, 0011. The Petitioner subsequently filed Notice of Appeal to the Eighth Judicial District Court, an appeal bond was posted, and thereafter, the imposition of the sentence was stayed pending the appeal. *See* Real Party in

Interest's Appendix, p. 0011. The District Court, sitting in its appellate capacity, denied Petitioner's direct appeal on August 21, 2019; remittitur issued on September 5, 2019. *See* Real Party in Interest's Appendix, pp. 0014-0016.

Once the remittitur issued, Petitioner's entire direct appeal process concluded. Petitioner had no further statutory or constitutional rights to appeal the District Court's decision to this Court. *See City of Las Vegas v. Carver*, 92 Nev. 198, 198, 547 P.2d 688, 688 (1976) (rejecting appeal by city from district court judgment reversing municipal court conviction and holding, "[w]e have no jurisdiction for appellate review of a district court judgment, which has been entered on an appeal from a municipal court"). Thus, pursuant to Colwell and Carver, the appeal process in this case had been exhausted, and the conviction became final on September 5, 2019. Moreover, it does not appear that Petitioner has the right to file a petition for writ of certiorari to the U.S. Supreme Court on this offense. Even if that right existed, Petitioner has not filed a petition for writ of certiorari to this Court or any other appellate court.¹

¹ **U.S. Supreme Court Rule 13. Review on Certiorari: Time for Petitioning.** Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

Overall, since Petitioner has no further appellate rights, and the instant petition does not constitute a continued direct appeal, Petitioner's case was final on September 5, 2019. The Andersen decision was entered on September 12, 2019. As such, Andersen's new rule of criminal procedure can only apply to the Petitioner if one of two narrow exceptions apply.

D. Andersen announced a new procedural rule, not a substantive one

Substantive rules apply retroactively since these rules "necessarily carry a risk that a defendant stands convicted of an act that the law does not make criminal" or faces a punishment that the law cannot impose. Bousley v. United States, 523 U.S. 614, 620, 118 S.Ct. 1604 (1998). Substantive rules include "decisions that narrow the scope of a criminal statute by interpreting its terms, as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish." Schiro v. Summerlin, 542 U.S. 348, 351-52, 124 S.Ct. 2147 (2002).

Rules of criminal procedure, on the other hand, regulate "the manner of determining the defendant's culpability" and "do not produce a class of persons convicted of conduct the law does not make criminal. . ." Schiro v. Summerlin, 542 U.S. 348, 351-52, 124 S.Ct. 2147 (2002). Clearly, rules that regulate only the *manner of determining* the defendant's culpability are procedural. Bousley, 523 U.S. at 620, 118 S.Ct. at 1604. And, rules that distribute "decision making

authority” in this fashion are “prototypical procedural rules.” Schriro, 542 U.S. at 353, 124 S.Ct. at 2523.

And “because nonretroactivity is the general requirement only for new rules of criminal procedure, a new substantive rule is more properly viewed not as an exception to that requirement but as a rule that will generally apply retroactively.” Bejarano v. State, 122 Nev. 1066, 1076, 146 P.3d 265, 272 (2006) (holding that the Court’s decision in McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004) announced a new substantive rule, since it concerned the reach of Nevada’s death penalty statute, and thus was entitled to retroactive application).

Andersen is analogous to the U.S. Supreme Court’s decision in Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428 (2002), and this Court’s decision in the instant case can be guided by both Schriro v. Summerlin, 542 U.S. 348, 124 S.Ct. 2147 (2002), and Colwell v. State, 118 Nev. 807, 59 P.3d 463 (2002).

In Ring, the U.S. Supreme Court held that it was unconstitutional for a judge, rather than a jury, to make findings of fact to support the death penalty. This Court later found that that Ring set forth a procedural rule, reasoning that it “did not forbid either the criminalization of any conduct or the punishment in any way of any class of defendants.” Colwell v. State, 118 Nev. 807, 821, 59 P.3d 463, 473 (2002). The U.S. Supreme Court confirmed this Court’s conclusion, holding that Ring propounded a procedural rule that was not retroactive and

merely changed the method of determining punishment in accordance with constitutional principles, but not the range of punishment or those persons actually subject to it. Schriro, 542 U.S. at 353, 124 S.Ct. 2519, *see also* Bejarano, 122 Nev. at 1077-79; Ennis v. State 122 Nev. 294, 137 P.3d 1095 (2006) (ruling that Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2006), was not retroactive since Crawford's holding had nothing to do with either the range of conduct that can be proscribed or the punishment that can be imposed).

