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Docket 81075 Document 2020-44846

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Case No. 81075

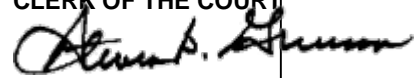
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff(s),)	
)	Case No. C-19-345584-1
vs.)	
)	Department VI
TED MICHAEL DONKO,)	
)	
Defendant(s).)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH,
DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 13, 2020

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – PART 2 – DAY 1 OF 1**

APPEARANCES:

For the Plaintiff(s):	CHAD N. LEXIS, ESQ. LAURA ROSE GOODMAN, ESQ. (Deputy District Attorneys)
-----------------------	--

For the Defendant(s):	ROBSON M. HAUSER, ESQ. KAMBIZ SHAYGAN-FATEMI, ESQ. (Deputy Public Defenders)
-----------------------	--

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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For the State:	
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For the Defendant:	
No Exhibits Offered.	

1 **LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 13, 2020**

2 [Proceeding commenced at 6:22 p.m.]

3
4 [In the presence of the jury.]

5 THE COURT: Ladies and gentlemen, there is one more
6 section of this trial that you are required to complete. Now that you
7 have returned a verdict on the counts that were just read, we'll
8 begin the second portion of the trial. You will be allowed to
9 consider the evidence that has been previously presented, as well
10 as any evidence that will be presented in this portion of the trial.

11 May the prosecutors please approach with the second
12 charging document.

13 MR. LEXIS: Can we approach, Judge?

14 THE COURT: Yeah.

15 [Bench conference transcribed as follows.]

16 MR. LEXIS: It's 100 percent my fault, I apologize.
17 [Indiscernible] the one who did it, I [indiscernible] tonight.

18 THE COURT: Okay. You're -- [indiscernible], it's pretty
19 [indiscernible]. Yeah.

20 MR. LEXIS: Okay. I apologize. It's my fault.

21 THE COURT: No, it's okay. Do you have [indiscernible]?

22 MR. LEXIS: Yes, ma'am.

23 THE COURT: With you?

24 MR. LEXIS: Yes.

25 THE COURT: All right. Do you want to [indiscernible]?

1 MR. LEXIS: Well, that's [indiscernible] defendant
2 [indiscernible].

3 THE COURT: Oh, okay.

4 MR. LEXIS: I'm going to go get it now, so [indiscernible].

5 THE COURT: Okay.

6 MR. LEXIS: I'll be back.

7 THE COURT: All right.

8 [End of bench conference.]

9 THE COURT: All right. We'll just be at ease for one
10 second.

11 [Pause in proceedings.]

12 THE COURT: And then counsel can just approach, please.

13 [Bench conference transcribed as follows.]

14 THE COURT: So for the record, we talked about this off of
15 the record in regards to the State's proffered jury instructions for
16 the PFA charge. And Defense told me that they've had the
17 opportunity to look through them. They are just stock and they
18 didn't have any objection. I just wanted to make sure that that was
19 clear.

20 MR. SHAYGAN-FATEMI: That's correct, Your Honor.

21 THE COURT: Okay. I know there weren't any additional
22 ones that you wanted to add?

23 MR. SHAYGAN-FATEMI: Nothing outside of what's
24 already been marked as defense exhibits by Your Honor, and we've
25 already gone over those.

1 THE COURT: And -- but I don't believe any of those apply
2 to the --

3 MR. SHAYGAN-FATEMI: The -- I just want to make sure
4 that we had a --

5 MR. HAUSER: We submitted the same *Crawford*.

6 MR. SHAYGAN-FATEMI: Just submitted.

7 THE COURT: Oh, in your [indiscernible] instruction.

8 MR. SHAYGAN-FATEMI: Yeah. Yeah.

9 THE COURT: Okay. Yeah, so we'll note that. We'll note
10 there wasn't one proffered in your packet, but you're saying that
11 just want to be worded in regards to whether or not if you think that
12 he didn't possess it, then it would have, right?

13 MR. HAUSER: Uh-huh.

14 MR. SHAYGAN-FATEMI: That's correct.

15 THE COURT: All right. So yeah, I mean, I think the --
16 State, your argument, if any, in regards to the proffer, the *Crawford*
17 instruction, in regards to the possession?

18 MS. GOODMAN: Your Honor, we would submit on the
19 previous argument. It's the same -- on the same argument for the
20 last *Crawford* possession, the last *Crawford* instructions previously
21 proposed.

22 THE COURT: All right. So my reasoning is the same in
23 regards to I don't find that a *Crawford* instruction would go to any
24 theory of the case or any specific element. So I'm going to overrule
25 that and we will go with the ones that -- all the other ones that are

1 agreed upon.

2 [End of bench conference.]

3 THE COURT: All right. I'm now going to ask my clerk to
4 read the second amended information regarding the second portion
5 of the trial.

6 [Information read.]

