

# IN THE SUPREME COURT OF THE STATE OF NEVADA

TED MICHAEL DONKO,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
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Elizabeth A. Brown  
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Case No: C-19-345584-1  
*Related Case A-22-852928-W*  
Docket No: 85261

# RECORD ON APPEAL VOLUME 5

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1 MR. HAUSER: -- that the Hispanic witnesses said it was  
2 Hispanic people.

3 THE COURT: Right. But that's not what she's talking  
4 about right now in regards to DeAndre said. They're talking about  
5 just the 911 call right now. That's what he's talking about.

6 MR. HAUSER: Okay.

7 THE COURT: The 911 callers, talked about that  
8 information.

9 MR. HAUSER: Got it. If we're just talking about that, I'm  
10 good.

11 THE COURT: Yeah.

12 MR. HAUSER: All right.

13 [End of bench conference.]

14 THE COURT: Objection's overruled.

15 Continue.

16 MR. LEXIS: Thank you, Judge.

17 Information provided to CAD, as you heard, 911 provided  
18 by DeAndre to these people.

19 Then Defense counsel wants to come up and tell you,  
20 Well, the timeframe. Well, everyone says it's around 12:15. The  
21 only person that really gives you a definitive timeframe as far as  
22 when the shooting happens and when the car is seen is Mr. Ramos,  
23 who told you what? A couple minutes.

24 MR. SHAYGAN-FATEMI: That misstates the testimony.

25 MR. LEXIS: Absolutely not.



1 MR. SHAYGAN-FATEMI: The surveillance that he said  
2 specifically gave a specific time. I'll submit it.

3 MR. LEXIS: Around 12:15.

4 THE COURT: All right. Overruled.

5 Continue.

6 MR. LEXIS: Okay. Once again, folks, surveillance lady  
7 said around 12:15 and so did everyone else as far as officers. The  
8 only one giving you --

9 MR. SHAYGAN-FATEMI: Not around, she said 12:15.

10 THE COURT: Okay. So you will rely on your notes, and if  
11 you need to play back the certain testimony, we can get that to you.  
12 Okay?

13 Continue.

14 MR. LEXIS: Okay. Once again, the surveillance lady didn't  
15 tell you she heard the shots. I don't care if it's 12:00, 12:15, or 12:20.  
16 The only person that gave you a timeframe with -- when the shots  
17 were fired and when that car was up here was Mr. Ramos. Which  
18 absolutely matches the evidence.

19 So, folks, at the end of the day, what's -- what does this  
20 leave defense counsel? Well, it leaves them to talk about  
21 possibilities and speculation. Okay. Right? The race. Is it possible  
22 he got the race wrong. Speculate as to why he got the race wrong.  
23 The tattoos. You know, it's possible he looked at the tattoos,  
24 speculating as to why he's not paying attention to the tattoos.  
25 Folks, use your common sense. Think about how this situation

1 arose. Folks, I'm not going to harp on all this -- what's already been  
2 brought over. But, again, you have a jury instruction that says use  
3 your common sense. You must bring to the consideration your -- of  
4 the evidence your everybody common sense as reasonable men  
5 and women.

6 In addition, an instruction that hasn't been gone over with  
7 you is motive. Folks, the law doesn't require the police to be mind  
8 readers, the prosecution to be mind readers, or you to be mind  
9 readers. Why he did what he did is not an element of the crime.  
10 Why he did what he did after the shooting isn't an element of the  
11 crime.

12 Motive is not an element of the crime charged and the  
13 State is not required to prove a motive on part of the defendant in  
14 order to convict. However, you may consider evidence of motive or  
15 lack of motive as circumstances in this case.

16 So let's think about it. You know, again, State doesn't  
17 have to prove any of that, prove motive. But does it make sense of  
18 what's going on? If there was some clinic on shoot-to-kill drive-by  
19 shootings, how did he do initially? Well, your common sense tells  
20 you he scoped out the area, came and announced who he's looking  
21 for. Did a good job, kept it quick, right? Kept it violent. Acted like  
22 he was going to do something.

23 But then he starts getting sloppy the second day, right?  
24 Shows up. Probably not a good idea to show up in a red shirt  
25 again. Probably not a good idea to yell out, Shorty, again.

1 But the execution, pretty good, right? Kept it quick, kept it  
2 to the point, pop off those eight rounds, and took off. Did that  
3 what, but now he really gets sloppy, which is not surprising. Right?  
4 Now you've got the cops coming. Now, you'd better not get caught  
5 or you're going to be sitting right there. Right.

6 So what's he do? You've got to admit you've got to weigh  
7 the risks, right? Is he going to take -- the cops probably got a  
8 description, right? Is he going to take this car and keep driving it on  
9 main streets with it? No. Your common sense tells you no.

10 Does a good job with dumping one of the people in the  
11 car. By the book. It's a good job. But then what? If you're going to  
12 dump the car, obviously, he doesn't want to stay in the car. You're  
13 going to dump it in some location you don't know the area? Are  
14 you going to dump it in the location you do know? Obviously, you  
15 know that.

16 So he dumps the car, right? But by doing that, you take a  
17 risk. You're going to -- might leave evidence behind. He almost got  
18 away with it, right? Fingerprints is no guarantee. But again,  
19 evidence was found on the most damning piece of evidence in that  
20 car. The license plate off the car. Unregistered vehicle. Blocks  
21 from the location.

22 But now he's stuck with an even bigger risk. Cops are  
23 coming, right? He decided to dump that car close to the crime  
24 scene. Still got that red shirt on. Is he going to risk walking to his  
25 house? It's only a little bit away. Can't help himself. Doesn't want

1 to get caught, so he dumps it.

2 Did he win the battle? Yeah. Did he make it home? Yeah.  
3 But did he win the war? Not even close. Left a trail of evidence  
4 behind, which there's no way out.

5 Folks, there's two ways to go about these type of cases.  
6 One is self-defense. When you pop off eight rounds in a drive-by  
7 against a bunch of unarmed people with men, women, and children  
8 inside a house, that's out the door. So you only have one play left,  
9 which is what? Identification.

10 Folks, is it surprising to you, in these type of situations,  
11 that you have people reluctant to testify? I went over this in voir  
12 dire jury selection for a reason. And again, you're able to bring in  
13 your past and common sense and experiences to that jury  
14 deliberation room.

15 Think about where this happened. Think about the way it  
16 went down. Fear absolutely comes into play. Most people want no  
17 part. Some people you can't even find. Does Defense counsel harp  
18 on that? Absolutely. Because it's easy for some people to look at  
19 Fernando. Oh, okay, buddy, you got shot in the stomach? Got shot  
20 in the arm? And you don't want to testify, and you're a felon? I  
21 don't care. You don't care, I don't care. Is that justice? Absolutely  
22 not. Does that happen all the time? You'd better believe it.

23 Tattoos, race inconsistencies. Once again, you got to  
24 think of the nature of these interactions, folks. The nature of these  
25 interactions. In fact, you saw an exchange. Defense came out at

1 Mr. Woods 10 different ways to ask him, Oh, you mean to tell me  
2 you weren't only paying attention to his face? His eyes? His eyes?  
3 His eyes? Eventually, what did he tell them? He started getting into  
4 an exchange. Well, have you been in this type of situation?

5 First interaction, don't know the guy threatening, thought  
6 he had a gun, thought his life was on the line. Second day, you  
7 know what happened.

8 Once again, fear in the situation. And you know what, I  
9 also want to point out, folks, when Defense counsel kept pressing  
10 this man, pressing this man, when he said, you know what, so you  
11 mean to tell me you're just looking at his eyes? Yeah, yeah, yeah,  
12 yeah, yeah. Then he came at him with what? Okay, then, Mr.  
13 Woods, tell me, what color's his eyes? You have a photo of his  
14 eyes, folks. You tell me if he got it wrong. Blue.

15 And, folks, you know, a couple of last points on this. If  
16 someone came busting in that door right now, let's say he was a  
17 man, Hispanic man, tattoo, mustache, short hair, came in and just  
18 start whaling on that correction officer right there, no time to -- no  
19 negotiation, no talking, just start whaling on him. And I asked  
20 for 14 voluntary statements. Do you think everybody's going to  
21 have the same statement? Some would say, We got him, came  
22 through the left door, the right door, maybe he it was a push that  
23 knocked him down, maybe it was just a punch, maybe it was a fist.  
24 Some would have no idea about any mustache. Some would  
25 totally get it wrong. Race, we go on, on, and on. Think about the

1 situation that these men were placed in.

2 Last point with regards to this aspect. Folks, I want you all  
3 to think about a painting. Okay. One of the most paintings in the  
4 world. And when people are looking at a painting, they are trying  
5 to pay attention to detail. That's the whole picture -- the whole  
6 point of looking at some painting, world famous painting, right?

7 And when most people are looking at this stuff, they're  
8 not being threatened with any physical violence, nor are they  
9 getting shot at. But ask yourself, if I asked all of you to write  
10 voluntary statements in detail and tell me the Mona Lisa, is her hair  
11 parted to the left or right? Is her hair behind her shoulders or in  
12 front of her shoulders? Is it a right profile or a left profile? Is her  
13 hands off to the right or to the left? Are they crossed or not  
14 crossed? Is her necklace high above the neck or down below? And  
15 if so, is there a pendant on it?

16 What about behind her? Is it a mountain range,  
17 grassland, or a lake? Is her skin complexion darker or lighter? Does  
18 she have a dress on? If so, is there anything over her dress? Is it  
19 long-sleeve or short-sleeve?

20 Folks, you get my point. I would have 14 different  
21 statements from people that were looking at a painting under no  
22 stress. But yet if I put up a picture of the Mona Lisa, you'd be quick  
23 to say no question, that's the Mona Lisa.

24 Folks, I want to point out direct and circumstantial  
25 evidence. This instruction is one of the only instructions the judge

1 told you at the beginning of this trial and at the end of the trial. And  
2 the only one she gave you an example of. Remember the rain  
3 example. If you see it's raining, direct evidence. Get up in the  
4 morning and see the street's wet, feel it: Circumstantial evidence.

5 Direct evidence is testimony of a person who claims to  
6 have personal knowledge of a crime, such as an eyewitness. Do we  
7 have cases like that? Absolutely. With no circumstantial evidence?  
8 Yeah. Sometimes we have cases with just circumstantial evidence,  
9 proof of a chain of facts and circumstances which tend to show  
10 whether the defendant is guilty or not.

11 As I asked you in voir dire, jury selection, whether or not  
12 when you have -- we just have one witness to say, Oh, yeah, that's  
13 the person, direct evidence.

14 Circumstantial evidence, you know, you come home,  
15 house is ransacked, and sure enough if you find a Coke bottle in  
16 your trash can, you're, like, I don't know. I didn't drink a Coke  
17 recently. Sure enough there's a fingerprint on it. Or there's DNA  
18 evidence on it. Do we get a lot of cases like that? You'd better  
19 believe it.

20 All you need is direct -- you could convict somebody just  
21 with direct evidence or just with circumstantial evidence. In this  
22 case you'd better believe you have both.

23 The point, folks, the law makes no distinction between the  
24 weight to be given to either direct or circumstantial evidence.

25 Therefore, all the evidence in the case, including the circumstantial

1 evidence, should be considered by you in arriving at your verdict.

2 Folks, let's just say all we had is direct evidence in this  
3 case. If all we had was Mr. Woods and Mr. Ramos, you'd better  
4 believe we would be right here telling you that's your man.

5 DeAndre, 90 percent ID of a six-pack -- out of a six-pack  
6 photo lineup. But for the hair was too long. He says if he was  
7 shown a picture of the hair, it would have been 100 percent.  
8 Identifies the defendant at a prior hearing and now a trial, says I'm  
9 sure. And he identifies the prior interaction based on height, build,  
10 Shorty, the red shirt, and his eyes. And, of course, identifies the  
11 vehicle as a gray older Toyota Corolla.

12 Just so happens, two minutes later, two blocks away,  
13 Mr. Ramos hears -- first hears shots, two minutes later sees an  
14 older model Toyota Corolla that matches the description driving  
15 aggressively. Defendant that exit's a red shirt. Tells you he's  
16 immediately suspicious of not only his driving conduct, but -- and  
17 by his behavior on how he's grabbing his waistband and looking  
18 around. Only person in the vehicle with no license plate. And, of  
19 course, then, IDs in court.

20 You better believe if that was the only evidence we had,  
21 you think we would have cut this man loose? No chance.

22 Now, folks, I'm going to talk about flight. The law realizes  
23 that when you're dealing with criminals, they're going to flee the  
24 scene. And evidence is going to disappear. And what are they  
25 going to claim? Oh, it's not me.