Judged by this standard, Andersen's holding can properly be classified as procedural. Andersen did not alter the range of conduct for the crime of battery constituting domestic violence nor did it attempt to change the sentencing provisions for this offense. The decision simply found that if a defendant may lose his/her firearm possession rights under state law due to a conviction for battery domestic violence, then the defendant must be afforded a jury trial.

Domestic abusers may claim that Andersen meets this exception in that it created a substantive rule. They may argue that Andersen can be interpreted to increase punishment (firearm prohibition) on certain offenses. However, Andersen does not prohibit firearm possession – that prohibition was previously put in place by the Nevada Legislature when NRS 202.360(1)(a) was amended in 2015. Andersen merely acknowledged the direct and automatic consequences that

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arise from a battery domestic violence conviction under state law, thus entitling certain defendants to a jury trial.

Ultimately, Andersen's holding is procedural. This decision did not alter the range of conduct that constitutes the crime of battery constituting domestic violence. The requisite conduct and elements of the offense (*i.e.* the use of unlawful force or violence against a victim with a domestic relationship, NRS 200.481, 200.485 & 33.018) remain fully intact post-Andersen. The penalties listed in NRS 200.485 are unchanged post-Andersen as well. Andersen simply altered the permissible method (jury trials vs. bench trials) for determining a defendant's culpability. As such, Andersen's new rule is procedural and not retroactive unless it meets the second narrow exception.

E. Andersen did not establish a procedure without which the likelihood of accurate convictions would be seriously diminished

The only other possible way for the new rule in Andersen to apply retroactively to Petitioner's conviction would be a determination that Andersen established a procedure without which would seriously diminish the likelihood of accurate convictions. This can hardly be said to be the case.

Moreover, this issue was previously decided in both Schriro v. Summerlin, 542 U.S. 348, 124 S.Ct. 2147 (2002) and Colwell v. State, 118 Nev. 807, 59 P.3d 463 (2002).

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The U.S. Supreme Court stated that:

The question here is not, however, whether the Framers believed that juries are more accurate factfinders than judges (perhaps so-they certainly thought juries were more independent, *see Blakely v. Washington*, post, 542 U.S., at 305-308, 124 S.Ct. 2531, 2538-2540, 159 L.Ed.2d 403, 2004 WL 1402697). Nor is the question whether juries actually are more accurate factfinders than judges (again, perhaps so). Rather, the question is whether judicial factfinding so “*seriously* diminishe[s]” accuracy that there is an “ ‘impermissibly large risk’ ” of punishing conduct the law does not reach. *Teague*, supra, at 312-313, 109 S.Ct. 1060 (*quoting Desist v. United States*, 394 U.S. 244, 262, 89 S.Ct. 1030, 22 L.Ed.2d 248 (1969) (Harlan, J., dissenting)) (emphasis added). The evidence is simply too equivocal to support that conclusion.

Schriro v. Summerlin, 542 U.S. 348, 355–56, 124 S. Ct. 2519, 2525 (2004).

The Court further noted that in *DeStefano v. Woods*, 392 U.S. 631, 88 S.Ct. 2093 (1968), the Court refused to give retroactive effect to *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444 (1968), which applied the Sixth Amendment’s jury-trial guarantee to the States. The Court stated that, although “the right to jury trial generally tends to prevent arbitrariness and repression[,] ... ‘[w]e would not assert ... that every criminal trial-or any particular trial-held before a judge alone is unfair or that a defendant may never be as fairly treated by a judge as he would be by a jury.’” *DeStefano*, 392 U.S., at 633-634, 88 S.Ct. 2093 (*quoting Duncan*, at 158, 88 S.Ct. 1444). The Court concluded that “[t]he values implemented by the right to jury trial would not measurably be served by requiring retrial of all persons convicted in the past by procedures not consistent with the Sixth Amendment right

to jury trial.” DeStefano, 392 U.S. at 634, 88 S.Ct. at 2093; Schriro, 542 U.S. at 356–57, 124 S. Ct. at 2525–26.