7 THE COURT: State?

8 MR. LEXIS: State waives opening, Judge.

9 THE COURT: Defense?

10 MR. HAUSER: No, we'll waive.

11 THE COURT: All right. State, any witnesses or documents
12 to present?

13 MR. LEXIS: No, Your Honor.

14 MS. GOODMAN: And, Your Honor, the clerk has the JOCs
15 that were marked as exhibits, and we would submit it on those
16 exhibits.

17 THE COURT: Can I have the -- may I have those for the
18 record, please.

19 THE CLERK: Yes, Your Honor.

20 THE COURT: I'm sorry. No rush.

21 All right. And that would be State's Exhibit 239,
22 Judgment of Conviction in Case C-274598, and State's 240,
23 Judgment of Conviction in C-288886, correct?

24 MR. LEXIS: Correct. And the certified copies are on it.
25 We move to admit them into evidence.

1 THE COURT: Defense?
2 MR. HAUSER: No objection.
3 THE COURT: All right. Those will be admitted.
4 [State Exhibit Nos. 239 and 240 admitted.]
5 THE COURT: Anything else, State?
6 MR. LEXIS: With the admission of those two certified
7 Judgments of Conviction, the State rests.
8 THE COURT: Defense?
9 MR. HAUSER: Defense rests.
10 THE COURT: State, closing arguments.
11 MR. LEXIS: Yes, Judge.
12 THE COURT: Excuse me?
13 MR. LEXIS: Yes, Judge. Let me just --
14 THE COURT: Oh, yes. Okay. Sorry.
15 MR. LEXIS: Your Honor, may we approach?
16 THE COURT: Yes.
17 [Bench conference transcribed as follows.]
18 MR. LEXIS: We're at closing arguments, correct?
19 THE COURT: Yes.
20 MR. LEXIS: Judge, I believe you need to read the jury
21 instructions.
22 THE COURT: Yeah, you're right.
23 MR. LEXIS: Okay.
24 THE COURT: Yeah. Let me read those instructions.
25 MR. HAUSER: It's probably not a bad idea.

1 THE COURT: Thank you.

2 MR. HAUSER: All right. And thank you.

3 [End of bench conference.]

4 [Jury instructions read.]

5 THE COURT: State?

6 **CLOSING ARGUMENT FOR THE STATE**

7 MR. LEXIS: Ladies and gentlemen, very briefly, I just want
8 to make three points.

9 Essentially, you're here because it's against the law to
10 possess a firearm if you're already a convicted felon. But new
11 evidence in the case is two judgments of conviction showing that
12 he is a convicted felon, a prior convicted felon.

13 My second point is, as you've heard the judge say, all the
14 evidence that you heard in the first case, we won't present
15 everything again. You are to consider all the evidence you heard in
16 the first case now in this case.

17 In addition, as you heard from the judge, it's Jury
18 Instructions 9, the State is not required to have recovered the
19 firearm or to produce a firearm in court. Obviously -- it's obvious
20 why the law allows that, because once again, the law realizes that
21 criminals are going to discard evidence when they commit a crime.

22 Thank you.

23 THE COURT: Mr. Hauser.

24 **REBUTTAL CLOSING ARGUMENT FOR THE DEFENDANT**

25 MR. HAUSER: Members of the jury, I don't think there

1 was enough proof the first time, there sure isn't this time. Do the
2 right thing, find him not guilty.

3 THE COURT: Any rebuttal on behalf of the State?

4 MR. LEXIS: Submitted, Your Honor. Thank you.

5 THE COURT: Okay. All right. So at this point in time, we
6 will -- the clerk, my JEA, and my marshal have already been sworn
7 for this trial. So the jury will go back to the deliberations room and
8 please let the marshal know when you have a verdict.

9 [Jury recessed for deliberations at 6:41 p.m.]

10 THE COURT: So we're outside the presence of the jury. I
11 just -- when we do bench conferences, I like to just make sure
12 everything was on the record and everything is captured on the
13 record. But there -- the only objection to the jury instructions given
14 were -- was that the defense had wanted a -- and it wasn't part of
15 their packet, but they expressed orally that they would like a
16 *Crawford* version of the possession of firearm.

17 MR. SHAYGAN-FATEMI: That is correct, Your Honor.

18 THE COURT: And then Ms. Rose, at the bench, objected,
19 stating the same objection that the State had stated during our guilt
20 phase instructions; is that correct?

21 MR. SHAYGAN-FATEMI: That is correct. That is correct.

22 THE COURT: All right. And so I had stated that I did not
23 feel like this was a situation as in *Crawford*, where a negative jury
24 instruction was necessary. So I denied that request. But it will be
25 on the record that an oral request was proffered by the defense.

1 Other than that, everyone had stipulated that the jury instructions
2 were correct. Is that right?

3 MR. SHAYGAN-FATEMI: That is correct, Your Honor.

4 THE COURT: All right. Yes, sir?

5 THE DEFENDANT: Your Honor, like, I wanted to get this
6 out there. The detective lied under oath. It's right there in
7 statement that I stated I knew who Shorty was. I never denied it.
8 Look, I could show you the report, I have it right here in my folder.