1           The law realizes you're going to have situations like  
2 DeAndre, like the other witnesses involved, where fear's going to  
3 come into play. People are going to mischaracterize and get  
4 [indiscernible] in possibilities and speculation again on why they  
5 thought somebody was a different race. Evidence, like I said, is  
6 going to disappear. It's going to be harder than if the man just  
7 stayed at the scene.

8           The law realizes that, and the law also states that the  
9 defense should not be able to use that as a sword. In fact, it's the  
10 exact opposite. Your jury instruction says:

11           The flight of a person immediately after the commission  
12 of the crime is not sufficient in itself to establish guilt, but is a  
13 fact which, if proved, may consider by you in light of all the  
14 other proved facts in deciding the question of his guilt or  
15 innocence.

16           So, you know what, why don't we for a second  
17 completely -- let's say DeAndre from the get-go said, you know  
18 what, couldn't pick him out of a six-pack lineup. Zero percent. Oh  
19 no. And Mr. Ramos said, you know what, I don't know. Can't  
20 identify him. What would the evidence be?

21           Let's just go with the circumstantial evidence, forget about  
22 the direct. What have we got? DeAndre identifying the prior  
23 interaction based on height, build, and Shorty. And a red shirt.  
24 Identifies the vehicle as a gray older Toyota Corolla. Identifies the  
25 red shirt. And not only that, the passenger being the one with the

1 red shirt, the shooter.

2 Fernando also states what? You heard the detective, at  
3 the hospital, says a gray older model Toyota. And the shooter  
4 being a passenger.

5 Let me point something out with Fernando again, as well,  
6 as far as this statement. Folks, if you think about a statement made  
7 immediately in time after somebody is shot, what's your common  
8 sense tell you? People are, obviously, are in fear, scared of  
9 retaliation, don't want to be here. They have the time to think about  
10 all that when they're laying on the ground with a bullet in their  
11 stomach. Or on the gurney in the hospital when the detective asked  
12 him, Oh, can you describe what you saw? What does he say? Gray  
13 older model Toyota and the shooter's a passenger. Absolutely  
14 consistent with everybody else.

15 Jonathan, older model Toyota, shooter the passenger.

16 Genaro, Mr. Ramos, couple minutes after hearing the  
17 shots, just so happens to see this older Toyota Corolla that matches  
18 the general description driving aggressively. It exits in a red shirt,  
19 suspicious behavior. Again, only person in the vehicle, no license  
20 plate, and what's his direction of travel, folks? What -- another what  
21 a coincidence. It's towards his residence.

22 The crime scene analysts, just so happens that car with  
23 his DNA on it two minutes after the event, driving aggressively,  
24 exiting aggressively, who he identifies in court, just so happens  
25 those eight spent cartridge casings of S&W, Smith & Wesson .40

1 cal -- .40 cal's are also consistent with what is in that vehicle two  
2 blocks away.

3 Video of a neighbor absolutely corroborates both  
4 DeAndre and Mr. Ramos. Red shirt, general height, build, body,  
5 language, very short hair. Direction of travel, again, corroborates  
6 the northbound direction, which is, again, towards his residence.

7 Folks, again, is that all we have as far as circumstantial  
8 evidence? No, it gets better, right? Now we get to  
9 those 3,000-pound elephants in the room. That car just so happens  
10 to have his prints on the most damning piece of evidence in that  
11 car, and a shirt in the same direction, a block away, towards his  
12 residence.

13 Is that all you have to rely on? No. Again, if you include  
14 all that and the direct evidence. The law makes no distinction to be  
15 given to the weight of direct or circumstantial, therefore all of it --  
16 all of it, folks -- is to be considered.

17 Folks, the evidence that you heard from this case comes  
18 from right here. The evidence which you are to consider in this  
19 case, the witness of the testimony, the exhibits, and any facts  
20 submitted are agreed to by counsel. There's nothing from this  
21 evidence that is actual that you could grasp onto and says, you  
22 know what, yeah, yeah. It is a Hispanic man with tattoos -- or no  
23 tattoos. No. Without engaging in possibilities or speculation, there  
24 is nothing actual from this stand that you could grasp onto  
25 corroborates and says, Yep, man had no tattoos, man was Hispanic.

1 The only way you get there is engaging in possibilities and  
2 speculation.

3 That's possible you don't need -- wasn't looking at the  
4 tattoos, like he told you. It's possible they misidentified the race  
5 when looking at -- speculate as to what -- why he was looking at  
6 just the face. Folks, that's not my stand on the law. That is the law.

7 A reasonable doubt is one based on reason. It's not  
8 mere possible doubt, but is such a doubt as would govern or  
9 control a person in the more weighty affairs of life. If the minds  
10 of the jurors, after the comparison of all consideration of the  
11 evidence are in such a condition that they can say they feel an  
12 abiding conviction of the truth of the charge, there is not a  
13 reasonable doubt. Doubt, to be reasonable, must be something  
14 actual, not mere possibilities or speculation.

15 The State of Nevada asks that you hold this man  
16 accountable for his actions and find him guilty of attempt murder  
17 with a deadly weapon, two count -- or, excuse me, three counts  
18 battery with use of a deadly weapon resulting in substantial bodily  
19 harm, two counts assault with a deadly weapon, and discharging a  
20 firearm at or into an occupied structure. Thank you.

21 THE COURT: All right. Thank you, Mr. Lexis.

22 All right. Ladies and gentlemen, the clerk will now swear  
23 in the officers to take charge of the jurors and the alternate jurors,  
24 please.

25 [Officers sworn.]

1 THE COURT: All right. So as you know, a criminal jury is  
2 comprised of 12 individuals, not 14. So two of you are alternates.  
3 The alternates in this case are Number 13, Shelley Bush, and  
4 Number 14, Tamara Jacquez.

5 You are not excused from jury service at this point in time.  
6 The other 12 are going to go back into the room and deliberate. I  
7 just need you to go back with them and leave all your personal  
8 information, because if someone falls sick or someone isn't able to  
9 come, that means one or both of you would have to come in and  
10 step in. So, please, you're still under the same admonishment that  
11 you've been under. You are just going to be allowed to go home  
12 unless you hear from us. All right?

13 So my marshal is going to take all 14 of you to the jury  
14 deliberation room. And then if you could get the information, the  
15 contact information for the two alternates, all right?

16 THE MARSHAL: Yes, Your Honor.

17 THE COURT: Thank you.

18 [Jury recessed for deliberations at 4:31 p.m.]

19 THE COURT: All right. So the jury's gone back. I imagine  
20 they'll just probably pick a foreperson tonight and go home, since  
21 it's 4:30. But for some reason, if they would like to stay and  
22 deliberate, we will let them do so. So we will contact you if they  
23 decide to go home.

24 MR. SHAYGAN-FATEMI: Your Honor, my client's  
25 expressed to me that he'd like to stay with us. If we think that we're

1 going to have a decision by 5:00, is it okay if he stays with us? Or  
2 Your Honor's call on that, obviously.

3 THE COURT: So, to be honest with you, it's really not my  
4 call. It's the corrections officer's call.

5 And I believe at 4:30, there's a shift change and you guys  
6 have to transport, right?

7 CORRECTIONS OFFICER: Yes, ma'am.

8 THE COURT: Okay. So I'm sorry, we're not going to be  
9 able to do that. And honestly, I don't think they're going to  
10 deliberate tonight. I think they're probably just going to pick a  
11 foreperson and go home.

12 MR. SHAYGAN-FATEMI: Okay.

13 THE COURT: So I will -- obviously, if they have a decision,  
14 you'll be brought back up by different corrections officers. And if  
15 they decide to go home, we will let everybody know.

16 So just leave your contact information with my clerk.

17 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. HAUSER: If they do choose to stay, how late do you  
20 keep them?

21 THE COURT: On a night like tonight, where we're just  
22 starting, I usually don't keep them past 6:00.

23 MR. HAUSER: That makes sense. And what time would  
24 you like him back here, just so we all know?

25 THE COURT: I'm going to let them choose. I wouldn't let

1     them choose later than 10:00. But --

2             MR. HAUSER: That makes sense. Yeah.

3             THE COURT: -- if they want to come in earlier, that's fine.  
4     But I'm not going to let them choose later than 10:00 a.m.

5             MR. HAUSER: Cool.

6             THE COURT: All right?

7             MR. HAUSER: Thank you, Judge.

8             THE COURT: Welcome.

9             [Court recessed at 4:33 p.m., until 6:17 p.m.]

10            [Outside the presence of the jury.]

11            THE COURT: All right. We are back in on C-345584-1,  
12     State of Nevada versus Ted Michael Donko. He's present with both  
13     attorneys, Mr. Shaygan and Mr. Hauser. Deputy district attorneys  
14     Ms. Rose Goodman and Mr. Lexis are also present.

15            [Jury reconvened at 6:18 p.m.]

16            THE COURT: All right. Ladies and gentlemen, we are  
17     back on the record in State of Nevada versus Ted Michael Donko.  
18     He's present with both attorneys present. The deputy district  
19     attorneys are present.

20            Do the parties stipulate to the presence of the jury?

21            MR. LEXIS: Yes, Your Honor.

22            MR. HAUSER: Yes, Your Honor.

23            THE COURT: Thank you.

24            Has the jury selected a foreperson?

25            JUROR NO. 8: That would be me, Your Honor.

1 THE COURT: Okay. And has the jury reached a verdict,  
2 yes or no?

3 JUROR NO. 8: We have.

4 THE COURT: Okay. Can you please hand the form to my  
5 marshal. Thank you.

6 The clerk will now read the verdict into the record, please.

7 THE CLERK: Yes, Your Honor.

8 District Court, Clark County, Nevada, State of Nevada,  
9 Plaintiff, versus Ted Michael Donko, Defendant, Case Number  
10 C-19-345584-1, Department 6, verdict:

11 We, the jury in the above entitled case, find the defendant,  
12 Ted Donko, as follows:

13 Count 1, Battery With Use of a Deadly Weapon, Resulting  
14 in Substantial Bodily Harm, Jonathan Sanchez: Guilty of battery  
15 with use of a deadly weapon resulting in substantial bodily harm.

16 Count 2, Battery With Use of a Deadly Weapon, Resulting  
17 in Substantial Bodily Harm, Fernando Espinoza: Guilty of battery  
18 with use of a deadly weapon resulting in substantial bodily harm.

19 Count 3, Attempt Murder With Use of a Deadly Weapon,  
20 Jonathan Sanchez: Guilty of attempt murder with use of a deadly  
21 weapon.

22 Count 4, Attempt Murder With Use of a Deadly Weapon,  
23 Fernando Espinoza: Guilty of attempt murder with use of a deadly  
24 weapon.

25 Count 5, Attempt Murder with Use of a Deadly Weapon,



1 DeAndre Woods: Guilty of attempt murder with use of a deadly  
2 weapon.

3 Count 6, Assault With a Deadly Weapon, DeAndre Woods:  
4 Guilty of assault with a deadly weapon.

5 Count 7, Discharging Firearm at or Into Occupied  
6 Structure, Vehicle, Aircraft, Watercraft: Guilty of discharging  
7 firearm at or into occupied structure, vehicle, aircraft, or watercraft.

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

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

11 THE JURY: Yes.

12 THE CLERK: Thank you.

13 THE COURT: Do either parties desire to have the jury  
14 polled?

15 MR. LEXIS: No, Your Honor.

16 MR. HAUSER: Yes.

17 THE CLERK: Juror Number 1, is this your verdict as read?

18 JUROR NO. 1: It is.

19 THE CLERK: Juror Number 2, is this your verdict as read?

20 JUROR NO. 2: It is.

21 THE CLERK: Juror Number 3, is this your verdict as read?

22 JUROR NO. 3: It is.

23 THE CLERK: Juror Number 4, is this your verdict as read?

24 JUROR NO. 4: It is.

25 THE CLERK: Juror Number 5, is this your verdict as read?

1 JUROR NO. 5: It is.  
2 THE CLERK: Juror Number 6, is this your verdict as read?  
3 JUROR NO. 6: It is.  
4 THE CLERK: Juror Number 7, is this your verdict as read?  
5 JUROR NO. 7: It is.  
6 THE CLERK: Juror Number 8, is this your verdict as read?  
7 JUROR NO. 8: It is.  
8 THE CLERK: Juror Number 9, is this your verdict as read?  
9 JUROR NO. 9: It is.  
10 THE CLERK: Juror Number 10, is this your verdict as  
11 read?  
12 JUROR NO. 10: It is.  
13 THE CLERK: Juror Number 11, is this your verdict as  
14 read?  
15 JUROR NO. 11: It is.  
16 THE CLERK: Juror Number 12, is this your verdict as  
17 read?  
18 JUROR NO. 12: It is.  
19 THE CLERK: Thank you.

