

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3
4 NATHAN OHM,

5 Petitioner,

6 vs.

7 THE EIGHTH JUDICIAL DISTRICT
8 COURT OF THE STATE OF
9 NEVADA, COUNTY OF CLARK;
10 AND THE HONORABLE KATHLEEN
11 DELANEY, DISTRICT COURT
12 JUDGE,

13 Respondents,

14 and

15 CITY OF HENDERSON,

16 Real Party in Interest.

CASE NO: 81960 Electronically Filed
Feb 22 2021 01:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

17 **APPENDIX TO**
18 **ANSWERING BRIEF**

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

FILED

CITY OF HENDERSON, NEVADA,

Plaintiff,

vs.

NATHAN NOAH OHM,

Defendant.

CRIMINAL COMPLAINT

CASE NO.

COUNT 1 - 19CR002297 (PCN 1)

COUNT 2 - 19CR002298 (PCN 2)

Nicholas G. Vaskov, Esq., City Attorney

The defendant has committed the crimes 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 February 22, 2019:

COUNT 1 - BATTERY CONSTITUTING DOMESTIC VIOLENCE

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 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 strike Hailey Schmidt about the face and/or did get on top of her, all of which occurred in the area of 3044 Paseo Hills Way.

COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE

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 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 strike and/or did punch Marcuse Ohm one or more times, all of which occurred in the area of 3044 Paseo Hills Way.

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: February 28, 2019
CAO File #: 021466
PCN#: NVHP5127178C

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

CITY OF HENDERSON, NEVADA,

Plaintiff,

vs.

NATHAN NOAH OHM,

Defendant.

FILED
2019 OCT 22 PM 1:38
AMENDED
CRIMINAL COMPLAINT

CASE NO. **NRS**

COUNT 1 - 19CR002297 (PCN 1)

COUNT 2 - 19CR002298 (PCN 2)

Nicholas G. Vaskov, Esq., City Attorney

The defendant has committed the crimes of:

BATTERY CONSTITUTING DOMESTIC VIOLENCE (Misdemeanor - Henderson Municipal Code 8.02.055) within the City of Henderson, in the County of Clark, State of Nevada, in the manner following, that the said defendant, on or about February 22, 2019:

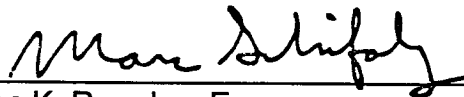
COUNT 1 - BATTERY CONSTITUTING DOMESTIC VIOLENCE

did willfully and unlawfully use force or violence against or upon the person's spouse, former spouse, any other person to whom the person is related by blood or marriage, any person with whom the person has had or is having a dating relationship, any person with whom the person has a child in common, the minor child of any of those persons or his minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child, to-wit: Did strike Hailey Schmidt about the face and/or did get on top of her, all of which occurred in the area of 3044 Paseo Hills Way.

COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE

did willfully and unlawfully use force or violence against or upon the person's spouse, former spouse, any other person to whom the person is related by blood or marriage, any person with whom the person has had or is having a dating relationship, any person with whom the person has a child in common, the minor child of any of those persons or his minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child, to-wit: Did strike and/or did punch Marcuse Ohm one or more times, all of which occurred in the area of 3044 Paseo Hills Way.

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.



Brian K. Reardon, Esq.
Assistant City Attorney

Dated: October 21, 2019
CAO File #: 021466
PCN#: NVHP5127178C

Henderson Statutory Text

8.02.050 - Battery.

A person who willfully and unlawfully uses force or violence upon the person of another is guilty of battery.

(Ord. No. [3451](#), § 1, 11-7-2017)

8.02.055 - Battery constituting domestic violence.

- A. Any person who commits an offense of battery as defined in section 8.02.050 against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child is guilty of a battery constituting domestic violence.
- B. The provisions of this section do not apply to:
 - 1. Siblings, except those siblings who are in a custodial or guardianship relationship with each other; or
 - 2. Cousins, except those cousins who are in a custodial or guardianship relationship with each other.
- C. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.
- D. A person convicted of a battery constituting domestic violence:
 - 1. For the first offense within seven years, is guilty of a misdemeanor and shall be sentenced to:
 - (a) Imprisonment in the city jail or detention facility for not less than two days, but not more than six months;
 - (b) Perform not less than 48 hours, but not more than 120 hours, of community service;
 - (c) A fine of not less than \$200.00, but not more than \$1,000.00; and
 - (d) Participate in weekly counseling sessions of not less than one and one-half hours per week for not less than six months, but not more than 12 months, at his or her expense, in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 439.258.
 - 2. For the second offense within seven years, is guilty of a misdemeanor and shall be sentenced to:

- (a) Imprisonment in the city jail or detention facility for not less than ten days, but not more than six months;
 - (b) Perform not less than 100 hours, but not more than 200 hours, of community service;
 - (c) Pay a fine of not less than \$500.00, but not more than \$1,000.00; and
 - (d) Participate in weekly counseling sessions of not less than one and one-half hours per week for 12 months, at his or her expense, in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 439.258.
- E. A person arrested for a battery constituting domestic violence pursuant to this section must not be admitted to bail sooner than 12 hours after arrest.

(Ord. No. [3632](#), § 2, 10-15-2019)

2017 WL 2531943

Only the Westlaw citation is currently available.

United States District Court, D. Idaho.

UNITED STATES of America, Plaintiff,

v.

Samuel Jay ENICK, Defendant.

Case No. 2:17-cr-00013-BLW

|

Signed 06/09/2017

Attorneys and Law Firms

Nancy D. Cook, US Attorney's Office, Coeur D'Alene, ID, for Plaintiff.

North Federal Defender, Federal Defenders of Eastern Washington & Idaho Spokane Office, Spokane, WA, for Defendant.

MEMORANDUM DECISION AND ORDER

B. Lynn Winmill, Chief Judge

INTRODUCTION

*1 Before the Court is Defendant's Motion to Dismiss. (Dkt. 18). The matter is fully briefed and the Court finds that the decisional process would not be aided by oral argument. For the reasons set forth below, the Court will grant the Motion to Dismiss.

BACKGROUND

Samuel Jay Enick has been charged with one count of unlawful possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(9) and one count of criminal forfeiture under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c) (Dkt. 1). The indictment alleges that Enick unlawfully possessed firearms and ammunition despite having been previously convicted of a violent misdemeanor involving domestic violence which disqualified him from such ownership. His prior conviction was a misdemeanor assault charge under Spokane Municipal Code ("SMC") Section 10.11.010 (Dkt. 18). The Government asserts that the assault misdemeanor is

the type of crime which operates as a predicate offense under 18 U.S.C. § 922(g)(9). Enick contends that it does not.

ANALYSIS

Section 922(g)(9) provides that it is unlawful for any person "who has been convicted in any court of a misdemeanor crime of domestic violence ... [to] possess in or affecting commerce, any firearm or ammunition[.]" 18 U.S.C. § 922(g)(9) (2012). A "misdemeanor crime of domestic violence" is defined as,

an offense that—(i) is a misdemeanor under Federal, State or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

18 U.S.C. § 921(a)(33)(A) (2012). Therefore, to qualify as a predicate offense a "misdemeanor crime of domestic violence" must have, "as an element, the use or attempted use of physical force, or threatened use of a deadly weapon." *U.S. v. Hayes*, 555 U.S. 415, 421 (2009). In addition, the Supreme Court has held that § 922(g)(9)'s "physical force" requirement is satisfied "by the degree of force that supports a common-law battery conviction." *U.S. v. Castleman*, 134 S. Ct. 1405, 1413 (2014).

The question here is whether Enick's prior conviction under SMC § 10.11.010 qualifies as a predicate offense under § 922(g)(9). Enick argues that, because SMC § 10.11.010 is a local law and not a "Federal, State, or Tribal law," SMC § 10.11.010 cannot be a predicate offense under § 922(g)(9). (Dkts. 18, 26). Enick also contends that neither the categorical approach nor the modified categorical approach qualify his prior conviction as a predicate offense because SMC § 10.11.010 is overbroad and indivisible. (Dkts. 18, 26).

1. Municipal Ordinance Conviction as Predicate Offense

The Court finds that a municipal ordinance does not fit within the definition of a “misdemeanor crime of domestic violence.” Rather, it appears that Congress purposefully excluded local law from that definition. Specifically, a “misdemeanor crime of domestic violence” only includes “an offense that—(i) is a misdemeanor under Federal, State or Tribal law[.]” 18 U.S.C. § 921(a)(33)(A).

A. Concurrent Jurisdiction

*2 Although the Government originally argued to the contrary, the parties now agree that the defendant can be convicted in *any* court for § 922(g)(9) to apply. The Court concurs. Thus, § 922(g)(9) may apply where a defendant is convicted in Spokane Municipal Court as Enick was here. However, that conviction in municipal court must be a misdemeanor under “Federal, State, or Tribal law.” Under the plain language of § 921 and § 922(g)(9), a conviction under a municipal ordinance cannot serve as a predicate offense for the purposes of § 922(g)(9).

B. Congressional Intent

In statutory construction, “our starting point is the plain language of the statute.” *U.S. v. Williams*, 659 F.3d 1223, 1225 (9th Cir. 2011) (citing *Children's Hosp. & Health Ctr. v. Belshe*, 188 F.3d 1090, 1096 (9th Cir. 1999)). If the “plain meaning of the statute is unambiguous, that meaning is controlling,” and courts do not look to the legislative history to determine if Congress meant something else. *Williams*, 659 F.3d at 1096.

The Court finds that the statute's language is unambiguous, clearly providing that only a violation of “Federal, State, or Tribal law” can constitute a predicate offense for a prosecution under 18 U.S.C. § 922(g)(9). But, even if the Court were to find the statute ambiguous and could consider Congressional intent, the legislative history strongly suggests that Congress purposefully excluded local law from the list of predicate offenses. Prior to amending § 921 in 2006, the relevant language mentioned only federal and state law. 18 U.S.C. § 921(a)(33)(A)(i) (amended 2006). The 2006 amendment added tribal law to the list of available substantive law. *See generally* Violence Against Women Act, Pub. L. No. 109-162, § 908, 119 Stat. 2960 (2006). The same amendment also distinguished “local law” in dozens of other portions of § 921, but not § 921(a)(33)(A)(i). *Id.* The statutory interpretation canon, *expressio unius est exclusio alterius*,

“the expression of one thing is the exclusion of another,” justifies an “inference that items not mentioned were excluded by deliberate choice, not inadvertence.” *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003). Therefore, the Court concludes that it was Congress's intent to exclude local laws from the “misdemeanor crime of domestic violence” definition.

2. Categorical Approach

A. Overbroad

Even if the Court were to find that convictions under a municipal code fit within the definition of § 921(a)(33)(A)(i), the predicate offense would not be a categorical match. To determine whether Enick's prior conviction qualifies as “misdemeanor crime of domestic violence,” the Court applies the “categorical approach” set forth in *Taylor v. U.S.*, 495 U.S. 575, 599 (1990). To evaluate the predicate offense under the categorical approach, the Court must compare the elements of the statute forming the basis of the defendant's conviction with the elements of the “generic” crime. *Decamps v. U.S.*, 133 S.Ct. 2276, 2283 (2013). Thus, if the elements of the SMC § 10.11.010 are the same or narrower than the elements in § 921(a)(33)(A)(ii) then Enick's prior conviction would serve as a predicate offense for the § 922(g)(9) charge. However, if SMC § 10.11.010 is broader than the elements in § 921(a)(33)(A)(ii), then the conviction does not categorically qualify as a predicate offense.

SMC § 10.11.010 clearly prohibits more conduct than the federal definition of a “misdemeanor crime of domestic violence. The ordinance states, “[n]o person may willfully use or threaten to use by purposeful words or acts unlawful physical force against the person of another.” SPOKANE, WASH., CODE § 10.11.010. It thus criminalizes the mere threat of use of physical force. In contrast, the federal statute only criminalizes one type of threat: threat with a deadly weapon. 18 U.S.C. § 921(a)(33)(A)(ii). And both parties appear to agree that Enick's prior conviction does not qualify as a predicate offense under the categorical approach because it is overbroad. (Dkt. 18 at 11, 26 at 15) (Dkt. 22 at 5). The Court agrees.