9 I feel like I got screwed.

10 THE COURT: Okay.

11 THE DEFENDANT: You know what I mean? I feel like it's
12 not fair.

13 THE COURT: Okay.

14 THE DEFENDANT: How do I get, like, attempt murder on
15 somebody that didn't even get shot? I'm not the person that did
16 this, you know. And I'm so frustrated I can't even cry. I'm just in
17 shock right now, you know? Because the detective lied and said
18 that I stated certain things that it's not in the report.

19 THE COURT: So I understand what you're saying in
20 regards to the frustration. But you realize, like, I don't have
21 anything to do with the verdict, right? There's nothing for me to do.
22 The --

23 THE DEFENDANT: Your Honor, I'm a felon. If I shot these
24 people, I'm going to jump on a 3-to-10. Okay. I'm -- I would have
25 took that deal in a heartbeat --

1 THE COURT: No.

2 THE DEFENDANT: -- because it's a good deal for
3 somebody that committed this crime.

4 I came in here with -- and it doesn't even matter what I say
5 right now. You know, it doesn't, because they knew they had this
6 case beat. They knew they were going to win it. They needed a
7 upper-hand win. And it's just unfortunate that I'm the guy that has
8 to sit here and do the time for something that I didn't do.

9 My mom is about to die on her deathbed, and the worst
10 news on a day that I find out she's about to die, is I get guilty for all
11 these charges. You know? And then try to hit me with possession
12 of firearm that I -- I never owned a firearm.

13 THE COURT: Okay. So I understand your frustration,
14 but --

15 THE DEFENDANT: Your Honor, it's not fair. It's not fair,
16 you know?

17 THE COURT: I understand. But at the same time, this was
18 the trial, right? And that was the jury's decision.

19 THE DEFENDANT: How do you take 30 minutes on my
20 life? How do you take 30 minutes to decide my life? You know,
21 that's not right.

22 THE COURT: I'm sorry. Yes?

23 MR. SHAYGAN-FATEMI: Nothing from us, Your Honor.

24 THE COURT: All right. So we'll just be at ease for a
25 moment to see what the jury wants to do, if they want to stay and

1 deliberate, if they would like to go home.

2 THE DEFENDANT: And is there a way we could -- if you
3 have time, to speed up my sentencing?

4 THE COURT: So the fastest it can be done is 50 --
5 between 45 and 50 days, because the -- a Presentence Investigation
6 Report has to be done. So you have to be interviewed and they
7 have to do background information and -- but 45 to 50 days is the
8 closest --

9 THE DEFENDANT: I would like get a copy of my PSI
10 before I even get sentenced, for my own safety, when I go to prison.

11 THE COURT: Uh-huh. Mr. Shaygan and Mr. Hauser will
12 be given a copy of it, because it gets uploaded into Odyssey. And if
13 there are any issues that you find -- I know what you're referencing.
14 If there are any of those issues, then they can approach me and we
15 can get them stricken.

16 THE DEFENDANT: Okay. And you will be -- if I appeal
17 this, you'll be my judge again? Or will I go to a different judge?

18 THE COURT: So, technically, you know --

19 MR. SHAYGAN-FATEMI: Your Honor, we can have a
20 member of our appellate team reach out to Ted rapidly to discuss --

21 THE COURT: Sure, yeah.

22 MR. SHAYGAN-FATEMI: -- his appellate rights.

23 THE COURT: I'm just trying to think of -- so for sentencing
24 purpose, whichever judge is the trial judge is the judge that does
25 the sentencing.

1 But in regards to appellate work, to be honest with you,
2 I'm not sure. I'm not sure if it goes back to the originating
3 department or it stays. I would think that it stays here. But I'm
4 not 100 percent certain in regards to that.

5 THE DEFENDANT: And do you know what the time holds
6 for all those charges?

7 THE COURT: 2-to-20s and 1-to-6s.

8 All right. So we can go off, De'Awna.

9 Oh, wait one second.

10 THE DEFENDANT: Do you know if you're going to go with
11 the 25 [indiscernible]?

12 THE COURT: Just either plead or it plays out to trial.

13 THE DEFENDANT: I apologize for any past attitudes I had
14 towards the State. I apologize to you guys. I know you guys are
15 just doing a job.

16 [Jury reconvened at 6:48 p.m.]

17 THE COURT: All right. The jury is still the same foreman?

18 JUROR NO. 8: Yes, Your Honor.

19 THE COURT: All right. And have you reached a verdict?

20 JUROR NO. 8: We have.

21 THE COURT: All right. Can you please pass the verdict to
22 my marshal.

23 THE CLERK: District Court, Clark County, Nevada, State of
24 Nevada, Plaintiff, versus Ted Michael Donko, Defendant, Case
25 Number C-19-345584-1, Department 6, verdict.