20 [Proceeding concluded at 6:22 p.m.]

21 ///

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

Shawna Ortega, CET\*562  
Shawna Ortega, CET\*562



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

vs.

TED MICHAEL DONKO,

Defendant(s).

Case No. C-19-345584-1

Department VI

BEFORE THE HONORABLE JACQUELINE M. BLUTH,  
DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 13, 2020

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

APPEARANCES:

For the Plaintiff(s):

CHAD N. LEXIS, ESQ.  
LAURA ROSE GOODMAN, ESQ.  
(Deputy District Attorneys)

For the Defendant(s):

ROBSON M. HAUSER, ESQ.  
KAMBIZ SHAYGAN-FATEMI, ESQ.  
(Deputy Public Defenders)

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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**I N D E X**

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Closing Argument for the State	8
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Verdict	13

**E X H I B I T S**

For the State:	
Nos. 239 and 240	7
For the Defendant:	
No Exhibits Offered.	

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

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

3  
4 [In the presence of the jury.]

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

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

13 MR. LEXIS: Can we approach, Judge?

14 THE COURT: Yeah.

15 [Bench conference transcribed as follows.]

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

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

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

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

22 MR. LEXIS: Yes, ma'am.

23 THE COURT: With you?

24 MR. LEXIS: Yes.

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

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

3 THE COURT: Oh, okay.

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

5 THE COURT: Okay.

6 MR. LEXIS: I'll be back.

7 THE COURT: All right.

8 [End of bench conference.]

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

11 [Pause in proceedings.]

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

13 [Bench conference transcribed as follows.]

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

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

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

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

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

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

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

6 MR. SHAYGAN-FATEMI: Just submitted.

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

8 MR. SHAYGAN-FATEMI: Yeah. Yeah.

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

13 MR. HAUSER: Uh-huh.

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

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

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

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

1 agreed upon.

2 [End of bench conference.]

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

6 [Information read.]

7 THE COURT: State?

8 MR. LEXIS: State waives opening, Judge.

9 THE COURT: Defense?

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

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

13 MR. LEXIS: No, Your Honor.

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

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

19 THE CLERK: Yes, Your Honor.

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

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

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



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

1 THE COURT: Thank you.

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

3 [End of bench conference.]

4 [Jury instructions read.]

5 THE COURT: State?

6 **CLOSING ARGUMENT FOR THE STATE**

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

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

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

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

22 Thank you.

23 THE COURT: Mr. Hauser.

24 **REBUTTAL CLOSING ARGUMENT FOR THE DEFENDANT**

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

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

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

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

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

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

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

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

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

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

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

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

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

4 THE COURT: All right. Yes, sir?

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

9 I feel like I got screwed.

10 THE COURT: Okay.

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

13 THE COURT: Okay.

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

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

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

1 THE COURT: No.

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

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

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

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

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

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

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

22 THE COURT: I'm sorry. Yes?

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

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

1 deliberate, if they would like to go home.

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

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

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

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

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

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

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

21 THE COURT: Sure, yeah.

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

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

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

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

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

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

9 Oh, wait one second.

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

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

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

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

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

18 JUROR NO. 8: Yes, Your Honor.

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

20 JUROR NO. 8: We have.

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

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

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

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

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

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

9           THE JURY: Yes.

10          THE CLERK: Thank you.

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

13          MR. HAUSER: No.

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

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

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



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

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

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

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

10 THE CLERK: Yes, Your Honor.

11 April 1st, 9:30 sentencing.

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

14 THE COURT: Defense?

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

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

21 ///

22 ///

23 ///

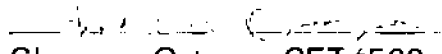
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MR. HAUSER: And that was April 1st, Judge?  
THE CLERK: Yes. 9:30.  
MR. HAUSER: We'll be here.  
THE COURT: All right. That's it. Thank you.  
MS. GOODMAN: Thanks, Your Honor.

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

///

ATTEST: I do hereby certify that I have truly and correctly  
transcribed the audio/video proceedings in the above-entitled case  
to the best of my ability.  
  
Shawna Ortega, CET #562



1 RTRAN  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,  
9 Plaintiff,

10 vs.

11 TED MICHAEL DONKO,  
12 Defendant.  
13

CASE NO. C-19-345584-1  
DEPT. VI

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

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

18 APPEARANCES:

19 For the State: ROBERT B. TURNER, ESQ.  
Chief Deputy District Attorney

20 For the Defendant: CHARLES W. SIMMONS, ESQ.  
21  
22  
23  
24

25 RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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

2 \* \* \* \* \*

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

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

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

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

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

14 THE DEFENDANT: Uh-huh.

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

17 THE DEFENDANT: All right.

18 THE CLERK: April 20<sup>th</sup>, 10:15.

19 THE DEFENDANT: Thank you.

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

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

24 

25 

---

Angelica Michaux  
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,  
9 Plaintiff,

10 vs.

11 TED MICHAEL DONKO,  
12 Defendant.

CASE NO. C-19-345584-1  
DEPT. VI

13  
14 BEFORE THE HONORABLE JACQUELINE M. BLUTH, DISTRICT COURT JUDGE  
15 MONDAY, APRIL 20, 2020

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

18 APPEARANCES:

19 For the State:

CHAD N. LEXIS, ESQ.  
Deputy District Attorney

20 For the Defendant:

21 ROBSON M. HAUSER, ESQ.  
Deputy Public Defender

22  
23  
24  
25 RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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

2 \* \* \* \* \*

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

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

6 MR. HAUSER: Good morning, Your Honor.

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

10 MR. HAUSER: Shaygan.

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

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

15 MR. HAUSER: I did.

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

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

22 THE COURT: Yeah.

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

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

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

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

14 THE COURT: Yeah.

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

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

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

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

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

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

24 THE COURT: Got it.

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



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

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

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

9 THE COURT: Okay, that's okay.

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

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

15 THE COURT: Yeah, I remember.

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

18 THE COURT: I'm sorry.

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

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

23 THE DEFENDANT: As being innocent.

24 THE COURT: Oh, okay.

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

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

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

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

24 THE COURT: Okay. Mr. Hauser?

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

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

11 THE COURT: Yep.

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

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

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

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

3 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

21 THE COURT: Go ahead.

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

24 THE COURT: Okay.

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

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

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

14           THE COURT: Okay, thank you.

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

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

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

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

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

23           MR. LEXIS: Sure.

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

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

3 MR. LEXIS: Yes, I understand.

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

5 MR. LEXIS: Okay.

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

10 [Pause in proceedings]

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

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

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

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

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

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

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

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

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

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

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



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

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

7 THE CLERK: Yes, Your Honor.

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

10 MR. HAUSER: One hundred and fifty days.

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

13 MR. LEXIS: Thanks, Judge.

14 MR. HAUSER: Thank you.

15 THE COURT: Thank you.

16 THE DEFENDANT: Thank you.

17 THE COURT: Thank you.

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

19 \* \* \* \* \*

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

24 

25 Angelica Michaux  
Court Recorder/Transcriber



IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TED MICHAEL DONKO,

Defendant.

SUPREME COURT NO. 81075

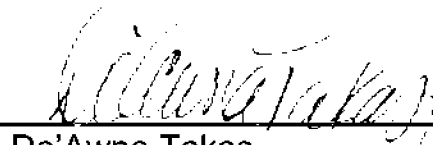
CASE NO. C-19-345584-1

DEPT. NO. VI

**AMENDED CERTIFICATE OF SERVICE**

I, De'Awna Takas, certify that I am the Court Recorder in Department VI District Court, Clark County, Nevada; and the transcripts of the proceedings heard on February 10, 2020, February 11, 2020, February 12, 2020, February 13, 2020, April 1, 2020 and April 20, 2020 by the Honorable Judge Jacqueline M. Bluth were e-filed with the Clerk of Court, Clark County, Nevada, in Case Number C-19-345584-1 on June 8, 2020, and courtesy copies were provided to Darin F. Imlay, the requesting party, and Jennifer Garcia and Eileen Davis.

Dated this 23<sup>rd</sup> day of June, 2020.



De'Awna Takas  
Court Recorder/Transcriber  
Eighth Judicial District Court, Dept. VI  
Regional Justice Center  
Las Vegas, Nevada 89155



1 RTRAN  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 TED MICHAEL DONKO,

12 Defendant.

CASE NO. C19-345584-1

DEPT. X

13  
14 ***BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE***

15 ***FRIDAY, FEBRUARY 7, 2020***  
16 ***RECORDER'S TRANSCRIPT RE:***  
17 ***CALENDAR CALL***

18 APPEARANCES:

19 For the State:

CHAD LEXIS, Esq.  
Deputy District Attorney

20  
21 For the Defendant:

ROBSON HAUSER, Esq.  
Deputy Public Defender

22  
23  
24  
25  
RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 Las Vegas, Nevada, Friday, February 7, 2020 at 8:31 a.m.

2  
3  
4 THE COURT: The defendant is in custody. Good morning. Mr. Hauser is  
5 here on his behalf. Mr. Lexis is here on behalf of the State. This is the date and  
6 time set for calendar call. I have worked my magic and found you guys a  
7 Courtroom. This case will be going to Department 6. You will begin trial Monday  
8 morning - - I mean Monday afternoon at 1:30. Tuesday your start time will be at  
9 11:00. Wednesday your start time will be 1:00, and Thursday and Friday your start  
10 time will be at 9:00. So that should be able to get it complete in a week.

11 MR. HAUSER: Got it. And, Judge, I do have the conflict motion I was going  
12 to file if I may file it in open Court.

13 THE COURT: Yes, please file it in open Court and I have been able to review  
14 the substance of this conflict motion and this Court does not find that a conflict exist  
15 based upon the fact that the rule requires that there be some information that was  
16 gained in the representation of this other person that is being used adversely to the  
17 defendant in this case. It's my understanding that if any testimony from this witness  
18 were to be elicited it would be elicited actually to help the defendant and would not  
19 be adverse to him. As well as I do not believe the testimony that would be elicited  
20 from this witness is in any way information that was gained during the public  
21 defender's representation of this witness as well as I don't believe anyone intends to  
22 call this witness. So based upon that the motion will be denied. You guys will be  
23 set for trial.

24 MR. HAUSER: Thank you, Judge.

25 THE CLERK: Jury trial February 10<sup>th</sup>, 1:30, Department 6.

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(Proceedings concluded at 8:33 a.m.)

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

*Victoria W. Boyd*

8-6-20

\_\_\_\_\_  
Victoria W. Boyd  
Court Recorder/Transcriber

\_\_\_\_\_  
Date



**REQT**

DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR No. 5674  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**APPELLANT'S REQUEST FOR CERTIFIED TRANSCRIPT OF PROCEEDINGS**

TO: De'Awna Takas  
Court Recorder, Department VI

Appellant requests preparation, at State expense, of a transcript of the proceedings before the District Court, as follows:

**Judge or officer hearing the proceeding:** Judge Jacqueline M. Bluth.

**Date or dates of proceeding:** 06/15/2020.

**Portions of the transcript requested:** (06/15/2020 - De'Awna Takas) - Any and all proceedings, all transcripts to include index.

**Number of copies required:** Two.

I hereby certify that on this date I ordered this transcript from the court reporter named above. I further certify

1 that Appellant is indigent and exempt from paying the required  
2 deposit.

3 EXECUTED on the 6 day of October, 2020.

4 DARIN F. IMLAY  
5 CLARK COUNTY PUBLIC DEFENDER

6 By: /s/ Audrey M. Conway  
7 AUDREY M. CONWAY, #5611  
8 Deputy Public Defender  
9 309 S. Third Street, Ste. 226  
10 Las Vegas, Nevada 89155  
11 (702) 455-4685

12 **CERTIFICATE OF ELECTRONIC FILING**

13 I hereby certify that service of the above and foregoing  
14 was made this 6 day of October, 2020, by Electronic Filing to:

15 District Attorneys Office  
16 E-Mail Address:

17 PDMotions@clarkcountyda.com

18 Jennifer.Garcia@clarkcountyda.com

19 Eileen.Davis@clarkcountyda.com

20 takasd@clarkcountycourts.us

21  
22 /s/ Carrie M. Connolly  
23 Secretary for the  
24 Public Defender's Office  
25  
26  
27  
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1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA

CASE NO. C-19-345584-1

9 Plaintiff,

DEPT. VI

10 vs.