B. Indivisible

*3 Even if the underlying offense is overbroad, it may still be considered as a predicate offense under the modified categorical approach. This approach is appropriate where the prior conviction is for violating a “divisible” statute.

Decamps, 133 S. Ct. at 1413. A divisible statute is a statute that “sets out one or more elements of the offense in the alternative.” *Id.* A statute is considered divisible if “it contains multiple alternative elements, as opposed to multiple alternative means.” *Rendon v. Holder*, 764 F.3d 1077, 1084-85 (2014). However, a disjunctive (that is, with an “or”) statute is not immediately considered a divisible statute. *Id.* at 1086. Rather, a disjunctive statute is divisible “[o]nly when state law requires that in order to convict the defendant the jury must unanimously agree that he committed a particular substantive offense contained within the disjunctively worded statute....” *Id.*

Here, SMC § 10.11.010 is a disjunctive statute because it contains “or”, suggesting that the ordinance can be broken into three sub-offenses: (1) using physical force, (2) attempting to use physical force, or (3) threatening to use physical force. However, the statute is only divisible if jury unanimity is required as to which part of the offense the defendant committed. *Rendon*, 764 F.3d at 1086. Fortunately, the Washington appellate courts have provided a clear answer, holding that jury unanimity is not required for a conviction under SMC § 10.11.010. *City of Spokane v. White*, 102 Wn. App. 955, 965 (2000). Because SMC § 10.11.010 does not

require juror unanimity, it is indivisible and the conviction cannot qualify under the modified categorical approach.

Because SMC § 10.11.010 is a local law and not a “State, Federal, or Tribal law” and because SMC § 10.11.010 is overbroad and indivisible, it does not qualify as a predicate offense for the § 922(g)(9) charge. The Court will therefore grant the Motion to Dismiss.

ORDER

IT IS ORDERED:

1. Defendant's Motion to dismiss (Dkt. 18) is **GRANTED**.
2. Defendant's Motion to Suppress (Dkt. 19) is **DEEMED MOOT**.
3. The June 19, 2017 hearing is **VACATED**.

All Citations

Not Reported in Fed. Supp., 2017 WL 2531943

2017 WL 4467544

Only the Westlaw citation is currently available.
United States District Court, D. Nevada.

UNITED STATES of America, Plaintiff,

v.

Andre WAGNER, Defendant.

Case No. 3:17-cr-00046-MMD-WGC

Signed 10/05/2017

Attorneys and Law Firms

Megan Rachow, AUSA, U. S. Attorney's Office, Reno, NV,
for Plaintiff.

ORDER

MIRANDA M. DU, UNITED STATES DISTRICT JUDGE

I. SUMMARY

*1 Defendant Andre Wagner was indicted on one count of possession of ammunition by a prohibited person in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). (ECF No. 17 at 2.) Wagner moves to dismiss the Superseding Indictment, contending that his prior misdemeanor conviction under Reno Municipal Code does not qualify as a predicate offense to make him a “prohibited person” under the relevant statute. The Court has reviewed Wagner’s motion to dismiss, the government’s response and Wagner’s reply. (ECF Nos. 35, 37, 38.) The Court agrees with Wagner and grants his motion.

II. BACKGROUND

Count Two of the Superseding Indictment charges Wagner with possession of ammunition by a prohibited person. (ECF No. 17 at 2.) The Superseding Indictment alleges that Wagner knowingly possessed ammunition after “having been convicted of a misdemeanor crime of domestic violence in the Reno Municipal Court, Reno, Nevada, on or about September 22, 2016[.]” (*Id.*) The criminal complaint filed in Reno Municipal Court charged Wagner with domestic battery in violation of NRS §§ 200.481 and 33.018. (ECF No. 35–1.) On September 22, 2016, Wagner pled nolo contendere to the lesser offense of simple battery in violation of Reno Municipal Code § 8.08.020A. (ECF No. 35–2 at 4.)

III. DISCUSSION

Wagner raises three arguments in seeking dismissal. The first two arguments relate to the predicate offense. Wagner insists that he was not convicted of the predicate offense of “misdemeanor crime of domestic violence” as required under 18 U.S.C. § 922(g)(9) (“section 922(g)(9)” or “§ 922(g)(9)”) because he was convicted of a misdemeanor under municipal law, not state law, and because the Indictment fails to plead the required elements of the predicated offense of domestic battery. (ECF No. 35 at 5–10.) His third argument challenges the constitutionality of the statute as applied. (*Id.* at 10–13.) Because the Court agrees with Wagner that conviction of a simple misdemeanor under municipal law does not meet the requirement for the predicate offense under 18 U.S.C. § 921(a)(33)(A) (“section 921(a)(33)(A)” or “§ 921(a)(33)(A)”), the Court declines to address the latter two arguments.

Section 922(g)(9) provides, in pertinent part, that it is “unlawful for any person ... who has been convicted in any court of a misdemeanor crime of domestic violence [] to ... possess ... ammunition.” 18 U.S.C. § 922(g)(9). Section 921(a)(33)(A) in turn defines the term “misdemeanor crime of domestic violence” to mean an offense that—

- (i) is a misdemeanor under Federal, State, or Tribal law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

18 U.S.C. § 921(a)(33)(A). Wagner argues that the plain meaning of “State law” found at section 921(a)(33)(A)(i) means state law while the government argues that the term includes local laws.

*2 “The starting point for [the court’s] interpretation of a statute is always its language.” *United States v. Olander*, 572 F.3d 764, 768 (9th Cir. 2009) (quoting *Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 953 (9th Cir. 2007)). The “first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). “The plainness or ambiguity of statutory language is determined by reference to

the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Id.* at 341.

The plain and unambiguous language of [section 921\(a\)\(33\)\(A\)](#) supports Wagner’s argument that a misdemeanor conviction under municipal law does not constitute a predicate offense for violation of [section 922\(g\)\(9\)](#). [Section 921\(a\)\(33\)\(A\)\(i\)](#) covers a misdemeanor under three specific categories of substantive laws: “Federal, State and Tribal law.” The statute clearly and plainly does not cover a misdemeanor conviction under municipal or local law. In this respect, the Court agrees with two other courts that have similarly construed [§ 921\(a\)\(33\)\(A\)\(i\)](#) to exclude municipal ordinances. See *United States v. Enick*, Case No. 2:17-cr-00013-BLW, 2017 WL 2531943, at *2 (D. Idaho June 9, 2017) (finding that [18 U.S.C. § 921\(a\)\(33\)\(A\)](#) is unambiguous in “providing that only a violation of ‘Federal, State, or Tribal law’ can constitute a predicate offense for a prosecution under [18 U.S.C. § 922\(g\)\(9\)](#)” and that the statute does not include a conviction for misdemeanor assault charge under Spokane Municipal Code); *United States v. Pauler*, 857 F.3d 1073, 1078 (10th Cir. 2017) (interpreting [933\(a\)\(33\)](#) to “not include a violation of a municipal ordinance” and rejecting the government’s argument that “State” should be read to mean “state and local”).

The government argues that a misdemeanor conviction in a municipal court is the equivalent of a misdemeanor conviction under state law. As support, the government relies on [NRS § 1.010](#)’s inclusion of municipal courts as a “court of justice” for the State and [NRS § 268.018](#)’s grant of authority to an incorporated city to treat a misdemeanor under state law as a misdemeanor under city ordinance. (ECF No. 37 at 2–3.) However, the government’s focus on the court of conviction is misplaced because the court of conviction is of no import. [Section 922\(g\)\(9\)](#) covers a conviction “in any court of a misdemeanor crime of domestic violence.” There is no dispute that the Reno Municipal Court has jurisdiction over the matter. In fact, the complaint filed in Reno Municipal Court charged Wagner with a misdemeanor under [NRS § 200.481](#) and [NRS § 33.018](#) as adopted by [§ 1.04.015](#) of the Reno Municipal Code. Just because the Reno Municipal Court could have convicted Wagner of a misdemeanor in violation of state law does not render all convictions by the same court convictions under state law. Nor does the municipal court’s status as a “court of justice” for the state make a municipal court conviction under municipal law a conviction under state law. The Court agrees with Wagner that

“[t]he relevant question ... is what body of law a court’s order construes, not what type of court is construing it.” (ECF No. 38 at 2.)

As to the government’s argument that the city may treat a misdemeanor under state law as a misdemeanor under city ordinance, such grant of authority does not turn a misdemeanor under the municipal code into a misdemeanor under state law. While [NRS § 268.018](#) gives a municipality the authority to treat a misdemeanor under state law as a misdemeanor under city ordinance, the government cites to no Nevada statute that incorporates municipal ordinances as state law. As Wagner aptly points out, the Reno Municipal Code enumerates its own set of laws that criminalizes some conduct that are not covered under the Nevada Revised Statutes. (ECF No. 38 at 3.)

***3** Despite the statute’s plain meaning, the government argues that constructing state law to include local laws (i.e., municipal ordinances) is consistent with Congress’s intent in enacting [§ 922\(g\)\(9\)](#) to “keep[] guns out of the hands of domestic abusers.” (ECF No. 37 at 4 (quoting *United States v. Hayes*, 555 U.S. 415, 426 (2009)). However, because the Court finds that the statute is unambiguous, “that meaning is controlling.” *United States v. Williams*, 659 F.3d 1223, 1225 (9th Cir. 2011). Indeed, the Court “need not examine legislative history as an aide to interpretation unless ‘the legislative history clearly indicates that Congress meant something other than what it said.’ ” *Id.* (quoting *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 877 (9th Cir.2001) (en banc)). But even if the Court were to consider the legislative history, the Court is not persuaded that, as the government argues, Congress meant for state law to include local laws.

In considering the legislative history, the Court does not have to start with a clean slate. The court in *Enick* engaged in that exercise and found that “the legislative history strongly suggests that Congress purposely excluded local law from the list of predicate offenses.” *Enick*, 2017 WL 2531943, at *2. The court reached this conclusion based on the following observations: Congress amended [§ 921](#) in 2006 to include tribal law to the list of substantive law the violation of which constituted the predicate offense for [§ 922\(g\)\(9\)](#) and “[t]he same amendment also distinguished ‘local law’ in dozens of other portions of [§ 921](#), but not [§ 921\(a\)\(33\)\(A\)\(i\)](#).” *Id.* The Court agrees with the *Enick* court’s reasoning. The government cites to Black’s Law Dictionary’s definition of “state law” at the time the two statutory provisions

—§§ 922(9)(g) and 921(a)(33)—were enacted in 1996—as including “ordinances of a city or town.” (ECF No. 37 at 3 (quoting *State Law*, BLACK’S LAW DICTIONARY (6th ed. 1990).) However, this argument ignores the 2006 amendment. Moreover, this argument, as the Tenth Circuit Court of Appeals observed in *Pauler*, “completely ignores the fact that §§ 921 and 922 clearly and consistently differentiate between states and municipalities and between state laws and municipal ordinances.” *Pauler*, 857 F.3d at 1075.

“The Supreme Court has stated that ‘a legislature says in a statute what it means and means in a statute what it says there.’ *Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 1118 (9th Cir. 2015) (quoting *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Here, Congress meant state law when it says “State [] law”, not “state and local laws” as the government argues.

Wagner’s misdemeanor conviction under the Reno Municipal Code does not fall within section 921(a)(33)(A)(i) and

therefore does not qualify as a predicate offense to make him a “prohibited person” under section 922(g)(9). The Court therefore agrees with Wagner that Count Two in the Superseding Indictment against him must be dismissed.

IV. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of Wagner’s motion.

It is therefore ordered that Defendant Andre Wagner’s Motion to Dismiss (ECF No. 35) is granted.

All Citations

Not Reported in Fed. Supp., 2017 WL 4467544

**City of North Las Vegas
Municipal Court**

2332 Las Vegas Blvd North • Suite 100 • North Las Vegas, Nevada 89030-6307
Telephone: (702) 633-1130 • Fax: (702) 399-6296

CERTIFICATE OF COURT DISPOSITION

I hereby certify that I have examined the records of the North Las Vegas Municipal Court and that the following information is a true and accurate record of disposition:

Name: ISAIAH A PERKINS


Date of Birth: 09/16/1991

Case Number: CR011026-10

Offense Date: 09/11/2010

Original Offense:	Final Offense:	Date of Disposition:	Final Disposition:
BATTERY DOMESTIC VIOLENCE NO PRIORS	DISTURBING PEACE (BREACH OF PEACE)	03/03/2011	CHANGE PLEA TO NOLO AT PRETRIAL



Prepared By: 
Court Clerk
Date: 12/17/19

MUNICIPAL COURT

NORTH LAS VEGAS, NEVADA

CITY OF NORTH LAS VEGAS, NEVADA,

vs.