1 We, the jury, in the above entitled case, find the defendant
2 as follows:

3 Count 1, Ownership or Possession of Firearm by
4 Prohibited Person, guilty of ownership or possession of firearm by
5 prohibited person.

6 Dated this 13th day of February, 2020, Foreperson.

7 Ladies and gentlemen of the jury, is this your verdict as
8 read, so say you one, so say you all?

9 THE JURY: Yes.

10 THE CLERK: Thank you.

11 THE COURT: Do either of the parties wish to have the jury
12 polled?

13 MR. HAUSER: No.

14 THE COURT: Okay. Ladies and gentlemen, as you know,
15 the right to trial by jury is one of our basic and fundamental
16 constitutional rights. And I am so grateful to each and every one of
17 you for being willing to come here this week. I know that there are
18 lots of other things that you have going on in your life, and I really
19 appreciate you being willing to serve and doing so so diligently, I
20 really appreciate that, as well as the two alternates.

21 The question always arises whether or not you can talk
22 now to others about your jury service and your deliberations. And
23 the answer to that is you can speak to others now.

24 From time to time attorneys wish to talk about, Hey, did
25 this work, did this not work? What did we do that you liked? What

1 did we do that you didn't like? It is your choice to speak to them if
2 you wish. But if -- you don't have to speak to anyone if you don't
3 want to. And if there were ever an issue with that, you can always
4 contact my chambers and I'll take care of it immediately.

5 But again, I just wanted to thank you so much for your
6 service. And you are excused.

7 [Jury excused at 6:50 p.m.]

8 THE COURT: All right. We are outside the presence of the
9 jury. I need an in-custody date, please.

10 THE CLERK: Yes, Your Honor.

11 April 1st, 9:30 sentencing.

12 MR. LEXIS: And, Your Honor, I'd ask that he be remanded
13 without bail.

14 THE COURT: Defense?

15 MR. HAUSER: Can't imagine that it matters, he hasn't
16 made bail yet.

17 THE COURT: Okay. So now that there has been a
18 conviction and the presumption of innocence as to this case is
19 gone, I will grant the State's request. And there will be the date set
20 in April for sentencing.

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MR. HAUSER: And that was April 1st, Judge?
THE CLERK: Yes. 9:30.
MR. HAUSER: We'll be here.
THE COURT: All right. That's it. Thank you.
MS. GOODMAN: Thanks, Your Honor.

[Court adjourned at 6:51 p.m.]

///

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


Shawna Ortega, CET #562



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,) CASE NO. C-19-345584-1
9 Plaintiff,) DEPT. VI
10 vs.)
11 TED MICHAEL DONKO,)
12 Defendant.)

13
14 BEFORE THE HONORABLE JACQUELINE M. BLUTH, DISTRICT COURT JUDGE
15 WEDNESDAY, APRIL 1, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **SENTENCING**

18 APPEARANCES:

19 For the State: ROBERT B. TURNER, ESQ.
20 Chief Deputy District Attorney
21 For the Defendant: CHARLES W. SIMMONS, ESQ.
22
23
24

25 RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

1 LAS VEGAS, NEVADA; WEDNESDAY, APRIL 1, 2020

2 * * * * *

3 [Proceedings commenced at 11:39 a.m.]

4 THE COURT: State of Nevada vs. Ted Michael Donko. Mr.
5 Donko is present in custody, Mr. Simmons on his behalf, Mr. Turner on
6 behalf of the State.

7 This was a trial that was done by Mr. Lexis. We received a
8 phone call that the Public Defender is sick and needs to continue until
9 April 20th. This will -- matter will be continued to April 20th because your
10 attorney is sick.

11 THE DEFENDANT: He's sick? Is there any way I can just get
12 sentenced today, ma'am?

13 THE COURT: No. I mean he has to -- he did your trial --

14 THE DEFENDANT: Uh-huh.

15 THE COURT: -- so I want him to be able to argue on your
16 behalf.

17 THE DEFENDANT: All right.

18 THE CLERK: April 20th, 10:15.

19 THE DEFENDANT: Thank you.

20 [Proceedings concluded at 11:39 a.m.]

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

24 

25 Angelica Michaux
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	CASE NO. C-19-345584-1
Plaintiff,)	DEPT. VI
vs.)	
TED MICHAEL DONKO,)	
Defendant.)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH, DISTRICT COURT JUDGE
MONDAY, APRIL 20, 2020

**RECORDER'S TRANSCRIPT OF HEARING RE:
SENTENCING**

APPEARANCES:

For the State:	CHAD N. LEXIS, ESQ. Deputy District Attorney
For the Defendant:	ROBSON M. HAUSER, ESQ. Deputy Public Defender

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

1 LAS VEGAS, NEVADA; MONDAY, APRIL 20, 2020

2 * * * * *

3 [Proceedings commenced at 10:14 a.m.]

4 THE COURT: All right, moving to page 10, C345584-1, State
5 of Nevada vs. Ted Michael Donko. Mr. Donko is present in custody.