11 TED MICHAEL DONKO,

12 Defendant.

13 BEFORE THE HONORABLE JACQUELINE M. BLUTH, DISTRICT COURT JUDGE  
14 MONDAY, JUNE 15, 2020

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

18 APPEARANCES:

19 For the State:

SARAH OVERLY, ESQ.  
Chief Deputy District Attorney

20  
21 For the Defendant:

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

22  
23  
24  
25 RECORDED BY: De'AWNA TAKAS, COURT RECORDER



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

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

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

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

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

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

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

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

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

21 MR. HAUSER: Yes.

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

24 MR. HAUSER: Alright.

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

1 MR. HAUSER: Yeah.

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

3 MR. HAUSER: Sounds good.

4 THE COURT: So let me just do that.

5 De'Awna would you mind burning that for me?

6 And I'll do that this afternoon.

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

8 THE COURT: Awesome.

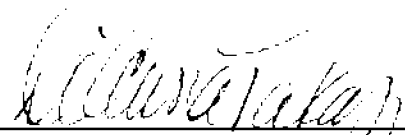
9 MR. HAUSER: Thank you very much.

10 THE COURT: Alright. Thanks guys.

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

12 \* \* \* \* \*

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

23   
24 \_\_\_\_\_  
25 De'Awna Takas  
Court Recorder/Transcriber



IN THE SUPREME COURT OF THE STATE OF NEVADA

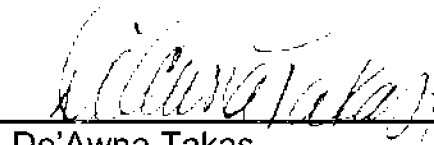
THE STATE OF NEVADA,  
  
Plaintiff,  
  
vs.  
  
TED MICHAEL DONKO,  
  
Defendant.

SUPREME COURT NO. 81075  
  
CASE NO. C-19-345584-1  
  
DEPT. NO. VI

**CERTIFICATE OF SERVICE**

I, De'Awna Takas, certify that I am the Court Recorder in Department VI District Court, Clark County, Nevada; and the transcript of the proceeding heard on June 15, 2020, by the Honorable Judge Jacqueline M. Bluth was e-filed with the Clerk of Court, Clark County, Nevada, in Case Number C-19-345584-1 on October 29, 2020, and courtesy copies were provided to Darin F. Imlay, the requesting party, and Jennifer Garcia and Eileen Davis.

Dated this 29<sup>th</sup> day of October, 2020.



De'Awna Takas  
Court Recorder/Transcriber  
Eighth Judicial District Court, Dept. VI  
Regional Justice Center  
Las Vegas, Nevada 89155

*Heather J. Smith*

CLERK OF THE COURT

AJOC

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TED MICHAEL DONKO  
#2668752

Defendant.

CASE NO. C-19-345584-1

DEPT. NO. VI

AMENDED JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1 & 2 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.481; COUNTS 3, 4, & 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 6 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 7 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony) in violation of NRS 202.285; and Bifurcated COUNT 1, originally COUNT 8 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1 & 2 – BATTERY WITH USE

1 OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B  
2 Felony) in violation of NRS 200.481; COUNTS 3, 4, & 5 – ATTEMPT MURDER WITH USE  
3 OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330,  
4 193.165; COUNT 6 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation  
5 of NRS 200.471; COUNT 7 – DISCHARGING FIREARM AT OR INTO OCCUPIED  
6 STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony) in violation of  
7 NRS 202.285; and Bifurcated COUNT 1, originally COUNT 8 – OWNERSHIP OR  
8 POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in violation of  
9 NRS 202.360; thereafter, on the 20<sup>th</sup> day of April, 2020, the Defendant was present in court for  
10 sentencing with counsel ROBSON HAUSER, Deputy Public Defender, and good cause  
11 appearing,  
12

13 THE DEFENDANT WAS HEREBY ADJUDGED guilty of said offenses and, in addition  
14 to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil Assessment  
15 Fee, \$3.00 DNA Collection Fee, and Jurisdiction retained as to any Restitution, the Defendant  
16 is sentenced to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** - a  
17 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24)  
18 MONTHS; **COUNT 2** - a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole  
19 eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with COUNT 1; **COUNT 3** - a  
20 MAXIMUM of NINETY-SIX (96) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX  
21 (36) MONTHS, plus a CONSECUTIVE term of THIRTY (30) MONTHS with a MINIMUM  
22 parole eligibility of TWELVE (12) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE  
23 to COUNTS 1 & 2; **COUNT 4** - a MAXIMUM of NINETY-SIX (96) MONTHS with a MINIMUM  
24 parole eligibility of THIRTY-SIX (36) MONTHS, plus a CONSECUTIVE term of THIRTY (30)  
25 MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS for the Use of a  
26 Deadly Weapon, CONSECUTIVE to COUNT 3; **COUNT 5** - a MAXIMUM of NINETY-SIX (96)  
27  
28

1 MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS, plus a  
2 CONSECUTIVE term of THIRTY (30) MONTHS with a MINIMUM parole eligibility of TWELVE  
3 (12) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 4; **COUNT 6** - a  
4 MAXIMUM of THIRTY (30) MONTHS with a MINIMUM parole eligibility of TWELVE (12)  
5 MONTHS, CONCURRENT with COUNT 5; **COUNT 7** - a MAXIMUM of THIRTY (30)  
6 MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS, CONCURRENT with  
7 COUNT 6; and **Bifurcated COUNT 1, originally COUNT 8** - a MAXIMUM of THIRTY (30)  
8 MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS, CONCURRENT with  
9 COUNT 7; with ONE HUNDRED FIFTY (150) DAYS credit for time served. As the \$150.00  
10 DNA Analysis Fee and Genetic Testing have been previously imposed, the Fee and Testing in  
11 the current case are WAIVED. The AGGREGATE TOTAL sentence INCLUDING the Deadly  
12 Weapon Enhancement is THREE HUNDRED SEVENTY-EIGHT (378) MONTHS MAXIMUM  
13 with a MINIMUM of ONE HUNDRED FORTY-FOUR (144) MONTHS. The AGGREGATE  
14 TOTAL sentence NOT INCLUDING the Deadly Weapon Enhancement is TWO HUNDRED  
15 EIGHTY-EIGHT (288) MONTHS MAXIMUM with a MINIMUM of ONE HUNDRED EIGHT  
16 (108) MONTHS.  
17  
18

19 THEREAFTER, on the 25<sup>th</sup> day of November, 2020, a clerical error having been  
20 discovered; COURT ORDERED, the following correction: the Defendant is sentenced to the  
21 Nevada Department of Corrections (NDC) as follows: **COUNT 1** - a MAXIMUM of SIXTY (60)  
22 MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS; **COUNT 2** - a  
23 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24)  
24 MONTHS, CONCURRENT with COUNT 1; **COUNT 3** - a MAXIMUM of NINETY-SIX (96)  
25 MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS, plus a  
26 CONSECUTIVE term of THIRTY (30) MONTHS with a MINIMUM parole eligibility of TWELVE  
27 (12) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 2; **COUNT 4** - a  
28

1 MAXIMUM of NINETY-SIX (96) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX  
2 (36) MONTHS, plus a CONSECUTIVE term of THIRTY (30) MONTHS with a MINIMUM  
3 parole eligibility of TWELVE (12) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE  
4 to COUNT 3; **COUNT 5** - a MAXIMUM of NINETY-SIX (96) MONTHS with a MINIMUM parole  
5 eligibility of THIRTY-SIX (36) MONTHS, plus a CONSECUTIVE term of THIRTY (30)  
6 MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS for the Use of a  
7 Deadly Weapon, CONSECUTIVE to COUNT 4; **COUNT 6** - a MAXIMUM of THIRTY (30)  
8 MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS, CONCURRENT with  
9 COUNT 5; **COUNT 7** - a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM parole  
10 eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 6; and **Bifurcated COUNT**  
11 **1, originally COUNT 8** - a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM parole  
12 eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 7; with ONE HUNDRED  
13 FIFTY (150) DAYS credit for time served. As the \$150.00 DNA Analysis Fee and Genetic  
14 Testing have been previously imposed, the Fee and Testing in the current case are WAIVED.  
15 The AGGREGATE TOTAL sentence is FOUR HUNDRED THIRTY-EIGHT (438) MONTHS  
16 MAXIMUM with a MINIMUM of ONE HUNDRED SIXTY-EIGHT (168) MONTHS.  
17  
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19  
20

21 Dated this 25th day of May, 2021

22   
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25 **A8B 164 0CCE 9F33**  
26 **Jacqueline M. Bluth**  
27 **District Court Judge**  
28

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 State of Nevada

CASE NO: C-19-345584-1

7 vs

DEPT. NO. Department 6

8 Ted Donko  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/25/2021

15 Dept 25 Law Clerk

Dept25LC@clarkcountycourts.us

16 Robson Hauser

Robson.Hauser@clarkcountynv.gov

17 Brett Spratt

brett.spratt@clarkcountynv.gov

18 DeLois Williams

Delois.Williams@clarkcountynv.gov

19 Public Defender's Office

pdclerk@clarkcountynv.gov

20 Dept 25 JEA Knight

KnightM@clarkcountycourts.us

21 Carrie Connolly

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22 Jennifer Garcia

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23 Eileen Davis

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24 Sharon Nichols

nicholss@clarkcountycourts.us

25 Robert Cangemi

CangemiRobert@yahoo.com



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Victoria Boyd	boydv@clarkcountycourts.us
De'Awna Takas	takasd@clarkcountycourts.us
Dept 6 Law Clerk	dept06lc@clarkcountycourts.us



1 **NOAS**  
2 DARIN F. IMLAY, PUBLIC DEFENDER  
3 NEVADA BAR No. 5674  
4 309 South Third Street, Suite 226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA, )  
11 )  
12 Plaintiff, ) CASE NO. C-19-345584-1  
13 v. ) DEPT. NO. VI  
14 TED MICHAEL DONKO, )  
15 )  
16 Defendant. )

17 **NOTICE OF APPEAL**

18 TO: THE STATE OF NEVADA

19 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,  
20 NEVADA and DEPARTMENT NO. VI OF THE EIGHTH JUDICIAL  
21 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE  
22 COUNTY OF CLARK.

23 NOTICE is hereby given that Defendant, Ted Michael  
24 Donko, presently incarcerated in the Nevada State Prison, appeals  
25 to the Supreme Court of the State of Nevada from the amended  
26 judgment entered against said Defendant on the 25<sup>th</sup> day of May,  
27 2021, whereby he was adjudged guilty of Counts 1 & 2, Battery With  
28 Use of a Deadly Weapon Resulting in Substantial Bodily Harm, Cts.  
3, 4, & 5 - Attempt Murder With use of a Deadly Weapon, Ct. 6 -  
Assault with a Deadly Weapon, Ct. 7 - Discharging a Firearm at or  
into Occupied Structure Vehicle Aircraft or Watercraft and  
bifurcated Count 1, originally Count 8 - Ownership or Possession  
of Firearm by Prohibited Person and sentenced to \$25 Admin. Fee;  
\$3 DNA collection fee; and jurisdiction retained as to any

1 restitution; as to Ct. 1 - 24-60 months in prison; Ct. 2 - 24-60  
2 months in prison concurrent with Ct. 1; Ct. 3 - 36-96 months in  
3 prison plus a consecutive term of 12-30 months in prison  
4 consecutive to Cts. 1 & 2, Ct. 4 - 36-96 months in prison plus a  
5 consecutive term of 12-30 months for use of a deadly weapon  
6 consecutive to Ct. 3; Ct. 5 - 36-96 months in prison plus a  
7 consecutive term of 12-30 months in prison consecutive to Ct. 4,  
8 Ct. 6 - 12-30 months in prison concurrent with Ct. 5; Ct. 7 - 12-  
9 30 months in prison concurrent with Ct. 6; and **Bifurcated Count 1,**  
10 **originally Count 8** - 12-30 months in prison concurrent with Count  
11 7; 150 days credit for time served; \$150 DNA analysis fee and  
12 genetic testing, previously imposed the fee and testing in the  
13 current case is waived. The Aggregate total sentence including  
14 the Deadly Weapon Enhancement is 144-378 months. The aggregate  
15 total sentence not including the deadly weapon enhancement is 108-  
16 288 months. On November 25, 2020 a clerical error having been  
17 discovered, Court ordered the following correction: Ct. 1 - 24-60  
18 months in prison; Ct. 2 - 24-60 months in prison concurrent with  
19 Ct. 1; Ct. 3 - 36-96 months in prison plus a consecutive term of  
20 12-30 months in prison consecutive to Ct. 2, Ct. 4 - 36-96 months  
21 in prison plus a consecutive term of 12-30 months for use of a  
22 deadly weapon consecutive to Ct. 3; Ct. 5 - 36-96 months in prison  
23 plus a consecutive term of 12-30 months in prison consecutive to  
24 Ct. 4, Ct. 6 - 12-30 months in prison concurrent with Ct. 5; Ct. 7  
25 - 12-30 months in prison concurrent with Ct. 6; and **Bifurcated**  
26 **Count 1, originally Count 8** - 12-30 months in prison concurrent  
27 with Count 7; 150 days credit for time served, \$150 DNA analysis  
28 fee and genetic testing have been previously imposed, the fee and

1 testing is waived. The aggregate total is 168-438 months.