ISIAIAH PERKINS,

Defendant.

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office

DATE 12/17/19
Municipal Court Administrator of the City of North Las Vegas, State of Nevada.

By [Signature]

CASE NO.:

CR11026-10

COMPLAINT

BATTERY DOMESTIC VIOLENCE

NO PRIORS

NRS 200.485(1)(a)

NLVCC 2.150

NO PLEA

DEEP GOSWAMI ESQ, Deputy City Attorney, on this October 15, 2010, in the City of North Las Vegas, County of Clark, State of Nevada, makes the following declarations subject to the penalty for perjury and says

that within his knowledge, information and belief, on 09/11/2010 or thereabout, and before the filing of this complaint and within the City of North Las Vegas, County of Clark, State of Nevada, at approximately 10:15 p.m., a misdemeanor was committed by such defendant who did willfully and unlawfully, commit an act of force or violence upon the person of his spouse, former spouse, any other person with whom he is related to by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had 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: BRITTANY GRIMBLE, by choking her, which occurred at 5820 PALMILLA ST,

all of which is contrary to the form, force and effect of NRS NRS 200.485(1)(a) and NRS 33.018 in such case made and provided against the North Las Vegas City Charter 2.150 and against the peace and dignity of the people of the City of North Las Vegas. Said complainant makes this declaration subject to the penalty according to law.

NC

Amend simple battery

[Signature]
DEEP GOSWAMI ESQ Complainant
Deputy City Attorney

ORIGINAL

By _____

CA004307-10 PAD

600+ Anger management II

Suspended Sentence

90 Days in Jail W.C.O.

CTS

Amend to D.TIP - (1)

Judge: NORTH LAS VEGAS
MUNICIPAL COURT

Case No. CR011026-10

Ticket No. CA4307-10
CTN: CA004307-10

PERKINS, ISAAH A -vs- By: GOSWAMI ESQ, DEEP

PERKINS, ISAAH A DEFNDT By: HOLPER ESQ, SCOTT M
5955 NUEVO LEON #17 319 S. THIRD STREET
NORTH LAS VEGAS, NV 89031 SUITE 1
LAS VEGAS, NV 89101

Dob: 09/16/1991 Sex: M
Lic: Sid:

Plate#:
Make:
Year:
Type:
Venue:
Location: CNLV

Accident: No

VASKOV ESQ, NICHOLAS G. CPLNT

Bond:
Type:
Set:
Posted:

Charges:

Ct.1 NRS BATTERY DOMESTIC VIOLENCE NO PRIORS CHANGE PLEA TO NOLO AT
200.485(1)(a) PRETRIAL
Offense Dt: 09/11/2010 Cvr:
Arrest Dt: 09/11/2010
Comments:

Sentencing:

Ct.1 Sentence Suspended Credit
Jail (Days)
Fines
Costs
Restitution
Probation(Mo) Expires:
Comm Svc (Hr)
REMARKS:

No.	Filed	Action	Operator	Fine/Cost	Due
1	12/17/19	DISPOSITION PREPARED	EARLC	0.00	0.00
		COURT DISPOSITION FORM Sent on: 12/17/2019 09:05:08.83			
2	11/26/12	DISPOSITION PREPARED	COMMACKS	0.00	0.00
		COURT DISPOSITION FORM Sent on: 11/26/2012 18:47:29.90			
3	11/20/12	EVENT COMPLETED	GARMONC	0.00	0.00
		The following event: MOTIONS scheduled for 11/20/2012 at 8:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: HOFFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2			
1	11/20/12	PRESIDING JUDGE AND STAFF ATTENDING IN-COURT	GARMONC	0.00	0.00
		Court Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Check In: Judge: HOFFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Staff: CURTIS, DAVITA - COURT CLERK 3: Present GARMON, CHERYL - COURT CLERK 3: Present PELAS, VERONICA - INTERPRETER: Present WEBSTER ESQ, STEPHEN C - SENIOR DEPUTY CITY ATTORNEY: Present Prosecutors: GOSWAMI ESQ, DEEP: Present VASKOV ESQ, NICHOLAS G.: Present			

Parties:

No.	Filed	Action	Operator	Fine/Cost	Due
5	11/20/12	DEFENDANT'S ATTORNEY PRESENT S HOLPER	GARMONC	0.00	0.00
6	11/20/12	MOTION GRANTED	GARMONC	0.00	0.00
7	11/20/12	CASE CLOSED	GARMONC	0.00	0.00
8	11/20/12	VIOLATION AMENDED TO DIST THE PEACE Charge #1: DISTURBING PEACE (BREACH OF PEACE)	GARMONC	0.00	0.00
9	11/08/12	PRESIDING JUDGE AND STAFF ATTENDING IN-COURT Court Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Check In: Judge: HOFFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Staff: CURTIS, DAVITA - COURT CLERK 3: Present GARMON, CHERYL - COURT CLERK 3: Present PELAS, VERONICA - INTERPRETER: Present WEBSTER ESQ, STEPHEN C - SENIOR DEPUTY CITY ATTORNEY: Present Prosecutors: GOSWAMI ESQ, DEEP: Present VASKOV ESQ, NICHOLAS G.: Present Parties:	GARMONC	0.00	0.00
10	11/08/12	EVENT COMPLETED The following event: MOTIONS scheduled for 11/08/2012 at 8:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: HOFFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2	GARMONC	0.00	0.00
11	11/08/12	ARRAIGNMENT AND SENTENCING HEARING SCHEDULED Event: MOTIONS Date: 11/20/2012 Time: 8:00 am Judge: HOFFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2	GARMONC	0.00	0.00
12	11/08/12	DEFENDANT'S ATTORNEY PRESENT S HOLPER	GARMONC	0.00	0.00
13	11/08/12	CONTINUE COURT DATE	GARMONC	0.00	0.00
14	10/10/12	ARRAIGNMENT AND SENTENCING HEARING SCHEDULED Event: MOTIONS Date: 11/08/2012 Time: 8:00 am Judge: HOFFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Result: EVENT COMPLETED	WASHINGTON	0.00	0.00
15	10/10/12	MOTION TO WITHDRAW PLEA Attorney: HOLPER ESQ, SCOTT M (009587)	WASHINGTON	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
16	09/25/12	DISPOSITION PREPARED COURT DISPOSITION FORM Sent on: 09/25/2012 13:35:38.43	DELAHUERTA	0.00	0.00
17	09/22/12	DISPOSITION PREPARED	TITUSL	0.00	0.00
18	02/15/12	AMEND THE SUSPENDED SENTENCE TO - 0 DAYS Charge #1: BATTERY NO WEAPON NO SUBSTANTIAL BODILY HARM	WHEATONS	0.00	0.00
19	02/15/12	PAYMENT MADE ON CASE	WHEATONS	0.00	0.00
20	02/15/12	50% OFF PROGRAM - 2012 QUOTED AMOUNT: \$103	WHEATONS	0.00	0.00
21	02/15/12	MORATORIUM GRANTED PER JUDGE	WHEATONS	0.00	0.00
22	02/15/12	PAYMENT MADE ON CASE	WHEATONS	0.00	0.00
23	02/15/12	CASE CLOSED	WHEATONS	0.00	0.00
24	02/15/12	EVENT COMPLETED The following event: STATUS CHECK scheduled for 02/06/2012 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	WHEATONS	0.00	0.00
25	01/12/12	STATUS CHECK EVENT SCHEDULED - SOOT SUS AR100 Event: STATUS CHECK Date: 02/06/2012 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	HAWSW	0.00	0.00
26	01/12/12	EVENT COMPLETED The following event: STATUS CHECK scheduled for 01/05/2012 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	HAWSW	0.00	0.00
27	01/12/12	PAYMENT MADE ON CASE	HAWSW	0.00	0.00
28	12/15/11	STATUS CHECK EVENT SCHEDULED- SUS//SOOT/ARS100 Event: STATUS CHECK Date: 01/05/2012 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	WHEATONS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
29	12/15/11	EVENT COMPLETED The following event: STATUS CHECK scheduled for 12/05/2011 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	WHEATONS	0.00	0.00
30	11/15/11	STATUS CHECK EVENT SCHEDULED Event: STATUS CHECK Date: 12/05/2011 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	HAWSW	0.00	0.00
31	11/15/11	EVENT COMPLETED The following event: STATUS CHECK scheduled for 11/03/2011 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	HAWSW	0.00	0.00
32	11/15/11	PAYMENT MADE ON CASE	HAWSW	0.00	0.00
33	11/15/11	LAST KNOWN ADDRESS CONFIRMED	HAWSW	0.00	0.00
34	10/05/11	STATUS CHECK EVENT SCHEDULED - SUS//SOOT//AR100 Event: STATUS CHECK Date: 11/03/2011 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	CURIELL	0.00	0.00
35	10/05/11	PAYMENT MADE ON CASE	CURIELL	0.00	0.00
36	09/12/11	CASE IN ACCOUNTS RECEIVABLE STATUS	RYANM	0.00	0.00
37	09/12/11	PAYMENT MADE ON CASE SUS/SOOT/AR \$100	RYANM	0.00	0.00
38	09/12/11	EVENT COMPLETED The following event: STATUS CHECK scheduled for 09/06/2011 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	RYANM	0.00	0.00
39	09/03/11	STATUS CHECK EVENT SCHEDULED - SUS/SOOT/AR \$100 Event: STATUS CHECK Date: 09/06/2011 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	WHEATONS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
40	08/03/11	EVENT COMPLETED The following event: STATUS CHECK scheduled for 07/18/2011 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	WHEATONS	0.00	0.00
41	06/02/11	STATUS CHECK EVENT SCHEDULED - SUS/SOOT/AR100 Event: STATUS CHECK Date: 07/18/2011 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	JOBEJ	0.00	0.00
42	06/02/11	EVENT COMPLETED - NO III TODAY The following event: STATUS CHECK scheduled for 06/16/2011 at 1:00 pm has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	JOBEJ	0.00	0.00
43	05/16/11	ACCOUNTS RECEIVABLE - SUSPENDED SENTENCE CASE NO LONGER IN COURT PROGRAMS	JACKSONR	0.00	0.00
44	05/16/11	STATUS CHECK EVENT SCHEDULED Event: STATUS CHECK Date: 06/16/2011 Time: 1:00 pm Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	JACKSONR	0.00	0.00
45	05/16/11	EVENT COMPLETED The following event: COURT PROGRAM STATUS CHECK scheduled for 05/10/2011 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	JACKSONR	0.00	0.00
46	05/16/11	PAYMENT MADE ON CASE	JACKSONR	0.00	0.00
47	05/16/11	ANGER MANAGEMENT CLASSES COMPLETE	JACKSONR	0.00	0.00
48	04/06/11	COURT PROGRAM STATUS CHECK Event: COURT PROGRAM STATUS CHECK Date: 05/10/2011 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	JACKSONR	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
49	04/06/11	EVENT COMPLETED The following event: COURT PROGRAM STATUS CHECK scheduled for 04/06/2011 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	JACKSONR	0.00	0.00
50	03/22/11	PAYMENT MADE ON CASE	TELLEZE	0.00	0.00
51	03/03/11	BOND EXONERATED	SYPHUS	0.00	0.00
52	03/03/11	COURT PROGRAM STATUS CHECK Event: COURT PROGRAM STATUS CHECK Date: 04/06/2011 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	TELLEZE	0.00	0.00
53	03/03/11	EVENT COMPLETED The following event: COURT PROGRAM STATUS CHECK scheduled for 03/03/2011 at 7:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	TELLEZE	0.00	0.00
54	03/03/11	AR PLAN FEE Charge #1: BATTERY NO WEAPON NO SUBSTANTIAL BODILY HARM Receipt: 1607313 Date: 05/16/2011	TELLEZE	40.00	0.00
55	03/03/11	PRESIDING JUDGE AND STAFF ATTENDING IN-COURT Court Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Check In: Judge: HOFFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Staff: DOCKTER ESQ, SHARON Y - DEPUTY CITY ATTORNEY: Present GARMON, CHERYL - COURT CLERK 3: Present GOSWAMI, DEEP - DEPUTY CITY ATTORNEY: Present PALOMO, GUILLERMO - INTERPRETER: Present RAMSEY ESQ, CATHERINE - DEPUTY CITY ATTORNEY: Present SYPHUS, SHELLEY - COURT CLERK 2: Present Prosecutors: GOSWAMI ESQ, DEEP: Present VASKOV ESQ, NICHOLAS G.: Present Parties:	GARMONC	0.00	0.00
56	03/03/11	COURT PROGRAM STATUS CHECK	GARMONC	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Duo
57	03/03/11	EVENT COMPLETED The following event: PRETRIAL. scheduled for 03/03/2011 at 1:30 pm has been resulted as follows: Result: EVENT COMPLETED Judge: HOFFEGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2	GARMONC	0.00	0.00
58	03/03/11	COURT PROGRAM STATUS CHECK Event: COURT PROGRAM STATUS CHECK Date: 03/03/2011 Time: 7:00 am Judge: NORTH LAS VEGAS MUNICIPAL COURT Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	GARMONC	0.00	0.00
59	03/03/11	VIOLATION AMENDED TO BATTERY Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS	GARMONC	0.00	0.00
60	03/03/11	SUSPENDED SENTENCE 90 DAYS SOOT WCO Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS	GARMONC	0.00	0.00
61	03/03/11	REFERRED TO ANGER MANAGEMENT CLASSES LEVEL 2 Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS	GARMONC	0.00	0.00
62	03/03/11	FOUND GUILTY Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS	GARMONC	0.00	0.00
63	03/03/11	CHANGE PLEA TO NOLO PRIOR TO TRIAL Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS	GARMONC	0.00	0.00
64	03/03/11	\$5 ADMINISTRATIVE ASSESSMENT - GEN FUND Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS Receipt: 1590405 Date: 03/22/2011	GARMONC	5.00	0.00
65	03/03/11	\$115 ADMINISTRATIVE ASSESSMENT Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS Receipt: 1590405 Date: 03/22/2011 Receipt: 1607313 Date: 05/16/2011	GARMONC	115.00	0.00
66	03/03/11	\$7 SPECIALTY COURT FEE Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS Receipt: 1607313 Date: 05/16/2011	GARMONC	7.00	0.00
67	03/03/11	\$10 CONSTRUCTION FEE ASSESSED Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS Receipt: 1607313 Date: 05/16/2011	GARMONC	10.00	0.00
68	03/03/11	\$600 FINE/BAIL ASSESSED Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS Receipt: 1607313 Date: 05/16/2011 Receipt: 1613202 Date: 06/02/2011 Receipt: 1630231 Date: 08/03/2011 Receipt: 1640160 Date: 09/12/2011 Receipt: 1646505 Date: 10/05/2011 Receipt: 1656986 Date: 11/15/2011 Receipt: 1664687 Date: 12/15/2011 Receipt: 1671830 Date: 01/12/2012 Receipt: 1682167 Date: 02/15/2012	GARMONC	600.00	0.00
69	03/03/11	DEFENDANT'S ATTORNEY PRESENT D SHEETS	GARMONC	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
70	01/20/11	CONTINUE COURT DATE FOR PRETRIAL	WALLERD	0.00	0.00
71	01/20/11	EVENT COMPLETED The following event: PRETRIAL, scheduled for 01/20/2011 at 1:30 pm has been resulted as follows: Result: EVENT COMPLETED Judge: HOEFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2	WALLERD	0.00	0.00
72	01/20/11	PRETRIAL HEARING SCHEDULED: Event: PRETRIAL. Date: 03/03/2011 Time: 1:30 pm Judge: HOEFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2	WALLERD	0.00	0.00
73	01/20/11	PRESIDING JUDGE AND STAFF ATTENDING IN-COURT Court Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Check In: Judge: HOEFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2 Staff: DOCKTER ESQ, SHARON Y - DEPUTY CITY ATTORNEY: Present GOSWAMI, DEEP - DEPUTY CITY ATTORNEY: Present PHILLIPS, KIMBERLY - DEPUTY CITY ATTORNEY: Present RAMSEY ESQ, CATHERINE - DEPUTY CITY ATTORNEY: Present SYPHUS, SHELLEY - COURT CLERK 2: Present WALLER, DAWNA - COURT CLERK 3: Present Prosecutors: GOSWAMI ESQ, DEEP: Present VASKOV ESQ, NICHOLAS G.: Present Parties:	WALLERD	0.00	0.00
74	01/20/11	DEFENDANT'S ATTORNEY PRESENT DAMIAN SHEETS	WALLERD	0.00	0.00
75	11/30/10	EVENT COMPLETED The following event: ARRAIGNMENT AND SENTENCING HEARING scheduled for 11/30/2010 at 8:00 am has been resulted as follows: Result: EVENT COMPLETED Judge: VANLANDSCHOOT, WARREN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1	GARMONC	0.00	0.00
76	11/30/10	PRETRIAL HEARING SCHEDULED: Event: PRETRIAL. Date: 01/20/2011 Time: 1:30 pm Judge: HOEFFGEN, SEAN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 2	GARMONC	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
77	11/30/10	PRESIDING JUDGE AND STAFF ATTENDING IN-COURT Court Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Check In: Judge: VANLANDSCHOOT, WARREN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Staff: CURTIS, DAVITA - COURT CLERK 3: Present DOCKTER ESQ, SHARON Y - DEPUTY CITY ATTORNEY: Present GARMON, CHERYL - COURT CLERK 3: Present PALOMO, GUILLERMO - INTERPRETER: Present Prosecutors: GOSWAMI ESQ, DEEP: Present VASKOV ESQ, NICHOLAS G.: Present Parties:	GARMONC	0.00	0.00
78	11/30/10	PLED NOT GUILTY Charge #1: BATTERY DOMESTIC VIOLENCE NO PRIORS	GARMONC	0.00	0.00
79	11/30/10	DEFENDANT'S ATTORNEY PRESENT D SHEETS	GARMONC	0.00	0.00
80	11/02/10	ARRAIGNMENT AND SENTENCING HEARING SCHEDULED Event: ARRAIGNMENT AND SENTENCING HEARING Date: 11/30/2010 Time: 8:00 am Judge: VANLANDSCHOOT, WARREN Location: NORTH LAS VEGAS MUNICIPAL COURT DEPT. 1 Result: EVENT COMPLETED	DELAHUERTA	0.00	0.00
81	11/02/10	ALERT ISSUED BOND TO BE EXONERATED issued on: 11/02/2010 For: PERKINS, ISAIAH Bond Amt:	DELAHUERTA	0.00	0.00
82	11/02/10	SURETY BOND FILED Arrest Bond Added to Case with: Action Code: BATTERY DOMESTIC VIOLENCE NO PRIORS Arrest Date: 10/29/2010 Custody Location: NORTH LAS VEGAS DETENTION CENTER Arrest # Type: LAW ENFORCEMENT AGENCY NUMBER Number: Bond Status: ACTIVE BOND Status Date: 10/29/2010 Blanket Bond: No Okay to Apply: No Bond Type: SURETY BOND Bond Amount: 3137 Bond/Pwr No.: S51937104 Bonding Co.: ALL STAR BONDING Insurance Co.: SAFETY NATIONAL CASUALTY CORPORATION	DELAHUERTA	0.00	0.00
83	10/29/10	DEFENDANT RELEASED FROM DETENTION	DELAHUERTA	0.00	0.00
84	10/29/10	CASE REACTIVATED	TIRADOJ	0.00	0.00
85	10/29/10	DEFENDANT ARRESTED/IN-CUSTODY	TIRADOJ	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
86	10/29/10	WARRANT SERVED BY P2097 ACTIVE WARRANT served on: 10/29/2010 For: PERKINS, ISAIAH	TIRADOJ	0.00	0.00
87	10/24/10	ALERT ISSUED ACTIVE WARRANT issued on: 10/24/2010 For: PERKINS, ISAIAH Bond Amt:	KUMINECZC	0.00	0.00
88	10/24/10	WARRANT PRINTED	KUMINECZC	0.00	0.00
89	10/22/10	BAIL SET: \$3,137.00 PER-JUDGE HOEFFGEN	FITEJR	0.00	0.00
90	10/22/10	WARRANT OF ARREST ISSUED	FITEJR	0.00	0.00
Total:				777.00	0.00
Totals By: AA FEE				120.00	0.00
FEE				57.00	0.00
FINE				600.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

CERTIFIED COPY

The document to which this certificate is
attached is a full, true and correct copy
of the original on file and of record in
my office

DATE 12/11/19
Municipal Court Administrator of the
City of North Las Vegas, State of Nevada.
By [Signature]

118 Nev. 859, 861, 59 P.3d 477, 479 (2002) (abrogated on other grounds), where this Court granted a writ of certiorari to address a District Court split on the constitutionality of a city ordinance. In that case, and as here, two separate courts “reached contrary conclusions” regarding the constitutionality of a criminal statute. Id. The Court held that it would “entertain a petition for extraordinary relief in order to resolve a split of the authority among lower courts.” Id. Here, the constitutionality of HMC § 8.02.055 was ruled upon, twice, by separate Eighth Judicial District Court departments, resulting in opposing decisions. *See Nathan Ohm v. Henderson Municipal Court*, Case No. A-20-810452-W, Dept. 25 (*See* Petitioner’s Appendix pp.089-106) (upholding the constitutionality of HMC § 8.02.055).

The City of Henderson petitions this Court to recognize the necessity of its writ for certiorari, rule on this issue of first impression, and resolve the split in the District Court, under the authority granted by NRS 34.020(3).

BACKGROUND

I. HENDERSON MUNICIPAL CODE § 8.02.055 – A NECESSARY AND PRACTICAL SOLUTION IN THE ABSENCE OF STATEWIDE DIRECTION

On average, the Henderson City Attorney’s Office files and resolutely prosecutes more than 1,000 cases of domestic battery per year in the Henderson Municipal Court. Pride and priority are placed in these cases. Proper resources are

allocated to ensure just outcomes and victim safety. In Henderson, the case results prove this, repeatedly.

On September 12, 2019, this Court released Andersen v. Eighth Judicial District Court et al., 135 Nev. Adv. Op. 42, 448 P.3d 1120 (2019), which held that the 2015 legislative amendment to NRS 202.360 elevated misdemeanor domestic battery (NRS 200.485, 33.018) to a serious offense under the Sixth Amendment. While Andersen's holding was somewhat straightforward, the decision unfortunately raised many more questions than answers. How can municipalities practically conduct jury trials without proper resources? What rules of uniform practice do municipalities follow when conducting jury trials, as none are present in the Nevada Revised Statutes relating to municipalities? Where does a municipality summon their jury pool from – the city or county? Are municipalities allowed some time to physically construct jury services facilities and jury boxes before implementation?

Thankfully, many of these questions were already addressed by this Court in Blanton v. N. Las Vegas Mun. Court, 103 Nev. 623, 748 P.2d 494 (1987). This Court acknowledged, in the unanimous Blanton decision, that even if jury trials were to be ordered by the Supreme Court for some misdemeanor offense(s), implementation cannot practically occur without statewide legislation. This Court stated:

Moreover, a decision of this court mandating jury trials in DUI cases would create numerous unresolved administrative problems. **Procedures for the summons and selection of jurors in the municipal courts do not exist. A decision requiring jury trials in the municipal courts could not be implemented until such procedures were developed.** This court is not in a position to legislate the procedures to be followed in such cases. **Further, the legislature of this state, which meets once every two years, is not presently in session to fill the void.**

Blanton v. N. Las Vegas Mun. Court, 103 Nev. 623, 634–35, 748 P.2d 494, 501–02 (1987) (emphasis added). This Court also noted the financial and logistical problems of the immediate requirement to conduct misdemeanor jury trials without legislative action.