This Court in, Colwell v. State, 118 Nev. 807, 821–22, 59 P.3d 463, 473 (2002) held:

The Supreme Court in Ring did not determine that factfinding by either juries or judges was superior in capital cases. In response to Arizona's suggestion that judicial factfinding might better protect against arbitrary imposition of the death penalty, the Court stated: “The Sixth Amendment jury trial right, however, does not turn on the relative rationality, fairness, or efficiency of potential factfinders.” The Court did declare that “the superiority of judicial factfinding in capital cases is far from evident” and noted that most states have entrusted factfinding in capital cases to juries. But we believe it is clear that Ring is based simply on the Sixth Amendment right to a jury trial, not on a perceived need to enhance accuracy in capital sentencings, and does not throw into doubt the accuracy of death sentences handed down by three-judge panels in this state. **We conclude therefore that the likelihood of an accurate sentence was not seriously diminished simply because a three-judge panel, rather than a jury, found the aggravating circumstances that supported Colwell's death sentence.**

Id. (internal citations omitted) (emphasis added).

In the instant case, Andersen simply regulated the procedure for determining culpability in battery domestic violence cases charged under state law (*i.e.* providing a jury trial rather than a bench trial), but the lawful procedure at the time of trial in March 2019 was certainly a bench trial. And, this new rule, does not seriously diminish the accuracy of prior convictions rendered by a Municipal

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Court Judge or Justice of the Peace under the then-prevailing law. The analysis in both Schriro and Colwell remains sound.

In contrast, this Court, in Bejarano, held that the failure to apply the new rule in McConnell retroactively would diminish the accuracy of some past death penalty sentences. Id. at 1078-79. As opposed to Andersen, which just sets forth the manner to determine culpability, the Court in Bejarano ruled that McConnell concerned who and when the death penalty could be applied. Id. Since the new rule in Andersen does not question accuracy of previous domestic violence trials adjudicated by a judge, this exception would not apply.

**II. MUNICIPAL COURTS SHOULD BE GRANTED THE
CLEAR AUTHORITY TO HOLD JURY TRIALS TO
COMPLY WITH THE ANDERSEN DECISION**

Petitioner requests that this Court issue a writ of mandamus and ultimately remand his case to the Henderson Municipal Court for a jury trial on the charge of misdemeanor battery domestic violence. See Petition for Writ of Habeas Corpus (Post-Conviction) or Alternatively Petition for Writ of Mandamus, p. 10.

While the City of Henderson does not believe that Petitioner's case qualifies for a jury trial under the above retroactivity analysis, the ultimate question remains unanswered regarding whether the City of Henderson can legally comply with Petitioner's requested remedy. If this Court determines that Petitioner is entitled to a jury trial, the City of Henderson requests that this Court unequivocally state

that municipal courts have the constitutional authority to conduct battery domestic violence jury trials pursuant to the Andersen decision.

To be clear, the City of Henderson believes that the Henderson Municipal Court *does* have the authority to hold jury trials to comply with the constitutionally-based Andersen decision. Any provision of statute or city charter to the contrary would certainly be overridden by the Andersen decision. However, the City's view is not universally held. Quite simply, municipalities must have a clear mandate from this Court in order to conscientiously plan to conduct jury trials.

In Andersen, this Court stated, “[g]iven that the Legislature has indicated that the offense of misdemeanor domestic battery is serious, it follows that one facing the charge is entitled to the right to a jury trial.” Andersen, 448 P.3d at 1124. The City of Las Vegas was the real party in interest in the Andersen case, and Mr. Andersen's case originated in the Las Vegas Municipal Court. This Court remanded the Andersen case to the District Court with an order to vacate the conviction, and ultimately, referred the case to the Las Vegas Municipal Court to set the jury trial. This Court obviously remanded the Andersen case for a jury trial but did not expressly state that the Las Vegas Municipal Court had the authority to conduct that jury trial.