2 DATED this 1<sup>st</sup> day of June, 2021.

3 DARIN F. IMLAY  
4 CLARK COUNTY PUBLIC DEFENDER

5  
6 By: /s/ Audrey M. Conway  
7 AUDREY M. CONWAY, #5611  
8 Deputy Public Defender  
9 309 S. Third Street, Ste. 226  
10 Las Vegas, Nevada 89155  
11 (702) 455-4685  
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## DECLARATION OF MAILING

Carrie Connolly, an employee with the Clark County Public Defender's Office, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 21 day of April, 2020, declarant deposited in the United States mail at Las Vegas, Nevada, a copy of the Notice of Appeal in the case of the State of Nevada v. Ted Michael Donko, Case No. C-19-345584-1, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to Ted Michael Donko, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. That there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 1<sup>st</sup> day of June, 2021.

/s/ Carrie M. Connolly  
An employee of the Clark County  
Public Defender's Office

1                                    **CERTIFICATE OF ELECTRONIC FILING**

2                    I hereby certify that service of the above and foregoing  
3 was made this 1<sup>st</sup> day of June, 2021, by Electronic Filing to:

4                                    District Attorneys Office  
5                                    E-Mail Address:

6                                    PDMotions@clarkcountyda.com

7                                    Jennifer.Garcia@clarkcountyda.com

8                                    Eileen.Davis@clarkcountyda.com

9                                    /s/ Carrie M. Connolly

10                                  Secretary for the  
11                                  Public Defender's Office



**CAS**

DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR No. 5674  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

---

**CASE APPEAL STATEMENT**

1. Appellant filing this case appeal statement: Ted Michael Donko.

2. Judge issuing the decision, judgment, or order appealed from: Honorable Jaqueline Bluth.

3. All parties to the proceedings in the district court (the use of et al. To denote parties is prohibited): The State of Nevada, Plaintiff; Ted Michael Donko, Defendant.

4. All parties involved in this appeal (the use of et. al. to denote parties is prohibited): Ted Michael Donko, Appellant; The State of Nevada, Respondent.

1           5.    Name, law firm, address, and telephone number of  
2 all counsel on appeal and party or parties whom they represent:

3 DARIN F. IMLAY  
4 Clark County Public Defender  
5 309 South Third Street, #226  
Las Vegas, Nevada 89155-2610

STEVEN B. WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

6 Attorney for Appellant

AARON D. FORD  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

9 Counsel for Respondent

10           6.    Whether appellant was represented by appointed or  
11 retained counsel in the district court: Appointed.

12           7.    Whether appellant is represented by appointed or  
13 retained counsel on appeal: Appointed.

14           8.    Whether appellant was granted leave to proceed in  
15 forma pauperis, and the date of entry of the district court  
16 order granting such leave: N/A.

17           9.    Date proceedings commenced in the district court  
18 (e.g., date complaint, indictment, information, or petition was  
19 filed): Information filed 12/19/19.

20           DATED this 1<sup>ST</sup> DAY OF June, 2021.

21                   DARIN F. IMLAY  
22                   CLARK COUNTY PUBLIC DEFENDER

23  
24           By:    /s/Audrey M. Conway  
25                   AUDREY M. CONWAY, #5611  
26                   Deputy Public Defender  
27                   309 S. Third Street, Ste. 226  
28                   Las Vegas, Nevada 89155  
                  (702) 455-4685



1  
2 **CERTIFICATE OF ELECTRONIC FILING**

3 I hereby certify that service of the above and  
4 foregoing was made this 1<sup>ST</sup> DAY OF June, 2021, by Electronic  
5 Filing to:

6 District Attorneys Office  
7 E-Mail Address:  
8 PDMotions@ccdandv.com

9 Jennifer.Garcia@ccdandv.com

10 Eileen.Davis@ccdandv.com

11 /s/ Carrie M. Connolly  
12 Secretary for the  
13 Public Defender's Office  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 83037  
District Court Case No. C345584

**FILED**

MAY 17 2022

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 20th day of April, 2022.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
May 16, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo  
Deputy Clerk

C-19-345584-1  
CCJA  
NV Supreme Court Clerks Certificate/Judgm  
4992424



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81075-COA

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

✓ No. 83037-COA

**FILED**

APR 20 2022

**ORDER OF AFFIRMANCE**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *S. J. [Signature]*  
DEPUTY CLERK

Ted Michael Donko appeals from a judgment of conviction in 81075-COA and an amended judgment of conviction in 83037-COA, pursuant to a jury verdict, of two counts of battery with use of a deadly weapon resulting in substantial bodily harm; three counts of attempt murder with use of a deadly weapon; assault with a deadly weapon; discharging a firearm at or into occupied structure, vehicle, aircraft or watercraft; and ownership or possession of a firearm by prohibited person. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

On October 1, 2019, a shooting occurred outside a residence.<sup>1</sup> The shooter aimed at three individuals, injuring two of them. Multiple witnesses described the shooter as wearing a red shirt and escaping in a Toyota vehicle. Law enforcement arrived on the scene and discovered a matching vehicle a few blocks from the shooting. A red shirt was also located on a sidewalk near the vehicle. Officers from the Las Vegas Metropolitan

<sup>1</sup>We do not recount the facts except as necessary for our disposition.

Police Department (LVMPD) impounded and searched the vehicle finding a license plate located between the seat and console, a bullet, and an unspent round of ammunition—which was a Win 40 Smith & Wesson cartridge—located on the passenger floor. The license plate was processed for prints. The prints, upon processing, revealed a match with Donko's left middle finger. The red shirt was also processed for DNA and revealed a mixture of two DNA profiles, which included Donko's DNA profile. Donko was charged with two counts of battery with use of a deadly weapon resulting in substantial bodily harm; three counts of attempt murder with use of a deadly weapon; assault with a deadly weapon; discharging a firearm at or into occupied structure, vehicle, aircraft or watercraft; and ownership or possession of a firearm by prohibited person.

After viewing a photo lineup, Deandre Woods, who was present at the shooting, identified Donko as the shooter, and he stated he was "95 percent" sure of his identification.<sup>2</sup> The case proceeded to a jury trial. Allison Rubino, a LVMPD forensic analyst, testified at trial that Donko's DNA profile was included in 99 percent of the DNA mixture, with the remaining one percent from an unknown contributor. Detective Marin, one of the law enforcement officers who responded to the scene, testified that the cartridge found in the Toyota vehicle was of the same type as the shell casings found at the scene of the shooting. At trial two witnesses identified Donko as the shooter involved in the incident. One of the witnesses, Genaro Ramos, who was called by the State, testified as to what he witnessed on the day of the shooting. He said he heard gunshots, saw a car speed by, and witnessed a

---

<sup>2</sup>Notably, Woods testified at the eventual trial as to seeing Donko the night before the shooting, wearing a red shirt and inquiring about someone named "Shorty," the same name mentioned by Donko the following day before he started shooting.

white male in a red shirt exit the vehicle. In his initial testimony, Ramos did not make an identification of Donko as the shooter, nor was he asked to do so during direct or cross-examination. After he testified and was in the hallway of the courthouse ready to leave, he privately told the prosecutor that he realized he could in fact identify Donko as the shooter. After Ramos initially testified, the State called Woods to testify. Woods identified Donko as the shooter, consistent with his pre-trial identification of Donko. During a break in Woods's testimony, the court held a bench conference with the State and Donko's counsel. During this conference, the State informed both the court and Donko's counsel that it would be recalling Ramos as a witness. Neither the defense nor the court inquired as to the State's purpose in recalling Ramos, nor did Donko's counsel object.

Ramos was recalled and testified that he had told the prosecutor in the hallway that he could identify Donko as the shooter but was nervous about doing so because "[t]he guy that I saw is the guy that I was going to point him, [sic] that that was the guy that I saw coming out of the car." Donko's counsel immediately objected, and the district court held a bench conference. Donko's counsel said that the identification was "improper," given that Ramos failed to identify Donko during his initial testimony. Donko's counsel asked the court to strike the identification. The State responded by indicating that there was nothing objectionable about Ramos's testimony concerning the hallway conversation with the prosecutor as it was accurate and with his identification of Donko. The district court stated that defense counsel's objection to Ramos's in-court identification was "not a legal objection," that there was nothing inadmissible about Ramos's testimony, and that Donko's counsel would be able to cross-examine Ramos regarding the identification. Donko's counsel then orally requested a mistrial for the same reasons previously discussed. The district court denied the oral motion

for a mistrial, finding that there was no legal reason to exclude Ramos's testimony regarding his in-court identification of Donko as the shooter, and that a mistrial was not warranted. Donko's counsel cross-examined Ramos regarding his identification. On the last day of trial, Donko testified in his own defense, against the advice of counsel. Based on the record, Donko's decision to testify was not related to Ramos's identification. During the State's closing argument, the prosecutor commented on Donko's inability during cross-examination to explain why certain physical evidence linking him to the shooting was found at the scene.

Ultimately, the jury convicted Donko on all counts. At sentencing, the district court imposed an aggregate sentence of 144-378 months. A judgment of conviction reflecting the aggregate total sentence of 144-378 months was filed. At sentencing, the district court also asked the State whether it was seeking restitution, and the State responded that the victims preferred that the court focus on sentencing Donko to time in prison rather than a restitution amount. The district court responded that it would retain jurisdiction to impose restitution but did not specify an amount. The defense did not object. Thus, the original judgment of conviction stated that the district court would retain jurisdiction for the purpose of imposing future restitution.

Subsequently, the State of Nevada Department of Corrections sent correspondence to the Clark County District Attorney's Office, stating that it believed there was a discrepancy in the judgment of conviction, as the calculations should have reflected an aggregate sentence of 168-438 months. The State then filed a motion to correct the aggregate sentence, arguing that the total aggregate sentence, based on the sentences given for each conviction, as incorporated into the judgment of conviction, should have reflected an aggregate sentence of 168-438 months. The district court held a

hearing on the State's motion. While Donko agreed that 168-438 months may have accurately reflected the total aggregate sentence based on the individual sentences set forth in the judgment of conviction, he argued it was the district court's intention to only impose an aggregate sentence of 144-378 months, as set forth in the judgment of conviction, so that the individual sentences would need to be adjusted accordingly. The court issued a minute order, finding that the aggregate sentence was miscalculated on the day of sentencing, but that the district court's individual sentences for each conviction, including which would run consecutively, was correct. Therefore, the district court corrected the aggregate sentence to 168-438 months, and an amended judgment of conviction was filed. The amended judgment of conviction, entered after the notice of appeal was filed in 81075-COA, did not state that the district court would retain jurisdiction for restitution. Donko filed a second notice of appeal, 83037-COA, to preserve his appellate rights regarding the district court's modification of the aggregate sentence in the amended judgment of conviction.

On appeal, Donko argues that the district court (1) abused its discretion and thereby violated Donko's Fourth, Sixth, and Fourteenth Amendment rights by admitting Ramos's in-court identification; (2) erred in amending Donko's aggregate sentence; (3) improperly retained jurisdiction over restitution; (4) violated his Fifth, Sixth, and Fourteenth Amendment rights by rejecting his proposed defense jury instructions; (5) allowed the State to violate his Fifth, Sixth, and Fourteenth Amendment rights based on prosecutorial misconduct during closing; (6) allowed his conviction to stand based on insufficient evidence; and (7) created cumulative error requiring reversal of his conviction. The State contends that Ramos's in-court identification was permissible, and it is the role of the jury to weigh the credibility of Ramos's testimony. The State also argues that the correction

to Donko's aggregate sentence was permitted by statute. The State argues that reversal is not warranted regarding the district court retaining jurisdiction for restitution, as it was not included in the amended judgment of conviction and is therefore moot. In response to the remainder of Donko's arguments, the State argues that the claims of improper denial of jury instructions, prosecutorial misconduct, insufficient evidence, and cumulative error are without merit. We address each of Donko's arguments on appeal in turn.