Several serious policy considerations reinforce our conclusion that we should not abandon our holding in Smith. First, a non-jury trial in a misdemeanor case is speedy and inexpensive. On the other hand, a decision of this court requiring jury trials in the prosecution of DUI offenses in the municipal court would result in tremendous expense to the municipalities of this state. **For example, courtrooms would require renovation, and in some cases expansion or replacement, in order to accommodate jurors. The increased time required to conduct jury trials would in many instances occasion a need for municipalities to employ more judges and more personnel, and to build still further courtrooms.** These expenses would be exacerbated because, in DUI cases, the prosecutor is prohibited by statute from engaging in plea bargaining. See NRS 484.3792(3). The resulting expense to the municipalities may actually deter the prosecution of DUI offenses. Thus, requiring jury trials in municipal courts for DUI cases could mandate a lack of action against those who drink and drive.

Id. (emphasis added). This Court's practical wisdom in Blanton provided a guide regarding how municipalities should handle the aftermath of the Andersen

decision. In short, the implementation of misdemeanor jury trials is wholly impractical absent statewide legislation regarding rules of procedure and funding.

Perhaps the biggest and most serious question has never directly been answered by either Blanton or Andersen – are municipal courts allowed to conduct jury trials for misdemeanor domestic battery? In the wake of the Andersen decision, defendants facing charges of misdemeanor domestic battery began either demanding jury trials in “speedy” course (knowing that infrastructure was not in place to grant the request), or challenging the City's very authority and ability to conduct jury trials; the effect of either strategy was to challenge the City's very authority to continue to prosecute crimes of domestic violence. The practical effects of the Andersen decision essentially brought the City's ability to prosecute domestic abusers to a halt.

The City began seeking solutions. Dismissing over 1,000 cases and theoretically handing the cases over to the Clark County District Attorney's office to re-file in Henderson Justice Court, without a grant of funding to handle such a huge surge in caseload, was not a practical or morally responsible option.¹ Simply

¹ Domestic violence is, undisputedly, a very serious problem in Nevada. Prosecuting domestic violence is essential to public safety, to reducing acts of domestic violence, and to protecting victims of domestic violence. As domestic violence is a major cause of death in Nevada at an alarmingly high rate, the ability to prosecute domestic violence is a compelling government interest of the City of Henderson. "Reducing domestic violence is a compelling government interest." United States v. Knight, 574 F. Supp. 2d 224, 226 (D.Me. 2008), citing United

asking victims of violent crime to wait two years or more for statewide legislative fix was neither a legal nor ethically appropriate option either. *See Nev. Const. Art. 1, § 8A* (a victim of a crime has the right “[t]o the timely disposition of the case following the arrest of the defendant.”).

After Andersen, for public safety reasons, the City needed a way to continue prosecuting domestic abusers during the current and ongoing temporary time when prosecutions for battery domestic violence under the NRS by the City are unclear. Determined to continue addressing the serious domestic violence problem and to help victims of violent crime, Henderson found the “way” by passing a local ordinance. Ordinance No. 3632, was introduced before the Henderson City Council on October 15, 2019, proposing the law that is now codified as HMC § 8.02.055. HMC § 8.02.055 mirrors the domestic battery prohibited conduct and penalties under NRS 200.485 (in conjunction with NRS 33.018); the only difference is the lack of invocation of the gun prohibition when charging under the municipal code.

During the October 15, 2019 City Council Meeting in which the ordinance was introduced, Nicholas Vaskov, the Henderson City Attorney, presented the

States v. Lippman, 369 F.3d 1039, 1043 (8th Cir.2004), cert. denied, 543 U.S. 1080, 125 S.Ct. 942, 160 L.Ed.2d 824 (2005). *See also People v. Jungers*, 127 Cal.App.4th 698, 704 (2005) (elimination of domestic violence is a compelling state interest).

Andersen decision to the council and listed the various options and concerns for the City moving forward.

For the first time, the Nevada Supreme Court held that those charged under Nevada's law with . . . a misdemeanor domestic battery are entitled to a trial by jury. The court reached this conclusion because a Nevada law also provides that anyone convicted under the State's domestic battery statute is prohibited from owning or possessing a firearm. According to the court, this prohibition on firearms makes convictions under the State's domestic battery statute a serious crime, requiring trial by jury.

This decision leaves the City with a couple of options. We could charge all domestic battery cases as simple battery. We don't think that's a good idea. Domestic battery is a distinct crime from simple battery, and we think it should be recognized and charged as such.

We could also refer all of our domestic violence cases to the District Attorney for prosecution in Justice or District Court. That would burden an already overtaxed county court system with more than 1,000 cases from the city alone, and probably more than 7,000 valley wide with all the other local governments. We didn't think that makes sense and we don't think that that's in the best interest of justice or the victims.

We could enact a city ordinance . . . making domestic violence battery a crime under the Henderson Municipal Code and charge our cases accordingly. We think that's the best approach and that's what's before you this evening.

Charging domestic violence under our Municipal Code allows the City to better protect victims by . . . monitoring those convicted through terms imposed by our courts, including counseling and other special programs that protect victims and help avoid . . . recidivism. This approach is consistent with what other local governments are doing. We've coordinated with our sister cities in Las Vegas and North Las Vegas on this. This approach is also supported by our Municipal Court and -- and our Municipal Court judges.

That said, we do consider this a short-term solution. Longer term, we intend to build the infrastructure necessary to hold jury trials.

/////

City Council Meeting, Bill No. 3376, Amendment to Henderson Municipal Code Chapter 8.02, pg 2, lines 9 – 15, pg 3 lines 1 – 15 (Oct. 15, 2019) (*See* Petitioner's Appendix p. 011-012).

Further, the ordinance clearly states the City's purposes for adding domestic battery to the municipal code: "battery constituting domestic violence is a widespread offense and the City of Henderson has a significant interest in protecting its citizens from this offense." (*See* Petitioner's Appendix pp. 107-110). The ordinance also states that, in response to the Andersen decision, there will be "anticipated legal challenges to the Municipal Court's jurisdiction to entertain and hold jury trials" (a prophecy fulfilled by the instant challenge wherein Cullen is challenging the municipal court's very authority to hear any domestic violence case), and that enacting a city ordinance is "important to protect the general health, safety, and welfare of the citizens of Henderson." Id.

Put more directly, as soon as the Andersen decision was released, despite the Andersen Court specifically remanding the case for that defendant to be given a jury trial in a municipal court, the City anticipated that defendants would next challenge a municipal court's authority to conduct jury trials. As defendants are currently challenging the City's very authority to conduct jury trials, taxpayer investment in jury trial infrastructure is basically impossible. This put the Petitioner (and all other municipal jurisdictions in Nevada) in a position with no

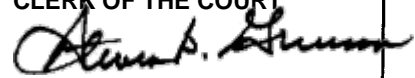
good solution, and effectively ground the prosecution of domestic violence to a screeching halt. It is clear that the City's motivation in adding domestic battery into the HMC was to be able to continue to protect its citizens from domestic violence by actually being able to prosecute domestic violence cases, pending further statewide legislative action.

Chief Justice Gunderson's words in Blanton ring true today louder than ever – a Supreme Court “decision requiring jury trials in the municipal courts could not be implemented” without statewide legislative action. Blanton, 103 Nev. at 35. We are the heirs to the Chief Justice's thoughtful words.

II. BOTH PARTIES AGREE THAT A CONVICTION UNDER HMC § 8.02.055 DOES NOT AFFECT A DEFENDANT'S SECOND AMENDMENT RIGHTS.

Criminal defendants have a fundamental right to a jury trial for “serious” offenses, but not for “petty” offenses. Since HMC § 8.02.055 does not disturb Cullen's Second Amendment rights and is therefore a “petty” offense, there is no accompanying right to a jury trial pursuant to Andersen.

The Sixth Amendment to the Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a ... trial by an impartial jury of the State ... wherein the crime shall have been committed.” The states are bound by the Sixth Amendment jury trial guarantee through its incorporation into the Due Process Clause of the Fourteenth Amendment. Duncan v. Louisiana, 391 U.S. 145, 149, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). However, despite the broad pronouncement that the accused in “all criminal prosecutions” has the right to a jury trial, the Supreme Court in Duncan observed that “[i]t is doubtless true that



1 **DAO**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**
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6
7 **CITY OF HENDERSON**

8 **Plaintiff/Respondent,**

9 **vs.**

10 **STEVEN CULLEN.**

11 **Defendant/Petitioner.**

DIST. COURT CASE NO.: A-20-809107-W

DEPT NO.: VIII

MUNI. COURT CASE NO.: 19CR008881

MUNI. COURT DEPT. NO.: 3

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17 **DECISION AND ORDER**

18 **I.**

19 **Procedural History**

20
21 This matter has as its genesis the September 8, 2019 arrest of Defendant/Petitioner, Mr.
22 Steven Cullen ("CULLEN"), who was initially charged with misdemeanor battery
23 constituting domestic violence under NRS 200.481(1)(a), NRS 33.018 and Henderson
24 City Charter 2.140. Shortly thereafter, the Henderson City Council enacted the new
25 domestic violence ordinance codified as City Ordinance 3632¹ on October 15, 2019. Two
26 days later, on October 17, 2019, the Henderson City Attorney's Office amended the
27 charges against CULLEN to one count of Battery Constituting Domestic Violence,
28 charged under Henderson Municipal Code (HMC) § 8.02.055.

CULLEN in the lower court filed a Demand for Jury Trial and Motion to Dismiss
requesting the Henderson Municipal Court either dismiss the Amended Criminal

¹ Henderson Municipal Code (HMC) § 8.02.055.

1 Complaint or grant him a jury trial.² Henderson Municipal Court Judge Rodney Burr
2 denied CULLEN's motion in a written decision on January 13, 2020.

3 CULLEN thereafter filed a Petition for Writ of Mandamus with this Court on January 23,
4 2020. CULLEN's prayer within his Petition for Writ of Mandamus was for issuance of an
5 order requiring Judge Burr to afford him a jury trial, or in the alternative, dismiss the
6 amended criminal complaint. The basis of his prayer was again, that HMC § 8.02.055
7 violates the *Ex Post Facto* Clause and is in direct conflict with NRS 202.360(1)(a) and
thus in contradiction of NRS 266.321(1) and (2). Plaintiff/Respondent City of Henderson
("HENDERSON") filed its Answer to Cullen's Petition on February 19, 2020. Counsel for
the parties thereafter agreed to submit the matter on their respective briefs.

8 This Court entered a Minute Order on March 19, 2020, GRANTING CULLEN's Petition
9 for issuance of Writ of Mandamus, ordering Judge Burr to provide him the requested jury
10 trial. The corresponding written Order was filed with the Eighth Judicial District Court
11 Clerk on April 11, 2020; however, it did not identify either the facts or legal basis upon
which the Writ of Mandamus was issued.

12 Plaintiff/Respondent HENDERSON filed an Amended Motion for Reconsideration and/or
13 Clarification of Order Granting Writ of Mandamus and For Stay of Order Granting Writ of
14 Mandamus on April 13, 2020 to which Defendant/Petitioner CULLEN filed an Opposition.
15 Oral argument was entertained by this Court on May 14, 2020 via telephone conference
16 which concluded with this Court agreeing to reconsider and clarify its April 11, 2020
17 Order. This Court at the conclusion of the hearing ruled that its previous Order of April
11, 2020 granting CULLEN's Petition for Writ of Mandamus stood and that Judge Burr
was ordered to provide CULLEN his requested jury trial.³ This Court at the conclusion of
the hearing also granted HENDERSON's request for an immediate stay of the instant
Order to allow for review by the Nevada Supreme Court.

18 II. 19 Factual Background

20 The legal backdrop of CULLEN's arrest was the Nevada Legislature's well-intentioned
21 desire to afford victims of domestic violence additional protections. It did this in 2017 by
22 amending the penalties associated with a conviction under NRS 200.485(1)(a) such that
23 persons convicted of domestic violence under NRS 200.485 are prohibited from owning,
24 possessing or having under his or her control any firearm. It was this added penalty,
touching upon a person's Constitutional right to bear arms, which caused the Nevada
Supreme Court in *Andersen v. Eighth Judicial District Court*, 135 Nev. 321, 448 P.3d
1120 (2019) to revisit its decision in *Amezcuca v. Eighth Judicial District Court*, 130 Nev.