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The City of Henderson believes that the correct (and only) interpretation of the Andersen decision is that this Court authorized municipal courts to hold jury trials for certain misdemeanor battery domestic violence offenses to comply with the 6th Amendment. However, that interpretation is not collective. In short, the City of Henderson (and all municipalities in Nevada) need clarity regarding whether municipal courts are authorized to hold jury trials pursuant to the Andersen decision in order to responsibly plan for these trials.

Undoubtedly, the Henderson City Attorney has the legal authority to charge a defendant with the crime of battery constituting domestic violence (NRS 200.481, 200.485, 33.018) in the Henderson Municipal Court.

The City of Henderson was incorporated pursuant to a charter in 1971. Henderson City Charter, Chapter 266, Statutes of Nevada 1971, Article I, Section 1.010. Through this special legislative act, the City was expressly granted the authority to prosecute violations of state law that occur within the City of Henderson. Henderson City Charter Section 2.140(2) states, “[a]ny offense made a misdemeanor by the laws of the State of Nevada shall also be deemed to be a misdemeanor in the City whenever such offense is committed within the City.” Then, Henderson City Charter Section 3.060 provides that the Henderson City Attorney shall “[d]etermine whether the City should initiate any judicial...proceeding, and [p]erform such other duties as may be designated by

the City Council or prescribed by ordinance.” Further, in 1974, the City Council, pursuant to its express legislative authority² in Section 3.060, enacted Henderson Municipal Code 8.02.010, which states:

The commission of any act within the corporate limits of the City of Henderson by any person or persons, or the failure to perform any duty imposed by law which is defined as an offense and made a misdemeanor under the laws of the State of Nevada is declared to be, and shall constitute a misdemeanor when said act is committed, or said duty omitted, within the corporate limits of the City of Henderson.

Certainly, the City of Henderson has the authority to prosecute the crime of battery constituting domestic violence (NRS 200.481, 200.485, 33.018) in the Henderson Municipal Court. The question remains though – did the Andersen

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² See NRS 268.001 Legislative findings and declarations. The Legislature hereby finds and declares that:

...

2. In Nevada’s jurisprudence, the Nevada Supreme Court has adopted and applied Dillon’s Rule to county, city and other local governments.

3. As applied to city government, Dillon’s Rule provides that the governing body of an incorporated **city possesses and may exercise only the following powers** and no others:

(a) **Those powers granted in express terms** by the Nevada Constitution, statute or **city charter**;

(b) Those powers necessarily or fairly implied in or incident to the powers expressly granted; and

(c) Those powers essential to the accomplishment of the declared objects and purposes of the city and not merely convenient but indispensable. (emphasis added).

decision grant municipalities the right to hold jury trials for battery domestic violence, when charged under the state law?

Municipalities traditionally derive their power and authority from the Nevada Constitution, their respective charters or the Nevada Revised Statutes. *See* NRS 268.001. None of those sources directly authorize municipal courts to conduct jury trials. NRS 175.011³ does not even mention municipal courts when discussing jury trials. And, this Court has held that because municipal courts are created by statute, their jurisdiction is limited to that granted by statute. McKay v. City of Las Vegas, 106 Nev. 203, 205, 789 P.2d 584, 585 (1990).

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³ NRS 175.011 – Trial by Jury – states:

1. In a district court, cases required to be tried by jury must be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the State. A defendant who pleads not guilty to the charge of a capital offense must be tried by jury.

2. In a Justice Court, a case must be tried by jury only if the defendant so demands in writing not less than 30 days before trial. Except as otherwise provided in NRS 4.390 and 4.400, if a case is tried by jury, a reporter must be present who is a certified court reporter and shall report the trial.

Moreover, at first glance, NRS 266.550 expressly forbids municipal courts from conducting jury trials.⁴ However, since the City of Henderson was incorporated pursuant to a city charter, as opposed to the general laws of NRS Chapter 266, it does not appear that NRS 266.550 would apply to the City of Henderson.⁵ In Blanton v. N. Las Vegas Mun. Court, 103 Nev. 623, 628, 748 P.2d 494, 497 (1987), this Court held that NRS 266.550 does not apply to incorporated cities and stated "Las Vegas and North Las Vegas, whose municipal courts are the subject of the instant dispute, are incorporated cities existing under the provisions of special legislative acts. *See* 1983 Nev.Stat. Ch. 517 at 1391-1437; 1971 Nev.Stat. Ch. 573 at 1210-1229. Consequently, the statutory prohibition against the holding of jury trials in the municipal courts, *see* NRS 266.550, does not apply to the cases presently before this court." In a footnote,

⁴ NRS 266.550(1) states:

The municipal court shall have such powers and jurisdiction in the city as are now provided by law for justice courts, wherein any person or persons are charged with the breach or violation of the provisions of any ordinance of such city or of this chapter, of a police or municipal nature. The trial and proceedings in such cases must be summary and without a jury.