First, Donko argues that the district court abused its discretion by admitting Ramos's in-court identification testimony because Ramos failed to identify Donko as the shooter during his initial testimony and the admission of Ramos's in-court identification when he was recalled as a witness deprived Donko of due process. "[A] district court's decision to admit or exclude evidence [is reviewed] for an abuse of discretion." *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Similarly, the trial court's judgment in denying a mistrial will not be overturned absent an abuse of discretion. *Rudin v. State*, 120 Nev. 121, 142, 86 P.3d 572, 586 (2004). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

Absent an allegation that an in-court identification was tainted by an improper pretrial identification process, an in-court identification is not subject to suppression but rather must be evaluated for credibility by the jury. *Steese v. State*, 114 Nev. 479, 498, 960 P.2d 321, 333 (1998). It is well established in this State that it is the function of the jury to weigh the credibility of the identifying witness. *Wise v. State*, 92 Nev. 181, 183, 547 P.2d 314, 315 (1976); see also *Browning v. State*, 104 Nev. 269, 274, 757 P.2d 351, 354 (1988) (concluding that the in-court identification was admissible,



and a witness's failure to previously make an identification is a factor to be weighed by the trier of fact, but such inability does not render an in-court identification inadmissible). The Supreme Court of the United States has established that ordinary safeguards built into the trial system provide sufficient due process for in-court identifications. See *Perry v. New Hampshire*, 565 U.S. 228, 237, 245-47 (2012) (stating that these safeguards include the Sixth Amendment right to confront the eyewitness; the right to effective assistance of counsel, "who can expose the flaws in the eyewitness' testimony during cross examination . . . and closing arguments"; and the State's burden of proving the crime beyond a reasonable doubt).

We conclude that the district court did not abuse its discretion in admitting Ramos's in-court identification of Donko. Ramos did not make a pretrial identification of Donko, but rather Ramos identified Donko during his testimony after he was recalled as a witness at trial. Accordingly, the credibility and weight of Ramos's testimony is "within the province of the jury." *Wise*, 92 Nev. at 183, 547 P.2d at 315. Donko, through counsel, cross-examined Ramos, thus satisfying due process as to Ramos's in-court identification of Donko.

Additionally, the district court did not abuse its discretion in denying Donko's oral motion for a mistrial pursuant to Ramos's identification because Donko was not unfairly prejudiced by Ramos's in-court identification so as to render his trial unfair. See *Nunnery v. State*, 127 Nev. 749, 785, 263 P.3d 235, 259 (2011) (affirming denial of mistrial despite surprise testimony that the defendant may have been involved in other crimes); *Summers v. State*, 122 Nev. 1326, 1335, 148 P.3d 778, 784 (2006) (affirming denial of mistrial despite surprise testimony that defendant threatened a witness's life). Accordingly, we are not persuaded by Donko's argument that Ramos's

in-court identification harmed his defense, such that the district court should have granted a mistrial.<sup>3</sup>

Second, Donko argues that the district court abused its discretion in amending Donko's judgment of conviction after he started serving his sentence, thereby improperly increasing his aggregate sentence and violating his protection from double jeopardy. A claim that a conviction violates the Double Jeopardy Clause generally is subject to de novo review on appeal. *Davidson v. State*, 124 Nev. 892, 896, 192 P.3d 1185, 1189 (2008); *Ebeling v. State*, 120 Nev. 401, 404, 91 P.3d 599, 601 (2004). NRS 176.565 states that "[c]lerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders."

Here, the district court did not amend the sentence on any individual conviction, but simply corrected a clerical error pertaining to the calculation of the aggregate sentence. Donko's argument that this error is not a "clerical error" is unpersuasive. *See Devlin v. State*, No. 73518, 2019 WL 4392531, at \*1 (Nev. Sept. 12, 2019) (Order of Affirmance) (holding that a district court can correct such clerical mistakes, when a district court entered an amended judgment of conviction correcting an aggregate sentence

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<sup>3</sup>Donko fails to demonstrate that he was denied a fair trial, and therefore, the district court did not abuse its discretion in denying a mistrial. *See Rudin*, 120 Nev. at 142, 86 P.3d at 586. The State presented strong evidence of Donko's guilt, including independent eyewitness testimony of Woods identifying Donko as the shooter, the bullet casings from the scene matching those found in the Toyota vehicle, the fingerprint match, and Donko's DNA was obtained from a red shirt found in the same neighborhood, consistent with what multiple witnesses described the shooter as wearing. Thus, any error in denying Donko's oral motion for a mistrial was harmless. *See generally* NRS 178.598.

from 11 years to 12 years). Here, the district court modified the aggregate sentence language to comport with the individual sentences originally imposed at sentencing. Therefore, the district court corrected its previous miscalculation of the aggregate sentence to be consistent with the individual sentences set forth in the judgment of conviction. Thus, we are not persuaded that the district court abused its discretion in amending Donko's judgment of conviction to correct the aggregate sentence.

Third, Donko contends that the district court erred in retaining jurisdiction over restitution in an amount to be determined later in violation of NRS 176.033(3); *see also Botts v. State*, 109 Nev. 567, 569, 854 P.2d 856, 857 (1993) (concluding that judgments of convictions that impose restitution in an uncertain amount to be determined in the future are clearly an error). However, Donko concedes in his reply brief that this issue is moot, given that the amended judgment of conviction, filed on May 25, 2021, no longer included language indicating that the district court would retain jurisdiction to impose restitution. Given that this issue is moot, we decline to exercise our discretion and consider the merits of this issue. *See Valdez-Jimenez v. Eighth Judicial Dist. Court*, 136 Nev. 155, 158, 460 P.3d 976, 982 (2020) (noting that the appellate court will generally decline to hear a moot case).

Fourth, Donko contends that the district court abused its discretion when it rejected his proposed jury instructions and revision to the verdict form. Specifically, he states that the district court should have permitted instructions that (1) modified the reasonable doubt instruction, (2) addressed reasonable interpretations of evidence, (3) addressed "reasonable doubt and subjective certitude on the part of jurors," (4) included negatively-

worded or inverse instructions pursuant to *Crawford v. State*<sup>4</sup>, and (5) placed “not guilty” before “guilty” on the verdict form.

“The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.” *Crawford*, 121 Nev. at 748, 121 P.3d at 585. “An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Id.* (internal quotation marks omitted). This court, however, reviews de novo “whether an instruction is a correct statement of the law.” *Clancy v. State*, 129 Nev. 840, 845, 313 P.3d 226, 229 (2013).

NRS 175.211 provides the statutorily mandated language for a reasonable doubt instruction, which does not include the language requested by Donko. To the extent Donko argues under *Crawford* the district court abused its discretion when it rejected his proffered other negatively-worded or inverse instructions, we note “the district court may refuse a jury instruction on the defendant’s theory of the case which is substantially covered by other instructions.” *Runion v. State*, 116 Nev. 1041, 1050, 13 P.3d 52, 58 (2000). Donko fails to demonstrate that his proposed inverse instructions went to a specific theory of his case and were not merely duplicative of the court-approved instructions. Additionally, district courts do not err by refusing to accept duplicitous, misleading, or inaccurate jury instructions. *Carter v. State*, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005); see also *McDermott v. State*, No. 79296, 2020 WL 6743121 (Nev. Nov. 13, 2020) (Order of Affirmance) (concluding that because the proffered instruction was otherwise covered by the reasonable-doubt instruction, there was no abuse of discretion by the district court in refusing to give it). Although the district

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<sup>4</sup>121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

court could have properly given the inverse instructions, we cannot conclude that the court reversibly erred. The instructions it did give were accurate and any error was harmless beyond a reasonable doubt. *See Guitron v. State*, 131 Nev. 215, 229-31, 350 P.3d 93, 102-03 (Ct. App. 2015).

Donko's contention that the district court also abused its discretion in denying his request to place "Not Guilty" before "Guilty" is also unpersuasive, as the Nevada Supreme Court has affirmatively rejected this argument. *See Yandell v. State*, No. 78259, 2020 WL 4333604, at \*4 (Nev. July 27, 2020) (Order of Affirmance) (rejecting the appellant's argument that "not guilty" should have been listed first on verdict form because there was no case adopting the "position that the 'not guilty' [option] must be listed before the 'guilty' option on a verdict sheet" (internal quotation marks omitted)).

Fifth, Donko contends that the district court erred in allowing the State to commit prosecutorial misconduct, through improper burden-shifting, when the State argued in closing that during cross-examination Donko failed to provide an explanation for his DNA being present on the red shirt found at the scene and for his fingerprint being found on a license plate located inside the Toyota vehicle. When reviewing claims of prosecutorial misconduct, this court considers whether the conduct was improper and, if it was, whether it warrants reversal or was harmless. *Valdez*, 124 Nev. at 1188, 196 P.3d at 476. A prosecutor does not improperly shift the burden of proof by arguing that the "defense failed to substantiate its theories with supporting evidence." *Evans v. State*, 117 Nev. 609, 631, 28 P.3d 498, 513 (2001), *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015); *see also Paschal-Campos v. State*, No. 77812, 2020 WL 1531436 (Nev. Mar. 27, 2020) (Order of Affirmance) (holding that

the State did not improperly shift the burden when it commented on the defendant's inability to substantiate her theory of the case with evidence).


Here, Donko testified in his defense and the State properly cross-examined him about his DNA being identified on the red shirt and his fingerprint lifted from a license plate located inside the vehicle found near the scene. Donko attempted to suggest that he was not the shooter, but he did not persuasively refute the physical evidence suggesting otherwise during cross-examination, resulting in the State arguing during closing that Donko "[g]ives no viable explanation" for the physical evidence obtained at the scene. The State was permitted to comment on the defendant's failure to explain physical evidence that directly tied him to the shooting. *See Evans*, 117 Nev. at 630, 28 P.3d at 513 (noting that the State may comment on the credibility of witnesses based on the evidence presented and "comment on the failure of the defense to counter or explain evidence presented"). The State here simply commented on the lack of support or explanation for Donko's assertion that he was not the shooter. Further, the jury was properly instructed that the State had the burden of proof. Accordingly, the State did not impermissibly shift the burden of proof or engage in prosecutorial misconduct during closing.

Sixth, Donko contends that the State failed to prove that Donko committed the charged crimes beyond a reasonable doubt. When determining if sufficient evidence was presented to support the verdict, this court "will inquire whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (internal quotation marks omitted). Here, there is sufficient evidence, viewed in the light most favorable to the prosecution, which would allow a rational trier of fact to find

the essential elements of the crime beyond a reasonable doubt. The State offered overwhelming witness testimony as well as physical evidence that all tied Donko to the shooting, such as DNA evidence and fingerprint evidence. Given this evidence and testimony, the jury could reasonably have found that Donko committed the crimes beyond a reasonable doubt.<sup>5</sup>

For the foregoing reasons, we

ORDER the amended judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>5</sup>Donko contends that cumulative error warrants reversal. Even where multiple errors are harmless individually, their cumulative effect may violate a defendant's right to a fair trial. *Valdez*, 124 Nev. at 1195, 196 P.3d at 481. Although the district court may have possibly erred in refusing some of the inverse jury instructions, it was only a *possible* trial error, and any error in retaining jurisdiction for the purpose of imposing restitution, was rendered moot in the amended judgment of conviction. Likewise, the district court's failure to grant Donko's oral motion for a mistrial was harmless in light of the overwhelming evidence of guilt. Therefore, Donko fails to show that a cumulative error analysis requires reversal based on two possible trial errors, each of which we conclude were harmless.

To the extent Donko raised other arguments on appeal that are not specifically addressed herein, we have considered the same and conclude that they do not warrant relief.