25
26
27 ² The basis cited by Cullen in his motion was that newly enacted (HMC) § 8.02.055 violates the *Ex Post Facto* clause
of the United States Constitution and Nevada Constitution and impermissibly conflicts with NRS 202.360(1)(a).

28 ³ This Court at the conclusion of the hearing, at the request of the City of Henderson, recognized that the City of
Henderson possesses the authority to accommodate and administer jury trials.

1 45, 319 P.3d 602 (2014).⁴ The *Andersen* Court succinctly explained its reasoning and
2 disitinction from *Amezcu*a as follows:

3 In *Amezcu*a, we held that a federal regulation restricting a convicted
4 domestic batterer's possession of a firearm was not a direct consequence
5 of a Nevada conviction for misdemeanor domestic battery. (Citation
6 omitted.) In so holding, we relied partly on the United States Supreme
7 Court's reasoning 'that the statutory penalties on other States are irrelevant
8 to the question *whether a particular legislature deemed a particular offense*
9 *'serious'.*' (Citations omitted.) But now, although not included in the statue
10 proscribing misdemeanor domestic battery, our Legislature has imposed a
11 limitation on the possession of a firearm in Nevada that automatically and
12 directly flows from a conviction for misdemeanor domestic battery. In our
13 opinion, this new penalty – a prohibition on the right to bear arms as
14 guaranteed by both the United States and Nevada Constitutions – 'clearly
15 reflect[s] a legislative determination that the offense [of misdemeanor
16 domestic battery] is a serious one.' (Original emphasis.) Id. at 324.

17 The consequential impact of *Andersen* was that persons charged with misdemeanor
18 battery constituting domestic violence were entitled to a jury trial, for if convicted of the
19 charged offense, they faced the "serious" consequence of losing Constitutional their right
20 to bear arms.

21 Plaintiff/Respondent, HENDERSON, within a month of the *Andersen* decision, enacted
22 HMC §8.02.055. Notably, and critical to the instant analysis, this ordinance removes as a
23 penalty of conviction of Battery Constituting Domestic Violence, the prohibition of
24 owning/possessing/controlling a firearm. Thus, falling under an *Amezcu*a analysis versus
25 an *Andersen* analysis as it pertains to whether a right to a jury trial attaches to the
26 charged offense.

27 III. 28 Issues Before the Court

- 1 Does this Court have the authority to consider and grant CULLEN's Petition for
Writ of Mandamus?
- 2 Does HMC §8.02.055 impermissibly conflict with NRS 202.360(1)(a) and (1)(b)?
- 3 Does HMC §8.02.055, as applied to Defendant/Petitioner CULLEN, violate the Ex
Post Facto Clauses of the United States Constitution and the Nevada
Constitution?

⁴ The *Amezcu*a Court concluded that the offense of first-offense domestic battery and the penalties then attached thereto did NOT "clearly indicate a determination by the Nevada Legislature that this is a serious offense to which the right to a jury trial attaches." *Amezcu*a, 130 Nev. at 50, 319 P.3d at 605.

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IV.
Discussion

This case presents an intersection of Constitutional rights, legal protections for victims of domestic violence, and a municipality's authority to regulate its judicial affairs. The Nevada Legislature in its desire to afford victims of domestic violence additional protection enacted NRS 202.360 which proscribed that a person shall not own/possess/control a firearm if they have been convicted in this State or any other state of a misdemeanor crime of domestic violence. This duly enacted statute adversely impacts a person's Constitutional right to bear arms if convicted, and thus, deemed a "serious" offense under the *Andersen* reasoning, thereby invoking a person's Sixth Amendment right to request a speedy, impartial, jury trial.

The practical consequence of the Nevada Legislature's enactment of NRS 202.360 and the Nevada Supreme Court's decision in *Andersen* has presented HENDERSON and municipalities throughout the State with a Hobson's choice – provide persons charged with battery constituting domestic violence a jury trial if requested, or amend their municipal codes to remove the penalties enacted by the Nevada Legislature in NRS 202.360. HENDERSON chose the latter, asserting it possessed the inherent power to do so, citing *In Donahue v. City of Sparks*, 111 Nev. 1281, 903 P.2d 225 (1995) and *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000).

Plaintiff/Respondent HENDERSON in its Amended Motion for Reconsideration and/or Clarification of Order expounded upon the practical implications it faced following the *Andersen* decision, explaining that The Henderson Municipal Court handles between 1,100-1,200 cases of Battery Constituting Domestic Violence every year and that no defendant facing such a charge has ever received a jury trial. (See, p.5, lines 9-12.) As to specific details in the "post-*Andersen* climate" HENDERSON offered the following:

The Henderson Municipal Court has no infrastructure in place to handle jury trials at this time. There are no jury boxes or deliberation rooms in the Henderson Municipal Courts. There is no jury commissioner, nor the entity charged with sending jury summonses or otherwise empaneling a jury. There are no allocated resources to immediately begin conducting jury trials. Perhaps more importantly, defendants are challenging the Henderson Municipal Court's authority to conduct a jury trial on a daily basis in this post-Andersen climate.

Many of these defendants won't actually want a jury trial, but they will be advised by their defense attorneys that simply demanding a jury trial will tie up their case for months or years before trials can be set, delaying justice for the 1,100-1,200 victims in these cases who have a constitutional right to 'the timely disposition of the case following the arrest of the defendant.'...The decision by this Court that Petitioner is entitled to a jury trial, without clear, articulated reasoning for the basis of Petitioner's right will have far-reaching consequences, negatively impacting prosecution of

1 domestic violence and impairing the constitutional rights of victims.

2 Id. pages, 5-6, lines 19-7. This Court is neither unsympathetic to HENDERSON's post-
3 *Andersen*, situation, nor is it naïve to the practical consequences of how future accused
4 domestic battery cases will be charged or negotiated. However, this Court is duty bound
5 to follow and interpret the Constitution and duly enacted laws of the Nevada Legislature
6 as written. It is also bound by the doctrine of *Stare Decisis*.

7 Plaintiff/Petitioner CULLEN has asserted that Henderson's enactment of HMC §8.02.055
8 was impermissible, as it is in direct conflict with NRS 202.360. Moreover, in his particular
9 case, the criminal charges filed against him violate the *Ex Post Facto Clauses* of the
10 United States Constitution and the Nevada Constitution.

11 V.
12 Order

13 This Court having reviewed all the moving papers filed on behalf of the parties and
14 entertaining oral argument of the parties on May 14, 2010, hereby GRANTS Respondent
15 HENDERSON's motion for reconsideration and/or clarification to the limited extent it
16 agrees that clarification of its April 11, 2020 Order Granting Petitioner CULLEN's Petition
17 for Writ of Mandamus requires clarification.

18 This Court AFFIRMS its Order of April 11, 2020 believing it was a proper exercise of
19 discretion that it possessed the authority to consider CULLEN's Petition for Writ of
20 Mandamus, as the issues raised therein involved important issues of law and public
21 policy for the reasons and legal basis cited in CULLEN's Petition for Writ of Mandamus.

22 This Court AFFIRMS its Order of April 11, 2020 based on the finding that even assuming
23 *arguendo* HENDERSON possessed the inherent powers to regulate its own affairs as it
24 pertained to its judiciary, HMC §8.02.055 is in direct conflict with NRS 202.360 for the
25 reasons and legal basis cited in CULLEN's Petition for Writ of Mandamus, in particular,
26 NRS 266.321 and HCC §2.140.

27 This Court AFFIRMS its Order of April 11, 2020 based on the finding that even assuming
28 *arguendo* HENDERSON's enactment of HMC §8.02.055 was permissible and not afoul
of NRS 266.321, it was violative of the *ex post facto* clauses contained within the United
States Constitution and the Nevada Constitution for the reasons and legal basis cited
within CULLEN's Petition for Writ of Mandamus.

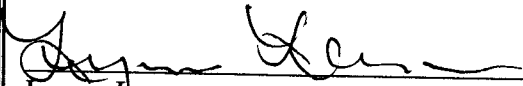
Dated: June 19, 2020.



Trevor L. Atkin
District Court Judge, Department 8

1 **Certificate of Service**

2 I hereby certify that on the date filed, a copy of this
3 Order was electronically served on all parties registered
4 through the Eighth Judicial District Court EFP system or mailed
5 to any party or attorney not registered with the EFT system.

6 
7 Lynne Lerner
8 Judicial Executive Assistant

ARTICLE I. - INCORPORATION OF CITY; GENERAL POWERS; BOUNDARIES; WARDS AND ANNEXATIONS;
CITY OFFICES

Section 1.010 - Preamble: Legislative intent.

1. 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.
2. Any powers expressly granted by this charter are in addition to any powers granted to a city by the general law of this state. All provisions of Nevada Revised Statutes which are applicable generally to cities (not including, unless otherwise expressly mentioned in this charter, chapter 265, 266 or 267 of NRS) which are not in conflict with the provisions of this charter apply to the City of Henderson.
3. Except as otherwise expressly provided in a particular section or required by the context:
 - (a) The masculine gender includes the feminine and neuter genders.
 - (b) The singular number includes the plural number and the plural includes the singular.
 - (c) The present tense includes the future tense.

The use of a masculine noun or pronoun in conferring a benefit or imposing a duty does not exclude a female person from that benefit or duty. The use of a feminine noun or pronoun in conferring a benefit or imposing a duty does not exclude a male person from that benefit or duty.

(Ch. 266, Stats. 1971 p. 402; A—Ch. 596, Stats. 1995, p. 2205)

witnesses if you so desire. It depends on whether you want the witness to come in free or if you want to pay him. This is in criminal cases.

MR. HILBRECHT: The way Civil Service works: They have a check in their pockets, but they do not give it to you unless you demand it.

MR. TORVINEN: In Washoe County, if you give the sheriff a check, he gives it to the witness. I feel they are entitled to it after they appear but not at the time of the subpoena.

Mr. Hilbrecht moved to amend Section 155 by removing "tendering to him the fee for 1 day's attendance".

Mr. Torvinen seconded

Motion passed unanimously

MR. SWACKHAMER: What if one witness doesn't show up and said he had no money to make the trip. Would he be guilty of contempt?

MR. DAYKIN: There is a limitation of 100 miles.

MR. HILBRECHT: They would continue the case and send someone out for him.

SECTION 176

Objection: It is felt that the present system of each attorney conducting the entire examination of prospective jurors should be retained rather than the court conducting this examination.

MR. DAYKIN: This corresponds to Rule 24 A of the Federal Rules and it was discussed very extensively in the committee. The only difference is that the Federal Rule says "may" and the committee inserted the word "shall". The statute as tendered is a compromise between discretion and no discretion made in the committee.

MR. TORVINEN: In criminal cases you have to get all twelve jurors to agree. In Civil Court you need only three-fourths of them agreeing.

MR. WOOSTER: It is not the same burden.

MR. SWACKHAMER: This language seems reasonable.

Mr. Hilbrecht moved to reject the proposed change

Mr. Lowman seconded

Motion passed unanimously

SECTION 174

This section was brought up at Mr. Torvinen's request.

MR. TORVINEN: The present practice is that if you don't demand a jury trial vigorously you don't get it. This lumps the rules of District Court and Justice Court together. I can see that this will cause havoc in Reno and Las Vegas. If my interpretation correct?

MR. DAYKIN: Yes, it is.

MR. TORVINEN: Whenever a petit larceny case comes up, you will be in trouble, unless you get a waiver of jury trial. I can see some problems in the administration of justice.

MR. DAYKIN: I don't believe this facet actually engaged much attention of the committee. The next section was intentionally added by the committee. No one thought of waiver of jury in the Justice Court.

MR. WOOSTER: What do you suggest as an amendment?

MR. TORVINEN: Do you think people charged with misdemeanors should really have this right?

MR. DAYKIN: The present section corresponds to Federal Rule 23 A and supercedes rules applying to Justice Court.

If we had any lack on the study committee, it was a lack of anyone involved in the Justice Court.

Mr. Torvinen moved to insert language similar to the present statute on this, 186.00, in section 174 and change section so that the language in the bill applies only to District Court.

Mr. Lowman seconded
Motion passed unanimously

SECTION 180

D.A.'s Comments: It is recommended that a provision be added that would not necessitate the trial beginning anew and a new jury being empaneled in this type of situation. The law should permit the continuance of the trial with less than twelve jurors. There is no constitutional requirement for a jury of any certain number of people.