⁵ NRS Chapter 266 is referenced in the Henderson City Charter, as well as language that some provisions of NRS Chapter 266 are applicable to the City, however there is no clear indication that the City or Nevada Legislature intended NRS 266.550 to apply to its municipal courts.

the Court then mentioned that “[t]he other cities with special charters are Boulder City, Caliente, Carlin, Carson City, Elko, Gabbs, Henderson, Reno, Sparks, Wells and Yerington.” Blanton, 103 Nev. at 628, 748 P.2d at 497, fn.5.

The City of Henderson is an incorporated city existing under a special charter and therefore is not subject to the statutory prohibition against holding jury trials in municipal court. However, in Donahue v. City of Sparks, 111 Nev. 1281, 1283, 903 P2d 225, 226 (1995), this Court stated that even though the City of Sparks was also enacted under a special charter, “there are no procedures or provisions in the Nevada Revised Statutes, Sparks City Charter or the Sparks Municipal Code for summoning or selecting juries in municipal court. We conclude that absent an express grant of authority, a municipal court lacks discretion to order a jury trial where one is not required by state or federal constitutional law.”

Thus, without a clear directive, it remains uncertain whether jury trials may be conducted in municipal courts. The City of Henderson requests that clarification here. Pursuant to Andersen, the U.S. and Nevada Constitutions require a jury trial for a defendant charged with misdemeanor battery domestic violence under state law, whenever a defendant’s Second Amendment firearms rights are in jeopardy. And, pursuant to Donahue, if state or federal constitutional law dictates the necessity of a jury trial, the municipal court may then conduct a

jury trial to fulfill those rights. The City of Henderson believes that this Court granted municipal courts the ability to hold jury trials on battery domestic violence offenses under the state law, in compliance with the 6th Amendment. And further, the judicial branch has the inherent powers to regulate its own affairs. Blackjack Bonding v. City of Las Vegas Mun. Court, 116 Nev. 1213, 1218-19, 14 P.3d 1275, 1279 (2000). Here, those affairs include the right to conduct jury trials pursuant to Andersen.

The City of Henderson requests that this Court expressly state that municipal courts now constitutionally possess the authority to conduct jury trials for misdemeanor battery domestic violence offenses, when a defendant's firearm possession rights are affected. Without this clarification, it remains difficult, if not impossible, for municipalities to financially plan to conduct jury trials in their respective municipal courts.

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CONCLUSION

Based on the above arguments of law and fact, the City of Henderson respectfully requests that this Court discharge the instant Petition for Writ of Mandamus.

DATED this 5 day of December, 2019.



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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2010 in 14-point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief excepted by NRAP 32(a)(7)(C) it is proportionately spaced, has a typeface of 14 points or more, and contains 7,112 words.

3. Finally, I hereby certify that I have read this Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 5 day of December, 2019.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6 day of December, 2019, a true and correct copy of the foregoing REAL PARTY IN INTEREST CITY OF HENDERSON'S ANSWERING BRIEF was served via electronic service through the Court's electronic filing system per NEFCR 9 to the following:

Aaron Ford
Michael Aisen
Adam Gill

and that the same was served via US mail, certified postage prepaid, and addressed as follows:

Eighth Judicial District Court
Hon. Richard Scotti, Dept. 2
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101



City of Henderson Employee

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROMAN HILDT,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
RICHARD F. SCOTTI, DISTRICT
JUDGE,

Respondents,

and

CITY OF HENDERSON,

Real Party in Interest.

