

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 COURT JUDGE,

Respondents,

And

CITY OF HENDERSON,

Real Party in Interest.

Electronically Filed
Dec 11 2019 04:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 79605

Dist. Ct. Case No.:
C-19-339750-A

**BRIEF OF AMICUS CURIAE FOR CITY OF LAS VEGAS
IN SUPPORT OF REAL PARTY IN INTEREST**

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INTEREST OF AMICUS

The City of Las Vegas is a political subdivision of the State of Nevada, and may file a brief without the consent of the parties or leave of the court pursuant to NRAP 29(a).

On September 12, 2019, the Nevada Supreme Court issued a decision in Andersen v. Eighth Judicial District Court in & for Cty of Clark, 135 Nev. Adv. Op. 42, 448 P.3d 1120 (2019), announcing the new rule that first-offense domestic battery was a serious offense to which a right to jury trial attaches. Since this decision was issued, several motions have been filed attempting to divest municipal courts of their jurisdiction to hear these misdemeanor cases based upon NRS 266.550 and certain City Charters.

The City of Las Vegas prosecutes a large percentage of the State of Nevada's misdemeanor battery domestic violence offenses. The amicus has a compelling interest in determining whether or not municipal courts possess jurisdiction to conduct jury trials. This Amicus Brief supports the Real Party At Interest's argument that municipalities have the authority to hold jury trials.

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ARGUMENT

I.

THE CITY CHARTERS OF HENDERSON AND LAS VEGAS PRECLUDE THE APPLICABILITY OF NRS 266.550

The majority of arguments attempting to divest municipalities of the jurisdiction to conduct jury trials rely upon NRS 266.550. However, there is a key exemption that undermines this argument. Specifically:

NRS 266.005. Inapplicability to certain cities

Except as otherwise provided in a city's charter, the provisions of this chapter shall not be applicable to incorporated cities in the State of Nevada organized and existing under the provisions of any special legislative act or special charter enacted or granted pursuant to the provisions of Section 1 of Article VIII of the Constitution of the State of Nevada.

The City of Henderson and the City of Las Vegas are incorporated cities within the State of Nevada, organized and existing under special charters. As such, application of NRS 266.550 to these cities is not directly through the Nevada Revised Statutes, but can only be accomplished through their city charters. See also Donahue v. City of Sparks, 111 Nev. 1281, 1282–83, 903 P.2d 225, 226 (1995) (finding that the City of Sparks is an incorporated city existing under a special charter, and thus is not subject to NRS 266.550, the statutory prohibition against jury trials in municipal courts).

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The amicus acknowledges that the Municipal Court Section of the City of Henderson and City of Las Vegas Charters permits governance of NRS Chapters 5 and 266, but only to the extent that it is **“not inconsistent with this Charter.”** See City of Henderson Charter Section 4.015; City of Las Vegas Charter Section 4.010.¹ (Emphasis added). Prohibiting a city from exercising its judicial powers over battery domestic violence offenders is clearly inconsistent with the Charters’ purpose, which is to provide for the public health, safety and general welfare of its citizens. See Henderson Charter Section 1.010; Las Vegas Charter Section 1.010.

The inconsistency of NRS 266.550 to the City Charters is further demonstrated by Henderson Charter Section 2.140(2) and Las Vegas Charter Section 2.160(2), which provides that a misdemeanor battery (or any misdemeanor) is deemed to have been committed against the City. Obviously the Charter’s purpose is frustrated when it is unable to prosecute or sentence individuals that have committed batteries against the City.

Although a transfer to justice court can potentially be accomplished pursuant to NRS 5.053, “a transfer may only become effective after a notice of acceptance is returned by the justice court...If a justice court refuses to accept the transfer of a case, the case *must* be returned to the municipal court.” (Emphasis added).

¹Upon information and belief, only City of Henderson, City of Las Vegas, and City of North Las Vegas reference any applicability of Chapter 266 to its Charters.

Accordingly, a transfer of cases to justice court is not automatic or mandatory. Without a notice of acceptance, these cases are to be returned to the municipal court, where they would have to be dismissed. Such a finding would lead to an absurd result that is contrary to the public health, safety and welfare of the City of Henderson and the City of Las Vegas. Such a proposition directly conflicts with both Charters' purposes. Accordingly, NRS 266.550 does not apply to the City of Henderson or the City of Las Vegas either by statute or under the terms of the City Charter.²

Even assuming that NRS 266.550 was applicable to the Cities of Henderson and Las Vegas, the requisite liberal interpretation would grant the municipal courts authority to conduct jury trials. The construction of charters as set forth in Henderson's City Charter Section 1.010(1) provides:

Preamble; Legislative Intent. Section 1.010

In order to provide for the orderly government of the City of Henderson and the general welfare of its citizens the Legislature hereby establishes this Charter for the government of the City of Henderson. It is expressly declared as the intent of the Legislature that all provisions of this Charter be liberally construed to carry out the express purposes of the Charter and that the specific mention of particular powers shall not be construed as limiting in any way the general powers necessary to carry out the purposes of the Charter. (Emphasis added).³

²Applying NRS 266.550 would also contradict NRS 5.050(2) and NRS 266.555, which grant municipal courts jurisdiction of misdemeanor offenses committed within the City.