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

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 83037**  
District Court Case No. C345584

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: May 16, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo  
Deputy Clerk

cc (without enclosures):

Clark County Public Defender \ Audrey M. Conway, Deputy Public Defender  
Clark County District Attorney \ Alexander G. Chen, John T. Afshar  
Hon. Jacqueline M. Bluth, District Judge

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on MAY 17 2022.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED  
APPEALS  
MAY 17 2022

CLERK OF THE COURT



IN THE SUPREME COURT OF THE STATE OF NEVADA

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 81075  
District Court Case No. C345584

**FILED**

MAY 17 2022

*Elizabeth A. Brown*  
CLERK OF COURT

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 20th day of April, 2021.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
May 16, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Sandy Young  
Deputy Clerk

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CCJA  
NV Supreme Court Clerks Certificate/Judgm  
4992425



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81075-COA

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83037-COA

**FILED**

**APR 20 2022**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**ORDER OF AFFIRMANCE**

Ted Michael Donko appeals from a judgment of conviction in 81075-COA and an amended judgment of conviction in 83037-COA, pursuant to a jury verdict, of two counts of battery with use of a deadly weapon resulting in substantial bodily harm; three counts of attempt murder with use of a deadly weapon; assault with a deadly weapon; discharging a firearm at or into occupied structure, vehicle, aircraft or watercraft; and ownership or possession of a firearm by prohibited person. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

On October 1, 2019, a shooting occurred outside a residence.<sup>1</sup> The shooter aimed at three individuals, injuring two of them. Multiple witnesses described the shooter as wearing a red shirt and escaping in a Toyota vehicle. Law enforcement arrived on the scene and discovered a matching vehicle a few blocks from the shooting. A red shirt was also located on a sidewalk near the vehicle. Officers from the Las Vegas Metropolitan

<sup>1</sup>We do not recount the facts except as necessary for our disposition.

Police Department (LVMPD) impounded and searched the vehicle finding a license plate located between the seat and console, a bullet, and an unspent round of ammunition—which was a Win 40 Smith & Wesson cartridge—located on the passenger floor. The license plate was processed for prints. The prints, upon processing, revealed a match with Donko's left middle finger. The red shirt was also processed for DNA and revealed a mixture of two DNA profiles, which included Donko's DNA profile. Donko was charged with two counts of battery with use of a deadly weapon resulting in substantial bodily harm; three counts of attempt murder with use of a deadly weapon; assault with a deadly weapon; discharging a firearm at or into occupied structure, vehicle, aircraft or watercraft; and ownership or possession of a firearm by prohibited person.

After viewing a photo lineup, Deandre Woods, who was present at the shooting, identified Donko as the shooter, and he stated he was "95 percent" sure of his identification.<sup>2</sup> The case proceeded to a jury trial. Allison Rubino, a LVMPD forensic analyst, testified at trial that Donko's DNA profile was included in 99 percent of the DNA mixture, with the remaining one percent from an unknown contributor. Detective Marin, one of the law enforcement officers who responded to the scene, testified that the cartridge found in the Toyota vehicle was of the same type as the shell casings found at the scene of the shooting. At trial two witnesses identified Donko as the shooter involved in the incident. One of the witnesses, Genaro Ramos, who was called by the State, testified as to what he witnessed on the day of the shooting. He said he heard gunshots, saw a car speed by, and witnessed a

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<sup>2</sup>Notably, Woods testified at the eventual trial as to seeing Donko the night before the shooting, wearing a red shirt and inquiring about someone named "Shorty," the same name mentioned by Donko the following day before he started shooting.

white male in a red shirt exit the vehicle. In his initial testimony, Ramos did not make an identification of Donko as the shooter, nor was he asked to do so during direct or cross-examination. After he testified and was in the hallway of the courthouse ready to leave, he privately told the prosecutor that he realized he could in fact identify Donko as the shooter. After Ramos initially testified, the State called Woods to testify. Woods identified Donko as the shooter, consistent with his pre-trial identification of Donko. During a break in Woods's testimony, the court held a bench conference with the State and Donko's counsel. During this conference, the State informed both the court and Donko's counsel that it would be recalling Ramos as a witness. Neither the defense nor the court inquired as to the State's purpose in recalling Ramos, nor did Donko's counsel object.

Ramos was recalled and testified that he had told the prosecutor in the hallway that he could identify Donko as the shooter but was nervous about doing so because "[t]he guy that I saw is the guy that I was going to point him, [sic] that that was the guy that I saw coming out of the car." Donko's counsel immediately objected, and the district court held a bench conference. Donko's counsel said that the identification was "improper," given that Ramos failed to identify Donko during his initial testimony. Donko's counsel asked the court to strike the identification. The State responded by indicating that there was nothing objectionable about Ramos's testimony concerning the hallway conversation with the prosecutor as it was accurate and with his identification of Donko. The district court stated that defense counsel's objection to Ramos's in-court identification was "not a legal objection," that there was nothing inadmissible about Ramos's testimony, and that Donko's counsel would be able to cross-examine Ramos regarding the identification. Donko's counsel then orally requested a mistrial for the same reasons previously discussed. The district court denied the oral motion

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Absent an allegation that an in-court identification was tainted by an improper pretrial identification process, an in-court identification is not subject to suppression but rather must be evaluated for credibility by the jury. *Steese v. State*, 114 Nev. 479, 498, 960 P.2d 321, 333 (1998). It is well established in this State that it is the function of the jury to weigh the credibility of the identifying witness. *Wise v. State*, 92 Nev. 181, 183, 547 P.2d 314, 315 (1976); see also *Browning v. State*, 104 Nev. 269, 274, 757 P.2d 351, 354 (1988) (concluding that the in-court identification was admissible,

and a witness's failure to previously make an identification is a factor to be weighed by the trier of fact, but such inability does not render an in-court identification inadmissible). The Supreme Court of the United States has established that ordinary safeguards built into the trial system provide sufficient due process for in-court identifications. *See Perry v. New Hampshire*, 565 U.S. 228, 237, 245-47 (2012) (stating that these safeguards include the Sixth Amendment right to confront the eyewitness; the right to effective assistance of counsel, "who can expose the flaws in the eyewitness' testimony during cross examination . . . and closing arguments"; and the State's burden of proving the crime beyond a reasonable doubt).

We conclude that the district court did not abuse its discretion in admitting Ramos's in-court identification of Donko. Ramos did not make a pretrial identification of Donko, but rather Ramos identified Donko during his testimony after he was recalled as a witness at trial. Accordingly, the credibility and weight of Ramos's testimony is "within the province of the jury." *Wise*, 92 Nev. at 183, 547 P.2d at 315. Donko, through counsel, cross-examined Ramos, thus satisfying due process as to Ramos's in-court identification of Donko.

Additionally, the district court did not abuse its discretion in denying Donko's oral motion for a mistrial pursuant to Ramos's identification because Donko was not unfairly prejudiced by Ramos's in-court identification so as to render his trial unfair. *See Nunnery v. State*, 127 Nev. 749, 785, 263 P.3d 235, 259 (2011) (affirming denial of mistrial despite surprise testimony that the defendant may have been involved in other crimes); *Summers v. State*, 122 Nev. 1326, 1335, 148 P.3d 778, 784 (2006) (affirming denial of mistrial despite surprise testimony that defendant threatened a witness's life). Accordingly, we are not persuaded by Donko's argument that Ramos's



in-court identification harmed his defense, such that the district court should have granted a mistrial.<sup>3</sup>

Second, Donko argues that the district court abused its discretion in amending Donko's judgment of conviction after he started serving his sentence, thereby improperly increasing his aggregate sentence and violating his protection from double jeopardy. A claim that a conviction violates the Double Jeopardy Clause generally is subject to de novo review on appeal. *Davidson v. State*, 124 Nev. 892, 896, 192 P.3d 1185, 1189 (2008); *Ebeling v. State*, 120 Nev. 401, 404, 91 P.3d 599, 601 (2004). NRS 176.565 states that "[c]lerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders."

Here, the district court did not amend the sentence on any individual conviction, but simply corrected a clerical error pertaining to the calculation of the aggregate sentence. Donko's argument that this error is not a "clerical error" is unpersuasive. *See Devlin v. State*, No. 73518, 2019 WL 4392531, at \*1 (Nev. Sept. 12, 2019) (Order of Affirmance) (holding that a district court can correct such clerical mistakes, when a district court entered an amended judgment of conviction correcting an aggregate sentence

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<sup>3</sup>Donko fails to demonstrate that he was denied a fair trial, and therefore, the district court did not abuse its discretion in denying a mistrial. *See Rudin*, 120 Nev. at 142, 86 P.3d at 586. The State presented strong evidence of Donko's guilt, including independent eyewitness testimony of Woods identifying Donko as the shooter, the bullet casings from the scene matching those found in the Toyota vehicle, the fingerprint match, and Donko's DNA was obtained from a red shirt found in the same neighborhood, consistent with what multiple witnesses described the shooter as wearing. Thus, any error in denying Donko's oral motion for a mistrial was harmless. *See generally* NRS 178.598.

from 11 years to 12 years). Here, the district court modified the aggregate sentence language to comport with the individual sentences originally imposed at sentencing. Therefore, the district court corrected its previous miscalculation of the aggregate sentence to be consistent with the individual sentences set forth in the judgment of conviction. Thus, we are not persuaded that the district court abused its discretion in amending Donko's judgment of conviction to correct the aggregate sentence.

Third, Donko contends that the district court erred in retaining jurisdiction over restitution in an amount to be determined later in violation of NRS 176.033(3); *see also Botts v. State*, 109 Nev. 567, 569, 854 P.2d 856, 857 (1993) (concluding that judgments of convictions that impose restitution in an uncertain amount to be determined in the future are clearly an error). However, Donko concedes in his reply brief that this issue is moot, given that the amended judgment of conviction, filed on May 25, 2021, no longer included language indicating that the district court would retain jurisdiction to impose restitution. Given that this issue is moot, we decline to exercise our discretion and consider the merits of this issue. *See Valdez-Jimenez v. Eighth Judicial Dist. Court*, 136 Nev. 155, 158, 460 P.3d 976, 982 (2020) (noting that the appellate court will generally decline to hear a moot case).

Fourth, Donko contends that the district court abused its discretion when it rejected his proposed jury instructions and revision to the verdict form. Specifically, he states that the district court should have permitted instructions that (1) modified the reasonable doubt instruction, (2) addressed reasonable interpretations of evidence, (3) addressed "reasonable doubt and subjective certitude on the part of jurors," (4) included negatively-

worded or inverse instructions pursuant to *Crawford v. State*<sup>4</sup>, and (5) placed “not guilty” before “guilty” on the verdict form.

“The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.” *Crawford*, 121 Nev. at 748, 121 P.3d at 585. “An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Id.* (internal quotation marks omitted). This court, however, reviews de novo “whether an instruction is a correct statement of the law.” *Clancy v. State*, 129 Nev. 840, 845, 313 P.3d 226, 229 (2013).

NRS 175.211 provides the statutorily mandated language for a reasonable doubt instruction, which does not include the language requested by Donko. To the extent Donko argues under *Crawford* the district court abused its discretion when it rejected his proffered other negatively-worded or inverse instructions, we note “the district court may refuse a jury instruction on the defendant’s theory of the case which is substantially covered by other instructions.” *Runion v. State*, 116 Nev. 1041, 1050, 13 P.3d 52, 58 (2000). Donko fails to demonstrate that his proposed inverse instructions went to a specific theory of his case and were not merely duplicative of the court-approved instructions. Additionally, district courts do not err by refusing to accept duplicitous, misleading, or inaccurate jury instructions. *Carter v. State*, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005); see also *McDermott v. State*, No. 79296, 2020 WL 6743121 (Nev. Nov. 13, 2020) (Order of Affirmance) (concluding that because the proffered instruction was otherwise covered by the reasonable-doubt instruction, there was no abuse of discretion by the district court in refusing to give it). Although the district

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<sup>4</sup>121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

court could have properly given the inverse instructions, we cannot conclude that the court reversibly erred. The instructions it did give were accurate and any error was harmless beyond a reasonable doubt. *See Guitron v. State*, 131 Nev. 215, 229-31, 350 P.3d 93, 102-03 (Ct. App. 2015).

Donko's contention that the district court also abused its discretion in denying his request to place "Not Guilty" before "Guilty" is also unpersuasive, as the Nevada Supreme Court has affirmatively rejected this argument. *See Yandell v. State*, No. 78259, 2020 WL 4333604, at \*4 (Nev. July 27, 2020) (Order of Affirmance) (rejecting the appellant's argument that "not guilty" should have been listed first on verdict form because there was no case adopting the "position that the 'not guilty' [option] must be listed before the 'guilty' option on a verdict sheet" (internal quotation marks omitted)).

Fifth, Donko contends that the district court erred in allowing the State to commit prosecutorial misconduct, through improper burden-shifting, when the State argued in closing that during cross-examination Donko failed to provide an explanation for his DNA being present on the red shirt found at the scene and for his fingerprint being found on a license plate located inside the Toyota vehicle. When reviewing claims of prosecutorial misconduct, this court considers whether the conduct was improper and, if it was, whether it warrants reversal or was harmless. *Valdez*, 124 Nev. at 1188, 196 P.3d at 476. A prosecutor does not improperly shift the burden of proof by arguing that the "defense failed to substantiate its theories with supporting evidence." *Evans v. State*, 117 Nev. 609, 631, 28 P.3d 498, 513 (2001), *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015); *see also Paschal-Campos v. State*, No. 77812, 2020 WL 1531436 (Nev. Mar. 27, 2020) (Order of Affirmance) (holding that

the State did not improperly shift the burden when it commented on the defendant's inability to substantiate her theory of the case with evidence).