6 MR. HAUSER: Good morning, Your Honor.

7 THE COURT: Good morning. All right, let me pull this one,
8 10. All right, okay. So, obviously, this was a trial. Mr. Hauser and Mr. --
9 what's Kambiz -- I can't think of Kambiz's last name right now.

10 MR. HAUSER: Shaygan.

11 THE COURT: Mr. Shaygan did the trial, as well as Mr. Lexis
12 on behalf of the State. Obviously, it's a complete right to argue.

13 Mr. Hauser, did you have the opportunity to go through the
14 PSI and make sure everything was correct in there?

15 MR. HAUSER: I did.

16 THE COURT: Okay, great. All right, so I know originally we
17 had one of the victims who did want to speak the first -- kind of the first
18 go around, but then it was my understanding that individual had spoken
19 to you and you were going to make those representations.

20 MR. LEXIS: Yes, Judge. I talked to all of the victims in the
21 case and just like in the trial, as you remember --

22 THE COURT: Yeah.

23 MR. LEXIS: -- due to them being scared and so forth, they
24 just wanted me to relay they wanted the maximum sentence possible,
25 and I told them I would make that argument.

1 THE COURT: All right, so Mr. Lexis.

2 MR. LEXIS: Judge, besides this man already being a two-
3 time felon prior to this incident, have numerous parole and probation
4 violations, I want to point out three things particularly on why I believe
5 you should sentence him to 84 months to 240 months on each Attempt
6 Murder with Deadly Weapon count to run consecutive to one another, in
7 addition, 24 to 72 months on the discharging inside the structure.

8 First, Judge, this is a Attempt Murder with Deadly Weapon
9 case, where it wasn't somebody where, you know, you're trying to stab
10 somebody or they got shot in the arm or stabbed in the arm or a rock
11 thrown at him. No. These people were shot, two of them particularly.
12 He already dished out two life sentences to these individuals and the
13 younger individual, if you remember --

14 THE COURT: Yeah.

15 MR. LEXIS: -- is never going to be able to walk again the
16 same for the rest of his life. He was shot in each leg; one of those bullets
17 remains in his leg by his artery and by a major nerve. They told him
18 several times, two different hospitals, that they cannot operate to ever
19 remove that bullet so it will stay with him forever. He can't walk more
20 than 20 feet without being in extreme pain and will need a walker or a
21 wheelchair for the rest of his life.

22 The other individual if you remember, Judge, he was shot in
23 the stomach and in the arm. It's surprising he didn't bleed out. Also want
24 to point out, Judge, that these individuals, as you heard from the stand
25 from both the victims and when the Defendant took the stand, he was

1 looking for some guy named Shorty. As you remember, none of these
2 people were Shorty, none of them. They were, in fact, all meeting up to
3 help move. There was -- and that was backed by the evidence -- there
4 was the pickup truck there. Their items they were moving from the back
5 of the house. That's what they were doing when this man came up,
6 popped off eight rounds and struck two of them. That other individual, his
7 chair was struck where he was sitting or surprisingly that he did not get
8 hit as well.

9 In addition, Judge, the third point I'm going to make is he
10 shouldn't get a free pass for shooting -- the charge of discharging a
11 firearm into the structure. As you remember from the facts, he popped
12 off eight rounds all in the direction towards that house. There were bullet
13 holes evidencing that it went into that, that residence. There were men,
14 women and children in that residence, as well as his targets, Shorty,
15 where none of them were Shorty were standing in front of that residence,
16 again where those innocent victims were inside. Luckily, nobody got hit
17 inside that residence. So, Judge, for an aggregate I'd ask for 200 and --
18 it looks like 246 months on the bottom and 792 months on the top.

19 THE COURT: All right, just give me a second, so 20 to 66
20 when you break it down years?

21 MR. LEXIS: Judge, I'm sorry. It's 23 to 66 years is 84 to 240
22 months consecutive times three, plus a 24 to 72 months for the
23 discharging, comes to 23 years and 66.

24 THE COURT: Got it.

25 Mr. Donko, in a moment I'm going to have the opportunity to

1 hear from Mr. -- oh sorry, one second.

2 One of my questions that I had when I was going through the
3 PSI is the previous -- and, Mr. Hauser, you may have the information on
4 this as well, but the previous bat with substantial, did you have any
5 information on that, in regards to what that was? It was the 2013. I didn't
6 know the underlying facts of that. Do you have any information on that,
7 Mr. Lexis, in regards to the facts?

8 MR. LEXIS: Of his battery to deadly, no, I don't.

9 THE COURT: Okay, that's okay.

10 Sir, in a moment, I'm going to have the opportunity to hear
11 from Mr. Hauser on your behalf. What if anything would you like to say?

12 THE DEFENDANT: Yes, ma'am. A lot has happened in
13 these last two months. I don't know if you remember last time, my mom
14 was dying.