CASE NO: 79605

DC Case No: C-19-339750-A
Dept. No: II

HMC Case No: 17CR012574
Dept. No: 3

**REAL PARTY IN INTEREST
CITY OF HENDERSON'S
APPENDIX**

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Attorneys for Petitioner

Document Title.....	Page Nos.
Criminal Complaint – HMC Case No. 19CR012574	0001
Henderson Municipal Court Docket	0002-00013
District Court Order Denying Appeal and Remanding to Lower Court..	0014-0015
District Court Remittitur	0016

COPY

**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 2:46
MUNICIPAL COURT
CITY OF HENDERSON
CASE NO. 17CR012574 (PCN 1) *JK* CLERK

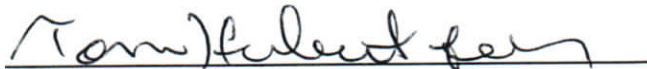
Josh M. Reid, City Attorney

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



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
			OPEN
			\$0.00

ATTY: GULLO, ROBERT J

1 DOMESTIC BATTERY, 1ST [50235]

NVHP5108127C-001

SENTENCED

Date / Time / Dept	Event	Event Result	Event Notes
1/9/20 10:00 am D3	CTR		
10/3/19 10:00 am D3	CTR	CONTINUED FOR SENTENCING	
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

crtvram2

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 INCUSTODY-- BAIL NOTIFICATION SENT TO HDC

ML2

10/17/17 RETURN COURT DATE:

CONTINUANCE FORM
Sent on: 10/17/2017 13:00:44.40

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

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

Date Printed: 11/19/19 12:27 pm

Page 1 of 12

DATE: 11/19/19
COURT CLERK: [Signature]

RPII Appendix 0002



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 #14838 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

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

DATE: 11/19/19

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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: 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	SDC2			
2/15/18	COURT DATE SET: Event: TRIAL Date: 04/26/2018 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3 Result: TRIAL CONT: DCA REQUEST	LMC			
4/26/18	ORAL MOTION FOR CONTINUANCE BY CAO / GRANTED CASH BOND: STANDS	LMC			
4/26/18	COUNTER: 10.07.41 / 10.28.33	LMC			
4/26/18	COURT DATE SET: Event: TRIAL Date: 07/23/2018 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3	LMC			
4/26/18	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 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	LMC			
7/23/18	CONTINUED: STIPULATION FILED BY DEFENSE ATTY / GRANTED BOND: STANDS	MLH3			

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RP11 Appendix 0004



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

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

DATE: 11/19/18
COURT CLERK: [Signature]



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			

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

DATE: 11/19/19

COURT CLERK: [Signature]



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: CMCs - 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

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

DATE: 11/19/19
COURT CLERK: [Signature]

RP11 Appendix 0007



HENDERSON MUNICIPAL COURT
DOCKET SHEET

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

D3 BURR

DR# 17-19690

		LMC	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				

Date Printed: 11/19/19 12:27 pm

Page 7 of 12

I HEREBY CERTIFY THAT THIS REPORT IS A TRUE COPY OF THE
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RP11 Appendix 0008



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	JJP5	25.00	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	JJP5	25.00	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				

I HEREBY CERTIFY THAT THIS REPORT IS A TRUE COPY OF THE
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DATE: 11/19/19
COURT CLERK: [Signature]



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: 10.28.40				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: 11/19/19

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Page 2 of 12

RP11 Appendix 0010



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	LMC			
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
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DATE: 11/19/19
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RP11 Appendix 0011



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
4/22/19	CONDITIONS OF RELEASE DISSOLVED				LMC
4/23/19	APPEAL CONFIRMATION/ REPLY RECEIVED: DIST COURT CASE # C-19-339750-A				LMC
9/5/19	APPEAL REMANDED FROM DISTRICT COURT: APPEAL DENIED. NOTICE OF ENTRY OF ORDER DENYING APPEAL AND REMANDING TO LOWER COURT FILED 8/27/19. COURT FOUND THERE WAS SUFFICIENT EVIDENCE PRESENTED TO JUDGE BURR AND THE EVIDENCE COULD NOT BE REWEIGHED. (\$3,000 INITIAL CASH BOND WAS HELD AS APPEAL BAIL. JUDGE BURR TO DETERMINE ON RETURN COURT DATE FOR RE-IMPOSITION OF SENTENCE IF SAID CASH BOND WILL BE APPLIED TOWARD THE FINE WITH BALANCE REFUNDED TO POSTER.) Charge #1: DOMESTIC BATTERY, 1ST				LMC
9/5/19	COURT DATE SET: **APPEAL REMAND: RE-IMPOSITION OF SENTENCE** Event: TRIAL Date: 10/03/2019 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3 Result: CONTINUED FOR SENTENCING				LMC
9/5/19	COPY OF RETURN COURT DATE NOTICE MAILED TO DEFENSE ATTORNEY GULLO AND DEFENDANT. (COPY FORWARDED TO CAO) Sent on: 09/05/2019 16:17:09.78				LMC