MR. KEAN: Does it limit the number of jurors that could be out?

MR. WOOSTER: No.

MR. DAYKIN: You would have to put a provision on it that if the parties were in agreement the trial could continue. Section 175.

Mr. Kean moved to reject the objections.
Mr. Lowman seconded
Motion passed unanimously

MR. DAYKIN: There are two ways around this, 2 in section 180 and 1 in section 175.

MR. WOOSTER: We now have 68 bills in our committee. Can we meet tomorrow from 1 to 3?

Miss Dungan, Mr. White and Mr. Lowman could not.

MR. WOOSTER: What we could do is consider other bills than AB 81. We have some that are relatively non-controversial.

SB 345
SB 256
SB 180
SB 71
SJR 22
SJR 12
AB 437

SEC. 443. NRS 266.590 is hereby amended to read as follows:

266.590 1. Any person upon whom any fine or penalty shall be imposed may, upon the order of the court before whom the conviction is had, be committed to the county jail or the city jail, or to such other place as may be provided by the city for the incarceration of offenders, until such fine [.] or penalty [and costs] shall be fully paid.

2. The city council shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding 8 hours each working day; and for such work the person so employed shall be allowed [\$2] \$4 for each day's work on account of such fine. [and costs.] The council may provide for the formation of a chain gang for persons convicted of offenses in violation of the ordinances of the city, and for their proper employment for the benefit of the city, and to safeguard and prevent their escape while being so employed.

3. Fines imposed by the municipal court may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city jail of the city at the rate of 1 day for every [\$1] \$4 of such fine, or the court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets or public works of the city, at the rate of [\$2] \$4 for each day of the sentence, which shall apply on such fine until the same shall be exhausted or otherwise satisfied.

SEC. 444. Chapter 281 of NRS is hereby amended by adding thereto a new section which shall read as follows:

As used in this chapter, "public officer" means a person elected or appointed to a position which:

1. *Is established by the constitution or a statute of this state, or by a charter or ordinance of a political subdivision of this state; and*
2. *Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.*

SEC. 445. NRS 353.264 is hereby amended to read as follows:
353.264 1. There is hereby created in the state treasury the reserve for statutory contingency fund.

2. The reserve for statutory contingency fund shall be administered by the state board of examiners, and the moneys in such fund shall be expended only for the payment of claims which are obligations of the state under NRS 7.260, [34.690,] 41.037, [176.610,] 178.435, 179.310, 212.040, 212.050, 212.070, 214.040 and 353.120 [.] and sections 277 and 320 of this act.

SEC. 446. Chapter 462 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Upon a trial for violation of any of the provisions of NRS 462.010 to 462.060, inclusive, it shall not be necessary to prove the existence of any lottery in which any lottery ticket shall purport to have been issued, nor to prove the actual signing of any such ticket or share, or pretended ticket or share of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of

the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, shall be evidence that such share or interest was signed and issued according to the purport thereof.

SEC. 447. Chapters 186, 187, 188 and 190 of NRS and NRS 34.490, 34.690, 169.010 to 169.190, inclusive, 170.010 to 170.030, inclusive, 170.050, 171.105 to 171.510, inclusive, 172.010 to 172.420, inclusive, 173.010 to 173.450, inclusive, 174.010 to 174.540, inclusive, 175.010 to 175.575, inclusive, 176.010 to 176.610, inclusive, 177.010 to 177.280, inclusive, 178.010 to 178.395, inclusive, 178.410, 178.475 to 178.600, inclusive, 179.010 to 179.200, inclusive, 185.010 to 185.130, inclusive, and 211.070 are hereby repealed.

SEC. 448. Section 16 of the charter of the City of Caliente, being chapter 289, Statutes of Nevada 1957, at page 406, is hereby amended to read as follows:

Section 16. Police Judge, Courts, Powers and Duties.

(1) There shall be in the City of Caliente a municipal court; the papers, pleadings filed therein and process issuing therefrom shall be entitled "In the Municipal Court of the City of Caliente."

(2) The municipal court shall be presided over by a police judge, who shall be a citizen of the state, and shall have been a bona fide resident of the city for not less than one year next preceding his election or appointment, and he shall be an elector and taxpayer in the city.

(3) The municipal court shall have such powers and jurisdiction in the city as are now provided by law for justices of the peace wherein any person or persons are charged with the breach or violation of the provisions of any ordinance of said city or of this act, of a police or municipal nature; provided, that the trial and proceedings in such cases shall be summary and without a jury.

(4) The said court shall have jurisdiction to hear, try and determine all cases, whether civil or criminal, for the breach or violation of any city ordinance or any provision of this act of a police or municipal nature, and shall hear, try and determine such cases in accordance with the provisions of such ordinances or of this act.

(5) The practice and proceedings in said court shall conform, as nearly as practicable, to the practice and proceedings of justice courts in similar cases.

(6) Fines imposed by the court may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city jail of said city, at the rate of one day for every [two] four dollars of such fine, or the court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets or public works of said city, at the rate of [three] four dollars for each day of the sentence, which shall apply on such fine until the same shall be exhausted or otherwise satisfied.

(7) Said court shall have jurisdiction of any action for the collection of taxes or assessments levied for city purposes, when the principal sum thereof does not exceed three hundred dollars; also of actions to foreclose liens in the name of the city for the nonpayment of such taxes or assessments when the principal sum claimed does not exceed three hundred

statewide consistency. I am personally and particularly encouraged by the extension of the castle doctrine to an occupied vehicle. I do a tremendous amount of traveling to and from the Nevada Legislature by myself, late at night. I am happy to have that part in the bill.

There is one concern I have that has been mentioned with regard to the issue of domestic violence, which can include a fistfight between a couple of brothers. Perhaps it would be better defined as a gross misdemeanor where there are some definite issues involved. There are some very minimal requirements for it to be labeled domestic violence, especially now with the domestic violence laws in place. I am concerned about the far-reaching extent of that particular section of the bill.

Chairman Hansen:

I would like to hear from Legal to get the definition straightened out on what constitutes domestic violence. I agree and that is the number-one area of concern that has been raised. If we are taking away someone's constitutional right, we want to make sure it is for a reasonably serious crime. Mr. Wilkinson, can you address the definition for the Committee?

Brad Wilkinson, Committee Counsel:

A misdemeanor crime of domestic violence is defined in federal law, and that definition is incorporated into the bill. It is defined as an offense that is a misdemeanor under federal, state, or tribal law and has an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

Chairman Hansen:

Did you say a weapon has to be involved?

Brad Wilkinson:

It says, "for use or attempted use of physical force." It is not as broad a definition as our definition of domestic violence under Nevada law.

Chairman Hansen:

If this law passes as is, would the federal statute be used as the definition of domestic violence?

Brad Wilkinson:

Yes, that is correct. It incorporates the federal definition of misdemeanor crime of domestic violence. It would not apply to a situation involving brothers, for example. It also would not apply to a dating relationship, or those things that are more expansive in Nevada law than they are under the federal law.

Senator Brower:

In *United States Code*, Title 18, Section 921(a)(33)(B), it goes on to say that "(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either (aa) the case was tried by a jury, or (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise." Therefore, it is a pretty tight definition. That is why we chose it.

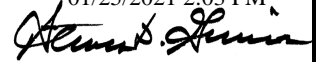
Chairman Hansen:

Is there anyone else in Las Vegas who would like to testify?

Vernon Brooks, Private Citizen, Las Vegas, Nevada:

I want to address a few points that came up in earlier conversations. First, I would like to address some of the generically typical arguments that come up against a bill like this. This bill does not change who can carry a firearm in Nevada. I am certain that it will get asserted that it does, but it does not. I think it is fairly apparent from the language. This bill will not harm convicted felons. That is already covered under federal statute, and this does not change that. What it does do is make the laws uniform across the state. The original preemption bill passed in 2007 under a Democratic-controlled Legislature. It was a fairly good statute, but it was missing a few things. This bill is more of a correction of that than anything else.

The point has been raised of whether the penalties are necessary. Anecdotally, I can point out examples of how this has been abused in the last few years. It is well known to those who carry firearms daily that the local jurisdictions have not fully adopted preemption as intended because nothing really forced them to. They keep their invalid ordinances on the books. The common consensus is because it allows for officers in the field to use what they know to be an invalid ordinance to further their investigation at that moment, and then throw it out later once something more useful is found. That is a miscarriage of justice that I think everyone will uniformly agree on.


CLERK OF THE COURT

ORDD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CITY OF LAS VEGAS,

Appellant(s),

vs.

CHRISTOPHER LEE ANDERSEN,

Respondent(s).

Case No.: C-20-350740-A

Dept. No.: 19

LV Muni Case No.: C1135328A

Hearing Date: January 14, 2021

Hearing Time: 9:00 a.m.

**ORDER DENYING RESPONDENT'S MOTION TO DISMISS, GRANTING
THE APPEAL, REVERSING THE MUNICIPAL COURT'S RULING, AND
REMANDING TO LOWER COURT**

BACKGROUND

The instant matter came before the Court as both Appellant's Appeal from the Las Vegas Municipal Court, case no. C1135328A, and Respondent's Motion to Dismiss for Lack of Jurisdiction *et al.*

On or around April 24, 2015, Respondent was arrested for Battery which Constituted Domestic Violence and simple Battery. Respondent filed a Demand for a Jury Trial with the Las Vegas Municipal Court, which was subsequently denied. Respondent then appealed the denial to the Nevada Supreme Court.

On September 12, 2019, the Nevada Supreme Court issued its decision on the matter; Anderson v. Eight Jud. Dist. Ct., 135 Nev. 321 (2019). In Andersen, the Court held that a first-offense domestic battery was a serious offense to which right to jury trial attached. Id. at 324. The Court further issued a Writ of Mandamus directing the district court to vacate its dismissal of Respondent's appeal and, ultimately, further remand the matter to the Municipal court for jury proceedings. Id.

On remand in the municipal court, Appellant advised of its intent to proceed with prosecution of Respondent, consistent with the Andersen decision. However, Respondent

1 objected and moved for dismissal, arguing that the municipal court lacked jurisdiction to
2 comply with the Supreme Court’s ruling. The municipal court agreed. The court issued a
3 ruling that it was bound by the constraints of NRS 266.550 (trials only by “summary and
4 without a jury”) and, lacking a legal vehicle by which to transfer jurisdiction, must dismiss the
5 case. Appellant timely appealed, and Respondent’s filed its Motion to Dismiss. As
6 Respondent’s motion addresses this Court’s authority to proceed on the matter, it shall be
7 addressed first.

8 9 DISCUSSION

10 A. RESPONDENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

11 The right to appeal is statutory, and where no statute or court rule provides for such,
12 no right to appeal exists. State v. Shade, 110 Nev. 57, 63 (1994). NRS 177.015(1)(a)
13 authorizes a “party aggrieved in a criminal action ...[w]hether that party is the State or the
14 defendant” to appeal “to the district court of the county from a final judgment of the justice
15 court.” See also Sandstrom v. Second Jud. Dist. Ct., 121 Nev. 657, 660-61 (2005). Further, in
16 Sandstrom, the Nevada Supreme Court extended the provisions of NRS 177.015(1)(a) to
17 include municipal courts. Id. at 62 (“[W]e conclude that the district courts are vested with
18 jurisdiction to consider appeals from orders of the municipal courts granting motions to
19 dismiss misdemeanor criminal complaints”).

20 In its arguments, Respondent asserts that NRS 177.015(2) controls in this matter and,
21 as such, Appellant’s right to appeal is limited to grants of a motion to suppress. Further,
22 Respondent argues that Appellant’s reliance on NRS 177.015(1) is misplaced, because the
23 statute only permits appeals by the “the State or the defendant.” This Court disagrees.

24 The Court in Sandstrom, was clear that the controlling statute for misdemeanor
25 criminal appeals is NRS 177.015(1)(a), not NRS 177.015(2). Moreover, that Court expressly
26 carved out an extension to include misdemeanors originating from the municipal courts.
27 Finally, despite Respondent’s literal reading of the statute, it is undisputed that the various
28 subset governmental entities that are established—counties, cities, municipalities, and

1 townships—all receive their authority from, and act as agents of, their respective states. See
2 generally NRS Titles 20-21; Las Vegas City Charter, sec. 1.010. Thus, Respondent’s
3 arguments fail and its Motion to Dismiss for Lack of Jurisdiction is denied.