15 THE COURT: Yeah, I remember.

16 THE DEFENDANT: She had just passed away from breast
17 cancer.

18 THE COURT: I'm sorry.

19 THE DEFENDANT: Ma'am, I feel for the victims what
20 happened. I still hold my grounds as innocent, ma'am. I didn't shoot --

21 THE COURT: I'm sorry. I didn't hear you. You still hold your
22 ground what?

23 THE DEFENDANT: As being innocent.

24 THE COURT: Oh, okay.

25 THE DEFENDANT: I didn't shoot these people, Your Honor. I

1 just wish they would've checked my shirt for GSR so they could see that.
2 Your Honor, I'm not asking -- I know I can't be let go because I have to
3 go through an appeal process and everything else, but I just ask you to
4 be light on me because of just how everything went down with -- just with
5 the evidence of the mixed-up statements that they used. I was
6 completely honest about everything I said in court. And, like I said, I
7 know you can't just let me go because that's not how it works. But, Your
8 Honor, if you look in my past, Your Honor, my Attempt Battery with
9 Substantial Bodily Harm, if you look at the record nobody got touched in
10 that. Me and my maintenance person that lived in my apartment
11 complex, we almost got into a fight and that was it.

12 And the restraining order my mom put on me when I was 18
13 because I was using drugs and she wanted to kick me out and I wouldn't
14 leave, and I went back to the house because I was homeless and I told
15 her just to call the cops on me because I didn't have nowhere to stay. I'm
16 not a violent person, Your Honor. I didn't do these.

17 I know I'm probably not -- nobody believes me, but I really
18 didn't do -- I really didn't shoot nobody, Your Honor, and that's all I can
19 say. I didn't shoot nobody. I hold my grounds in this, and I know my
20 tattoos and everything else makes it look like I'm -- it's different, but I
21 didn't shoot these people. And as well as they're afraid of, you know
22 what I mean, retaliation. I'm afraid too, you know. And all I know is I
23 didn't shoot these people.

24 THE COURT: Okay. Mr. Hauser?

25 MR. HAUSER: Judge, that's exactly where I was going to

1 start. Mr. Donko says and has always told me that he's an innocent man.
2 He expects to be exonerated on appeal. He does feel very bad for the
3 victims, as he just said, but there's nothing more he can say, other than
4 he did not commit this crime. Your Honor sat through the trial and you
5 saw the evidence. There is certainly evidence against him. I'm obviously
6 not here to deny that; otherwise we wouldn't really be here. But Your
7 Honor remembers that that evidence is far from an absolute open and
8 shut case. There were certainly some questions with the credibility of the
9 witnesses. There were certainly some questions with the validity of the
10 scientific evidence, but that's why we had a trial.

11 THE COURT: Yep.

12 MR. HAUSER: We're on the backside and we lost, but I
13 would at least ask Your Honor to take the evidence into consideration in
14 this case. This was not the most open and shut case we've seen.

15 What the request from the State was was for 23 to 66 years.
16 Had he succeeded in actually killing anyone, it's possible that his
17 sentence would be substantially less than that. There are certainly
18 murder cases, I think Your Honor knows this far better than I, who've
19 gotten less than 20 years on the bottom. That's not to downplay the
20 seriousness of this offense but it is at least to talk about the range that
21 we're trying to impose here. We're talking about someone who didn't
22 actually kill anyone and who did do damage, but no one's actually dead.
23 We have to at least consider that when we're going forward.

24 Twenty-three to sixty-six, he's not making the board his first
25 time out. This is a violent offense. That's also something we should at

1 least consider going forward. And I want to talk a little bit about him and
2 where he came from and how he got here.

3 THE COURT: Okay.

4 MR. HAUSER: As Your Honor can see, most his record is
5 non-violent. We have this weird issue with an Attempt Battery
6 Substantial Bodily Harm. I don't have the facts on that. I don't have the
7 police report. Generally, that's a plea that gets offered. It was a gross,
8 concurrent time. That's what it looked like. But Mr. Donko's life could've
9 been very different but for an unfortunate injury at a young age.

10 When he was 15 and 16 years old, he was a baseball star at
11 Cheyenne High. He'd even gotten scholarship offers at that point to go
12 play in Reno. He breaks his leg while he's playing baseball. While he's
13 recovering from the broken leg, he gets addicted to opiates. When you
14 get addicted to drugs at that young age, Judge, it's kind of downhill from
15 there, unless you can stop it right away. We didn't.

16 Regardless of who failed there, the fact is, at that point, life
17 was going to be a very different thing then it would've been if he'd gone
18 on to be a college athlete. He's a drug addict; he's a high school
19 dropout. He needs more help than the system can provide. And that's
20 not an option that we're getting into today, but it's again something I'd ask
21 the Court to consider.

22 He was working before he got picked up. He's at least able to
23 hold down a job, which means there is some promise for him once he
24 gets out. He has the ability to be rehabilitated. He has the ability to be a
25 productive member of society. He was working for the Teamsters tearing

1 up and tearing down concert venues and he worked at the Mirage pool.
2 He's already told you that his life's been incredibly more difficult since
3 he's been in here because his mother's already passed away.