I HEREBY CERTIFY THAT THIS REPORT IS A TRUE COPY OF THE
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Page 11 of 12

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RP11 Appendix 0012



HENDERSON MUNICIPAL COURT
DOCKET SHEET

D3 BURR

HILDT, ROMAN CHRISTOPHER

17CR012574

DOB: 9/11/71

DR# 17-19690

		ASSESSED	PAID	CREDIT	BALANCE
10/3/19	CONTINUED: STIPULATION FILED BY DEFENSE ATTY / GRANTED - CONTINUED FOR RE-IMPOSITION OF SENTENCE - POST APPEAL REMAND. (DEFENDANT RECENTLY SUBMITTED A PETITION REGARDING THIS CASE TO THE SUPREME COURT OF NEVADA - PENDING) CASH BOND (HELD AS APPEAL BAIL): STANDS	LMC			
10/3/19	COUNTER: 10.00.37	LMC			
10/3/19	COURT DATE SET: Event: TRIAL Date: 01/09/2020 Time: 10:00 am Judge: BURR, RODNEY T Location: DEPARTMENT 3	LMC			
10/3/19	EVENT PARTICIPANTS: Court Location: DEPARTMENT 3 Check In: Judge: BURR, RODNEY T Location: DEPARTMENT 3 Staff: CRG - CLERK: Present GARCIA, NECHOLE M - DEPUTY CITY ATTORNEY: Present LMC - CLERK: Present Prosecutors: Parties: HILDT, ROMAN CHRISTOPHER - DEFENDANT: Not Present GULLO, ROBERT J - Attorney for DEFENDANT: Not Present	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: 11/19/19

COURT CLERK: [Signature]

Steven D. Grierson

1 **ORDM**

2 ELAINE F. MATHER, ESQ.
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 Attorneys for Respondent

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 ROMAN CHRISTOPHER HILDT,

13 Appellant,

14 vs.

15 CITY OF HENDERSON,

16 Respondent.

} Case No: C-19-339750-A
} Dept No. 2

ORDER DENYING APPEAL
AND REMANDING
TO LOWER COURT

17 This matter came before this Court on August 8, 2019, with MICHAEL
18 AISEN, ESQ., present for Appellant and ELAINE F. MATHER, ESQ., present for
19 Respondent. Following argument, and review of case law, this Court finds that the
20 Supreme Court did not view the permanent loss of Second Amendment rights as
21 rising to the level of seriousness that would allow the court to afford the right to a jury
22 trial. There was sufficient evidence presented to Judge Burr and the evidence could
23 not be re-weighted. Therefore,

24 IT IS HEREBY ORDERED that this Appeal is DENIED, the same hereby is
25 DISMISSED, and it is further,

26 ORDERED, ADJUDGED AND DECREED that the conviction in Henderson
27 Municipal Court Case No. 17CR012574 is AFFIRMED, and this case is

28 /////

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input checked="" type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Defect	<input type="checkbox"/> Judgment of Arbitration

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 Respectfully submitted,


DISTRICT COURT JUDGE
MH

7
8 By: Elaine F. Mather
9 ELAINE F. MATHER, ESQ.
10 Nevada State Bar No. 10399
11 243 South Water Street – MSC 711
12 Henderson, NV 89015
13 Attorney for Respondent

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

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NOV 21 2019

ORIGINAL

FILED

SEP - 5 2019

46

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: *[Signature]*
Deputy Clerk of the Court

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Steven D. Grierson
CLERK OF THE COURT

C-19-339750-A
RMTT
Remittitur to the Lower Court
4860602



NOV 21 2019

RP11 Appendix 0016

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SEP - 5 2019
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