4 Having established that this Court does have jurisdiction to hear this matter, the Court
5 now turns its attention to the merits of Appellant’s Appeal of the municipal court’s dismissal.

6 B. APPELLANT’S APPEAL

7 An appellate court, as this Court functions for the justice and municipal courts,
8 reviews questions of law de novo. S.O.C. v. Mirage Casino-Hotel, 117 Nev. 403, 407 (2001)
9 (citing SIIS v. United Exposition Servs. Co., 109 Nev. 28, 30 (1993)); see also NRS 177.015;
10 Sandstrom, 121 Nev. at 659 (district courts have “final appellate jurisdiction in cases arising in
11 Justice Courts and such other inferior tribunals as may be established by law”). Conversely,
12 factual determinations are “entitled to deference and will be reviewed for clear error.” Rosky
13 v. State, 121 Nev. 184, 190 (2005).

14 Municipal courts have jurisdiction of all misdemeanors committed in their respective
15 cities. NRS 5.050(2). Additionally, municipal courts, who are incorporated “under the
16 provisions of special legislative acts,” are excluded from the “statutory prohibition against the
17 holding of jury trials.” Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 628 (1987); see
18 Donahue v. City of Sparks, 111 Nev. 1281, 1282-83 (1995)(“[A]n incorporated city existing
19 under a special charter [is] not subject to the statutory prohibition against jury trials in
20 municipal courts”); see also NRS 266.005 (“the provisions of this chapter shall not be
21 applicable to incorporated cities ... existing under the provisions of any special legislative act
22 or special charter”); but cf. NRS 266.550 (regarding municipal courts “[t]he trial and
23 proceedings in such cases must be summary and ***without a jury***”)(emphasis added).

24 In its papers and oral representations, Respondent argues that the municipal court lacks
25 authority to conduct jury trials according to NRS 266.550. This Court rejects the argument as
26 it does not take NRS 266.005 into consideration. The City of Las Vegas is an incorporated
27 city in the State of Nevada organized and existing under special charter. The Court finds that
28 the law is well established in the matter. The Blanton court’s holding that the statutory

1 prohibitions of NRS 266.550 do not apply to incorporated cities is directly applicable to the
2 current matter. Blanton, 103 Nev. At 628. Moreover, the fact that the City of Las Vegas
3 Charter, has adopted NRS 266.550 does not exclude the Municipal Courts from conducting
4 jury trials due to Las Vegas City Charter Sec 4.010. The Charter adopts NRS 266.550 but
5 only to the extent that it is “not inconsistent with this Charter”. The stated purpose of the
6 Charter is to “provide for the orderly government of the City of Las Vegas and the public
7 health, safety, prosperity, security, comfort, convenience and general welfare of its citizens.”
8 Id. at Section 1.1010. The inability of the Las Vegas Municipal Court to hear jury trials would
9 interfere with the city’s police powers and undermine the its ability to protect victims of
10 domestic violence within the city limits. As such, NRS 266.550 is “inconsistent” with the
11 purpose of the Charter and thus not applicable to the City of Las Vegas and its municipal
12 courts. Additionally, the notion that a city would be granted the authority to charge battery-
13 domestic violence crimes as serious offenses requiring a jury trial, but lack the authority and
14 ability to properly conduct said trials, is contrary to public policy. More specifically, it flies in
15 the face of common sense.

16 Further, Respondent argues a procedural solution to this matter is already available in
17 the legal mechanisms of NRS 5.0503. He asserts that the municipal court, upon the dismissal
18 of the case, has the authority to simply transfer the matter to the justice court for a jury trial.

19 Respondent’s argument on transferring jurisdiction lacks merit. NRS 5.0503(1)(b)
20 does allow municipal courts to transfer criminal cases to justice court “if such a transfer is
21 necessary to promote access to justice for the defendant...”. The focus of the language is the
22 defendant and the promotion of justice for that defendant. NRS 5.0503(1)(b) goes on to
23 require that the municipal court “note[] its findings concerning [what made it necessary to
24 transfer the case] in the record”. This Court rejects the idea that having a regular policy of
25 moving all battery domestic violence cases to justice court can possibly be the reason “a
26 transfer is necessary to promote access to justice for the defendant”. In fact, the opposite is
27 true. Such transfers will require time delays prolonging the defendants’ access to justice.
28

1 Requiring municipal courts to transfer these cases, which will inevitably delay them in
2 order to accommodate the transfer process, runs afoul of not only the one-year statute of
3 limitations, but the defendants' constitutional rights. Thus, viewed in totality—the Blanton
4 case; NRS 266.005; NRS 266.550; the Las Vegas City Charter; public policy; and general
5 common sense—this Court finds that the established law grants the municipal courts authority
6 to hold jury trials and comply with the Andersen decision¹.

7 Accordingly, the Court **ORDERS, ADJUDGES, AND DECREES** that Respondent's
8 Motion to Dismiss is hereby **DENIED**.

9 The Court **FURTHER ORDERS** that the above-captioned Appeal is hereby
10 **GRANTED**.

11 The Court **FURTHER ORDERS** that the ruling of the Las Vegas Municipal Court is
12 hereby **REVERSED**.

13 The Court **FURTHER ORDERS** this matter **REMANDED** to the lower court for
14 proceedings consistent herewith. The bond, if any, to be returned to Appellant.

15 **IT IS SO ORDERED.**

16 Dated this 25th day of January, 2021

17 

18 CRYSTAL ELLER
19 DISTRICT COURT JUDGE
C-20-350740-A

E88 983 684C 1ED7
Crystal Eller
District Court Judge

27 ¹ The Court is aware of and acknowledges both the logistical and administrative challenges with
28 physically facilitating jury trials in the municipal court, at this time. However, the Court declines to
rule on that matter and addresses only the law as it stands.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Las Vegas City of, Appellant(s) CASE NO: C-20-350740-A
7 vs DEPT. NO. Department 19
8 Christopher Lee Andersen,
9 Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Denying was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 1/25/2021

15 Shauna Culpepper sculpepper@lasvegasnevada.gov
16 Edward Poleski epoleski@lasvegasnevada.gov
17 Michael Pariente michael@parientelaw.com
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Domestic Violence in NEVADA

WHAT IS DOMESTIC VIOLENCE?

Domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, threats, and emotional abuse. The frequency and severity of domestic violence can vary dramatically.

DOMESTIC VIOLENCE IN NEVADA

- 43.8% of Nevada women and 32.8% of Nevada men experience intimate partner physical violence, intimate partner sexual violence and/or intimate partner stalking in their lifetimes.¹
- For many years, Nevada consistently ranked 1st in the nation for domestic violence fatalities.² In 2017, Nevada ranked 4th in the rate of femicide.³ 56% of these femicides were committed by intimate partners, and of these, 67% were killed with firearms.⁴
- In 2019, Nevada domestic violence programs served 37,669 survivors.⁵
- In 2019, law enforcement responded to at least 8,462 domestic violence incidents.⁶ Many others went unreported.
- As of December 31, 2019, Nevada had submitted 3,220 domestic violence misdemeanor and 911 active protective order records to the NICS Index.⁷
- In between 2015, there were 48 active protection orders in the National Crime Information Center for Nevada. 39 protection orders had a disqualifying Brady Indicator.⁸

DID YOU KNOW?

- 1 in 3 women and 1 in 4 men in the United States have experienced some form of physical violence by an intimate partner.⁹
- On a typical day, local domestic violence hotlines receive approximately 19,159 calls, approximately 13 calls every minute.¹⁰
- In 2018, domestic violence accounted for 20% of all violent crime.¹¹
- Abusers' access to firearms increases the risk of intimate partner femicide at least five-fold. When firearms have been used in the most severe abuse incident, the risk increases 41-fold.¹²
- 65% of all murder-suicides involve an intimate partner; 96% of the victims of these crimes are female.¹³

DOMESTIC VIOLENCE-RELATED FIREARMS LAWS IN NEVADA

- Nevada state law prohibits domestic violence misdemeanants from possessing firearms, excluding dating partners.¹⁴
- Respondents to final protective orders, including dating abusers, are prohibited from purchasing or acquiring firearms.¹⁵
- Courts may prohibit respondents to final protective orders from possessing or owning firearms¹⁶ and/or require them to relinquish any firearms in their possession.¹⁷
- Although courts are not explicitly authorized to prohibit respondents to ex parte protective orders from possessing firearms or to require them to relinquish their firearms, they are authorized to order whatever relief they deem necessary to protect victims and survivors, including dating partners.¹⁸

If you need help:

Call The National Domestic Violence Hotline 1-800-799-SAFE (7233)
Or, online go to TheHotline.org

Suggested citation: National Coalition Against Domestic Violence (2020). *Domestic violence in Nevada*. Retrieved from www.ncadv.org/files/Nevada.pdf.



DOMESTIC VIOLENCE-RELATED FIREARMS LAWS IN NEVADA (Cont.)

- Nevada requires background checks for most, but not all, firearms sales and transfers.¹⁹
- Nevada can strengthen its laws to protect victims and survivors by
 - Prohibiting dating violence and stalking misdemeanants from possessing firearms;
 - Prohibiting respondents to ex parte and final protective orders from possessing firearms;
 - Requiring all persons prohibited due to domestic violence to surrender their firearms;
 - Requiring background checks for all gun sales and transfers; and
 - If requested by the survivor, requiring law enforcement to recover all firearms and ammunition when responding to domestic violence incidents.

For more information about domestic violence and firearms in Nevada, go to

<https://www.disarmdv.org/state/nevada/>.

¹ National Center for Injury Prevention and Control (2019). *The national intimate partner and sexual violence survey: 2010-2012 State Report*. Centers for Disease Control and Prevention. Retrieved from <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

² Powell, P. & Smith, M. (2011). *Domestic violence: An overview*. Retrieved from <https://www.unce.unr.edu/publications/files/cy/2011/fs1176.pdf>.

³ Violence Policy Center (2019). *When men murder women: An analysis of 2017 homicide data*. Retrieved from <http://www.vpc.org/studies/wmmw2019.pdf>.

⁴ Ibid.

⁵ Nevada Network to End Domestic Violence (2020). *NCESDV statewide data collection project: Reporting period: Calendar Year 2019*. Retrieved from <https://www.ncedsv.org/wp-content/uploads/2020/06/2019-CY-yr-QSR.pdf>.

⁶ Ibid.

⁷ Instant Criminal Background Check System Section (2020). *Active records in the NICS index as of December 31, 2019*. FBI Criminal Justice Information Services. Retrieved from <https://www.fbi.gov/file-repository/active-records-in-the-nics-indices-by-state.pdf/view>.

⁸ United States Government Accountability Office (2016). *Gun control: Analyzing available data could help improve background checks involving domestic violence records*. Retrieved from <https://www.gao.gov/assets/680/678204.pdf>.

⁹ Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M. (2011). *The national intimate partner and sexual violence survey: 2010 summary report*. Retrieved from http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

¹⁰ National Network to End Domestic Violence (2020). *14th annual domestic violence counts report*. Retrieved from https://nnedv.org/wp-content/uploads/2020/03/Library_Census-2019_Report_web.pdf.

¹¹ Truman, J. & Morgan, R. (2014). *Nonfatal domestic violence, 2003-2012*. Retrieved from <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

¹² Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Lauphon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health, 93*(7), 1089-1097.

¹³ Violence Policy Center (2018). *American roulette: Murder-suicide in the United States*. Retrieved from www.vpc.org/studies/amroul2018.pdf.

¹⁴ Nev. Rev. Stat. § 202.360(1)(a).

¹⁵ Nev. Rev. Stat. § 33.0305(1).

¹⁶ Nev. Rev. Stat. §§ 202.360(1)(d); 33.031(1)(b).

¹⁷ Nev. Rev. Stat. § 33.031(1)(a).

¹⁸ Nev. Rev. Stat. § 33.030(1)(g); Nev. Rev. Stat. § 33.018(1).

¹⁹ Nev. Rev. Stat. §§ 202.2547(1); 202.2548.

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Or, online go to TheHotline.org