4 We're not talking about someone who grew up in the most
5 privilege of circumstances, which again is not an excuse, but it is at least
6 something to consider. When all is said and done, we're talking about
7 someone who made horrible choices, but we're not talking about an
8 actual murder. And I'm asking you not to sentence him according to that.
9 I'm asking for the minimums or at least something near to the minimums.
10 Judge, this was not Mr. Lexis' case before we went to trial. The offer was
11 put on the record before trial.

12 THE COURT: I don't remember it. What was it?

13 MR. HAUSER: Three to ten years. That's certainly a factor
14 that should be considered. I don't know Mr. Lexis didn't make that
15 offer --

16 MR. LEXIS: Judge, I'm going to object. First of all, that's
17 inappropriate and, second, that's when we had no victims, couldn't be
18 found and then when we do find them, they didn't want no part of it
19 because of the retaliation aspect of this. But besides that, it's completely
20 inappropriate, in my opinion, to be shouting out pretrial offers.

21 THE COURT: Go ahead.

22 MR. HAUSER: But that's why we put those offers on the
23 record, Judge, so that you know where we stand before the trial.

24 THE COURT: Okay.

25 MR. HAUSER: So, I'm not asking for the 3 to 10. I'm asking

1 for something slightly larger than that. What I'm asking for is a
2 cumulative sentence of 48 on the bottom and 150 on the top. I believe
3 that that works out to 4 to 12 years. My math is, honestly, just terrible.
4 But, if we do 3 years on the bottom on the Attempt Murders with a 12 to
5 30 on top of that; 3 to 8 plus a 12 to 30, that's the aggregate that I'm
6 asking for. I do believe that's appropriate. Again, he's not going to make
7 the boards first time out. We're looking at someone who's going to serve
8 the majority of that sentence.

9 Once he gets out, he can try and put the pieces back together.
10 He still does, as I said, Judge, maintain his innocence. He expects to be
11 exonerated, so I'm asking for the 3 to 8 on the Attempt Murders, 12 to 30
12 on the deadly weapon consecutive and everything else to run concurrent.
13 I'll submit it on that.

14 THE COURT: Okay, thank you.

15 Mr. Lexis, what was the restitution, if any?

16 MR. LEXIS: Judge, we tried to get the restitution figures
17 and --

18 THE COURT: All right. Well, I'll just --

19 MR. LEXIS: -- both the -- both victims indicated they'd rather
20 the Court focus more on the time than restitution.

21 THE COURT: Okay. Did you want me to retain jurisdiction
22 though --

23 MR. LEXIS: Sure.

24 THE COURT: -- in case they were able to do it, because,
25 obviously, those are some very serious medical bills and some serious

1 probably future medical bills. So I can definitely focus on both is my
2 point, you know?

3 MR. LEXIS: Yes, I understand.

4 THE COURT: So, I want them to know that.

5 MR. LEXIS: Okay.

6 THE COURT: So, just give me a second you guys because
7 this is -- because there are so many counts I actually, unlike others, I
8 don't make up my mind before argument. I do it during, after what you
9 guys say, so I need to look at this for a second.

10 [Pause in proceedings]

11 THE COURT: All right. Thank you for being patient with that.
12 All right, in accordance with the laws of the State of Nevada, you are
13 hereby adjudged guilty of the crimes of Count 1 and 2, Battery with Use
14 of a Deadly Weapon Resulting in Substantial Bodily Harm; Counts 3, 4
15 and 5, Attempt Murder with Use of a Deadly Weapon; Count 6, Assault
16 with a Deadly Weapon; Count 7, Discharging Firearm at or into an
17 Occupied Structure, Vehicle, Aircraft or Watercraft, and Count 8,
18 Ownership or Possession of a Firearm by a Prohibited Person.

19 In addition to the \$25 Administrative Assessment Fee, the
20 \$150 DNA fee, the \$3 DNA fee is waived, as it was taken in your
21 previous case. However, there is a \$3 DNA collection fee and a \$250
22 Indigent Defense fee.

23 You are sentenced to Count 1, Battery with Use of a Deadly
24 Weapon Resulting in Substantial Bodily Harm, a minimum of 24 months
25 to a maximum of 60 months.

Count 2, Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm, a minimum of 24 months to a maximum of 60 months to run concurrently to Count 1.

Count 3, Attempt Murder with Use of a Deadly Weapon, as to the Attempt Murder, a minimum of 36 months, a maximum of 96 months. In regards to the Weapon Enhancement, a minimum of 12 months, a maximum of 30 months. That will obviously run consecutive to the Attempt Murder, and Count 3 will run consecutive to Counts 1 and 2.

Count 4, a minimum of 36 months, a maximum of 96 months with a consecutive minimum of 12 months, maximum of 30 months. That will run consecutive to Count Number 3.