³A nearly identical provision is set forth in the Las Vegas Charter Section 1.100(2).

As set forth above, Chapter 266 is only applicable through the Charters' provisions. Therefore, any application should be liberally construed to effect the Charters' purposes. As such, whenever any statutes are ambiguous or are in conflict with each other, they should be applied in a way that accomplishes a public safety and general welfare goal.

NRS 266.550 is ambiguous and contradictory on its face as it 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.

The first sentence provides that municipal courts have the same powers and jurisdiction as justice courts. As such, if justice courts have the power/jurisdiction to conduct jury trials, then the municipal courts have this same power/jurisdiction.

The final sentence, which states "without a jury," obviously contradicts the explicit power granted in the first sentence. As such, NRS 266.550 is both ambiguous and contradictory. Pursuant to Charter Sections 1.010 (Henderson) and 1.100 (Las Vegas), it should be read to accomplish the purposes and objects of the Cities' Charters. Accordingly, it should be interpreted to grant municipal courts the same power/jurisdiction to conduct jury trials as justice courts.

Moreover, Chapter 5 of the NRS is also applicable to municipal courts. See Charters Section 4.015 (Henderson); Sec. 4.010 (Las Vegas). However, unlike NRS

266.550, it is applicable to city municipal courts by City Charter *and* as a direct statutory authority because it does not have a default inapplicability. Therefore, any conflict between the two chapters would be resolved in favor of Chapter 5 and its statutes.

As this Court has previously held, “NRS 5.050 plainly grants municipal courts jurisdiction to entertain criminal actions charging a misdemeanor violation.” City of Las Vegas v. Las Vegas Mun. Court, 110 Nev. 1021, 1023, 879 P.2d 739, 740 (1994). Accordingly, under the terms of NRS 5.050(2), the municipalities have proper jurisdiction to charge battery domestic violence offenses. It would lead to an absurd result for municipalities to be able to charge the offense, but not possess the jurisdiction to entertain trials and/or sentence the offenders.

Moreover, NRS 5.073 provides:

Conformity of practice and pleadings to those of justice courts

(1)The practice and proceedings in the municipal court must conform, as nearly as practicable, to the practice and proceedings of justice courts in similar cases...

It is undisputed that Clark County justice courts may now conduct jury trials for serious misdemeanor charges. The municipal courts must conform to these same proceedings and will, therefore, possess jurisdiction to conduct jury trials. In applying a liberal interpretation of competing statutes to achieve the purpose of the Charter, NRS 5.073 would govern in lieu of NRS 266.550.

II.

ANDERSEN CREATED A CONSTITUTIONAL REQUIREMENT FOR MUNICIPAL TRIALS THAT WOULD OVERRULE ANY COMPETING STATUTE

In Andersen, the defendant demanded a jury trial in the Las Vegas Municipal Court for his first-offense domestic violence charge. Andersen v. Eighth Judicial District Court in & for Cty of Clark, 135 Nev. Adv. Op. 42, 448 P.3d 1120 (2019). This court held that the state firearm prohibition resulting from the 2015 amendment to NRS 202.360 resulted in a legislative determination that misdemeanor battery domestic violence is a serious offense to which the right to a jury trial attaches. Id. As such, in order to afford Andersen the requested relief in the court of original jurisdiction, Las Vegas Municipal Court would need to conduct a jury trial.

A defendant's constitutional rights generally overrides any statutory prohibitions. See e.g. Reno v. Howard, 130 Nev. 110, 318 P.3d 1063 (2014) (finding that a defendant's Confrontation Clause rights override NRS 50.315 requirement that a bona fide dispute must be alleged in demanding phlebotomist); Flores v. State, 121 Nev. 706, 120 P.3d 1170 (2005) (State not entitled to rely upon NRS 51.315 to introduce child witness's out-of-court statements as it violated defendant's Sixth Amendment right to confrontation).

In deciding Andersen, this court found that a defendant has a Sixth Amendment right to a jury trial for battery domestic violence charges because they

are deemed serious offenses. Such a right overrules any statutory prohibition against municipal jury trials. Accordingly, this court should unequivocally find that the municipalities possess jurisdiction to conduct jury trials.

CONCLUSION

Petitioner in this matter specifically requests that his case be remanded to Henderson Municipal Court Department 3 for a jury trial. The City Charters demonstrate an intent for municipal courts to continue to retain jurisdiction over misdemeanor charges, including serious offenses. As such, the amicus respectfully requests that this court clarify the municipalities' jurisdiction to conduct jury trials.

Respectfully submitted, this 17th day of December, 2019.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the brief complies with formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using MS Word in 14-point Times New Roman. I further certify that this brief complies with page- or type-volume limitations of NRAP 32(a)(7) because, excluding NRAP (a)(7)(C) it is proportionally spaced, has a typeface of 14 points or more and contains 2,464 words.

I hereby certify that I have read this appellate 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), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. 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 Appellant Procedure.

Dated this 11th day of December, 2019.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on December 11, 2019. I deposited a true and correct copy of the foregoing document, via United States mail, first-class postage prepaid, to:

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