Count Number 5, Attempt Murder with Use of a Deadly Weapon, a minimum of 36 months with a maximum of 96 months. The weapon enhancement will be a minimum of 12 months and a maximum of 30 months. That's to run consecutive to Count 4.

Count 6, Assault with a Deadly Weapon, will be a minimum of 12 months, a maximum of 30 months to run concurrently.

Count 7, Discharging a Firearm at or into an Occupied Structure, will be a minimum of 12 months, a maximum of 30 months. That will also run concurrent.

Count 8, Ownership or Possession of a Firearm by a Prohibited Person, a minimum of 12 months, a maximum of 30 months. That will run concurrent. So the only things that will run consecutive are the three Attempt Murders with Use of a Deadly Weapon.

That is an aggregate of -- it should be a minimum of 12 years,

1 a maximum of 31.5, a minimum of 12 years, a maximum of 31.5,
2 including the deadly weapon enhancements.

3 And then Mr. Reed, if you could get with me later because we
4 have to word it in the -- we have to word it in the minutes, specifically, for
5 the prison with the -- with the aggregate and without the aggregate, so
6 we can do that after court. That's just for the JOC.

7 THE CLERK: Yes, Your Honor.

8 THE COURT: I will retain jurisdiction in regards to the -- for
9 the restitution. And credit for time served, please?

10 MR. HAUSER: One hundred and fifty days.

11 THE COURT: One hundred and fifty days credit for time
12 served.

13 MR. LEXIS: Thanks, Judge.

14 MR. HAUSER: Thank you.

15 THE COURT: Thank you.

16 THE DEFENDANT: Thank you.

17 THE COURT: Thank you.

18 [Proceedings concluded at 10:32 a.m.]

19 * * * * *

20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 

25 Angelica Michaux
Court Recorder/Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

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8 STATE OF NEVADA

CASE NO. C-19-345584-1

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Plaintiff,

DEPT. VI

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vs.

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TED MICHAEL DONKO,

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Defendant.

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BEFORE THE HONORABLE JACQUELINE M. BLUTH, DISTRICT COURT JUDGE

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MONDAY, JUNE 15, 2020

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**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
STATE'S NOTICE OF MOTION AND MOTION TO ADDRESS AGGREGATE
SENTENCE CALCULATIONS**

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APPEARANCES:

19

For the State:

SARAH OVERLY, ESQ.
Chief Deputy District Attorney

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For the Defendant:

ROBSON M. HAUSER, ESQ.
Public Defender's Office

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RECORDED BY: De'AWNA TAKAS, COURT RECORDER

1 Monday, June 15, 2020, Las Vegas, Nevada

2
3 [Proceedings began at 11:15 a.m.]

4 THE COURT: Nevada versus Ted Michael Donko, page 12,
5 C345584. Mr. Donko is not present, in custody in the Nevada Department of
6 Corrections, Mr. Hauser on his behalf. Ms. Overly on behalf of the State.

7 This was -- State's notice of motion and motion to -- address
8 aggregate sentence calculations. So I have to do that on the records, and I don't
9 know if I didn't do it, or I didn't do it correctly on the record this first time.

10 But I've gone through now and it's a minimum of 168 months a
11 maximum of 438 months for the aggregate.

12 MS. OVERLY: Yes, that's what I reflect, Your Honor.

13 MR. HAUSER: And, I think, that is what is accurately reflected in the
14 JOC, but I don't think that was your intention at sentencing.

15 At sentencing you were very clear about I want to run just the attempt
16 murders consecutive, with their necessary enhancements, which was 3 to 8, 12 to
17 38, 12 to 38, 12 to 30, for an aggregate -- at the time you said of 12 to 31½ years
18 which would be what the aggregate was listed at in the JOC, that turned out to be
19 wrong, which was 144 to 378.

20 THE COURT: Wow, that's a lot. Alright.

21 MR. HAUSER: Yes.

22 THE COURT: So, I'm -- I have no recollection of all of it. So let me
23 just --

24 MR. HAUSER: Alright.

25 THE COURT: -- look at it in JAVS.

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MR. HAUSER: Yeah.

THE COURT: And then I will issue a minute order.

MR. HAUSER: Sounds good.

THE COURT: So let me just do that.

De'Awna would you mind burning that for me?

And I'll do that this afternoon.

Mr. HAUSER: And, Judge, there's also a transcript on-line.

THE COURT: Awesome.

MR. HAUSER: Thank you very much.

THE COURT: Alright. Thanks guys.

[Proceedings concluded at 11:17 a.m.]

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


De'Awna Takas
Court Recorder/Transcriber

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TED MICHAEL DONKO,) No. 81075
)
 Appellant,)
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 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
 _____)

DARIN IMLAY Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610 Attorney for Appellant	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155 AARON FORD Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538 Counsel for Respondent
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 9 day of December 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

BY /s/ Rachel Howard
Employee, Clark County Public Defender's Office