Here, Donko testified in his defense and the State properly cross-examined him about his DNA being identified on the red shirt and his fingerprint lifted from a license plate located inside the vehicle found near the scene. Donko attempted to suggest that he was not the shooter, but he did not persuasively refute the physical evidence suggesting otherwise during cross-examination, resulting in the State arguing during closing that Donko "[g]ives no viable explanation" for the physical evidence obtained at the scene. The State was permitted to comment on the defendant's failure to explain physical evidence that directly tied him to the shooting. *See Evans*, 117 Nev. at 630, 28 P.3d at 513 (noting that the State may comment on the credibility of witnesses based on the evidence presented and "comment on the failure of the defense to counter or explain evidence presented"). The State here simply commented on the lack of support or explanation for Donko's assertion that he was not the shooter. Further, the jury was properly instructed that the State had the burden of proof. Accordingly, the State did not impermissibly shift the burden of proof or engage in prosecutorial misconduct during closing.

Sixth, Donko contends that the State failed to prove that Donko committed the charged crimes beyond a reasonable doubt. When determining if sufficient evidence was presented to support the verdict, this court "will inquire whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (internal quotation marks omitted). Here, there is sufficient evidence, viewed in the light most favorable to the prosecution, which would allow a rational trier of fact to find

the essential elements of the crime beyond a reasonable doubt. The State offered overwhelming witness testimony as well as physical evidence that all tied Donko to the shooting, such as DNA evidence and fingerprint evidence. Given this evidence and testimony, the jury could reasonably have found that Donko committed the crimes beyond a reasonable doubt.<sup>5</sup>

For the foregoing reasons, we

ORDER the amended judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>5</sup>Donko contends that cumulative error warrants reversal. Even where multiple errors are harmless individually, their cumulative effect may violate a defendant's right to a fair trial. *Valdez*, 124 Nev. at 1195, 196 P.3d at 481. Although the district court may have possibly erred in refusing some of the inverse jury instructions, it was only a *possible* trial error, and any error in retaining jurisdiction for the purpose of imposing restitution, was rendered moot in the amended judgment of conviction. Likewise, the district court's failure to grant Donko's oral motion for a mistrial was harmless in light of the overwhelming evidence of guilt. Therefore, Donko fails to show that a cumulative error analysis requires reversal based on two possible trial errors, each of which we conclude were harmless.

To the extent Donko raised other arguments on appeal that are not specifically addressed herein, we have considered the same and conclude that they do not warrant relief.

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

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 81075**  
District Court Case No. C345584

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: May 16, 2022

Elizabeth A. Brown, Clerk of Court

By: Sandy Young  
Deputy Clerk

cc (without enclosures):

Hon. Jacqueline M. Bluth, District Judge  
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District  
Attorney  
Clark County District Attorney \ John T. Afshar  
Clark County Public Defender \ Deborah L. Westbrook  
Clark County Public Defender \ Audrey M. Conway, Deputy Public Defender

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on MAY 17 2022.

HEATHER UNGERMANN  
Deputy District Court Clerk

RECEIVED  
APPEALS

MAY 17 2022

1

22-15411

CLERK OF THE COURT

1072

*Steven D. Grierson*

1 NOAS

2 TED Michael Donko #1080899  
3 Lovelock Correctional Center  
4 1200 Prison Road  
5 Lovelock, Nevada 89419

6 In Pro Se

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 \* \* \* \* \*

10 TED Michael Donko, )

11 Petitioner, )

Case No. C19-345584-1

12 -vs- )

Dept. No. XXV

13 THE STATE OF NEVADA, )

14 Respondent. )

15 NOTICE OF APPEAL

16 NOTICE IS GIVEN that Petitioner, TED Michael Donko,  
17 in pro se, hereby appeals to the Nevada Supreme Court the  
18 Findings of Fact, Conclusions of Law and Order Denying /  
19 Dismissing Petition for Writ of Habeas Corpus, as filed/entered  
20 on or about the 11 day of MAY, 2022, in the above-  
21 entitled Court.

22 Dated this 11 day of MAY, 2022.

23 TED Michael Donko

24 [Signature] #1080899  
25 Lovelock Correctional Center  
26 1200 Prison Road  
27 Lovelock, Nevada 89419

28 Petitioner In Pro Se

LCCL FORM 24.064



1  
2 CERTIFICATE OF SERVICE

3 I do certify that I mailed a true and correct copy of the  
4 foregoing NOTICE OF APPEAL to the below address(es) on this  
5 11 day of MAY, 2022, by placing same in the  
6 U.S. Mail via prison law library staff:  
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16

17 TED Michael Donko

18 ~~XXXXXXXXXX~~ # 1080994  
19 Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

20 Petitioner In Pro Se  
21

22 AFFIRMATION PURSUANT TO NRS 239B.030

23 The undersigned does hereby affirm that the preceding  
24 NOTICE OF APPEAL filed in District Court Case No. C-19-345584-1  
25 does not contain the social security number of any person.

26 Dated this 11 day of MAY, 2022.

27 TED Michael Donko

28 ~~XXXXXXXXXX~~  
Petitioner In Pro Se

IN THE SUPREME COURT OF THE STATE OF NADRA

TEO MICHAEL DANKO,

CASE No: C-19-345584-1

APPELLANT

DEPT. No. VI

**FILED**

MAY 20 2022

v.

THE STATE OF NADRA,

*Shirley*  
CLERK OF COURT

RESPONDENT

June 20, 2022  
8:30 AM

NOTICE OF MOTION

MOTION TO WAIVE FILING FEE FOR PETITION FOR WRIT  
OF HABEAS CORPUS

COMES NOW, APPELLANT, TEO MICHAEL DANKO, IN PRO SE, AND  
RESPECTFULLY MAKES THIS HONORABLE COURT TO WAIVE THE  
FILING FEE NECESSARY TO FILE A PETITION FOR WRIT OF HABEAS CORPUS,  
BEING FILED CONTEMPORANEOUSLY HERewith.

THIS MOTION IS MADE AND BASED PURSUANT TO THE  
SUPPORTING POINTS AND AUTHORITIES ATTACHED HEREIN, NRS.  
34.150 THROUGH NRS 34.310, N.I.Z.M.P Rule 2(c) AND  
Rule 24, AS WELL AS ALL PAPERS, PLEADINGS, AND DOCUMENTS  
ON FILE HEREIN.

POINTS AND AUTHORITIES

I. STATEMENT OF THE FACTS

IN THE ABOVE ENTITLED CASE, APPELLANT, TEO MICHAEL DANKO,  
WAS GRANTED LEAVE TO PROCEED IN FORMA PAUPERIS IN THE  
DISTRICT COURT.

N.I.Z.M.P. Rule 2(c) REQUIRES THAT A FILING FEE BE  
PAID PRIOR TO THIS COURT SUBMITTING A PETITION FOR  
WRIT OF HABEAS CORPUS.

N.I.Z.M.P., Rule 24, ALLOWS AN INDIGENT WHO HAS BEEN  
GRANTED LEAVE TO PROCEED IN FORMA PAUPERIS IN THE DISTRICT COURT

1 TO SO PROCEED IN THIS CASE

2 APPLICANT WOULD OFFER THAT DUE TO HIS PRESENT, HIS

3 CIRCUMSTANCES REMAINING THE SAME, HE IS UNABLE TO PAY

4 THE REQUIRED FILING FEE FOR THE PETITION FOR WRIT OF

5 HABEAS CORPUS THAT HE IS FILING HEREWITH, AND REQUESTS THAT

6 SAID FILING FEES BE WAIVED IN THE INTEREST OF JUSTICE.

7 DATED THIS 11 DAY OF MAY, 2022.

8

9 CONCLUSION

10 WHEREFORE, ALL OF THE ABOVE STATED REASONS, APPLICANT

11 RESPECTFULLY REQUESTS THIS HONORABLE COURT TO WAIVE THE

12 REQUIRED FILING FEES.

13 DATED THIS 11 DAY OF MAY, 2022.

14

15

RESPECTFULLY SUBMITTED

16

17

18

APPLICANT IN PRO SE

19

20 CERTIFICATE OF SERVICE

21 I HEREBY DO CERTIFY TO N.C.P. 56) THAT I, THE APPLICANT IN

22 THE EX ABOVE, NOTICE OF MOTION AND MOTION TO WAIVE FILING

23 FEES FOR PETITION FOR WRIT OF HABEAS CORPUS, AND THAT ON THIS

24 11 DAY OF MAY, 2022, I DID SERVE A TRUE

25 AND CORRECT COPY OF THE ABOVE MENTIONED DOCUMENT, BY

26 GIVING IT TO A PRISON OFFICIAL AT THE LOVELACE CORRECTIONAL

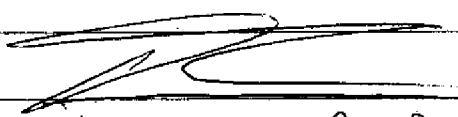
27 CENTER LAW LIBRARY TO DEPOSIT IN THE U.S. MAIL, SEALED

28 IN AN ENVELOPE, POSTAGE PRE-PAYED AND ADDRESSED AS FOLLOWS:

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STEVEN B. WALTON  
CLARK COUNTY DIST. ATTY.  
200 LEWIS AVE, 3RD FLOOR  
LAS VEGAS, NV 89155  
(702) 455-4711

DATED THIS 11 DAY OF MAY, 2022.



WALTON IN PRO P.S.

1 TED MICHAEL DONICO #  
2 1200 PRISON ROAD  
3 LANSBCK, NV 89419  
4 LANSBCK CORRECTIONAL CENTER

FILED

MAY 20 2022

CLERK OF COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*\*\*

8 TED MICHAEL DONICO  
9 APPPELLANT,

CASE No. C-19-345584-1

DEPT. NO. June 20, 2022  
8:30 AM

10 VS  
11 THE STATE OF NEVADA  
12 RESPONDENT.

POSITION FOR WRIT OF  
MANDAMUS

14 COMES NOW, TED MICHAEL DONICO, APPELLANT IN  
15 PRO SE, AND RESPECTFULLY MOVES THIS HONORABLE COURT  
16 TO ISSUE A PETITION FOR WRIT OF MANDAMUS, BEING FILED  
17 CONTEMPORANEOUSLY HERewith, DIRECTING HONORABLE  
18 JUDGE \_\_\_\_\_ TO REVERSE AND VACATE HIS ORDER  
19 AND/OR ACTIONS IN DENYING APPELLANT THE TESTING OF  
20 EVIDENCE FOR GUNSHOT RESIDUE (GSR), WHICH IN  
21 TURN DENIED APPELLANT A FAIR TRIAL.

22 THIS MOTION IS MADE AND BASED PURSUANT TO  
23 THE SUPPORTING POINTS AND AUTHORITIES ATTACHED HEReto,  
24 NRS 34.150 THROUGH NRS 34.310, NRS 34.310, RULE 21, AS  
25 WELL AS ALL PAPERS, PLEADINGS, AND DOCUMENTS ON FILE  
26 HERETO.

## POINTS AND AUTHORITIES

### I. BACKGROUND

THE STATE FILED A COMPLAINT ON NOVEMBER 26, 2019 ALLEGING TWO COUNTS OF BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM; TWO COUNTS OF ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; AND ONE COUNT OF CUNDRSHIP OR POSSESSION OF A FIREARM BY A PROHIBITED PERSON. ON DECEMBER 18, 2019, A PRELIMINARY HEARING BECAME DONE OVER. ON DECEMBER 18, 2019, AN INFORMATION ALLEGING TWO COUNTS OF BATTERY WITH USE RESULTING IN SUBSTANTIAL BODILY HARM; THREE COUNTS OF ATTEMPT MURDER WITH USE; ONE COUNT OF ASSAULT WITH A DEADLY WEAPON; ONE COUNT OF DISCHARGING A FIREARM AT OR INTO AN OCCUPIED STRUCTURE; AND ONE COUNT OF CUNDRSHIP OR POSSESSION OF A FIREARM BY A PROHIBITED PERSON. ON DECEMBER 20, 2019, DANKO APPEARED IN DISTRICT COURT AND PLEADED NOT GUILTY. ON FEBRUARY 7, 2020, THE PROSECUTOR'S MOTION TO WITHDRAW DUE TO CONFLICT AND THE COURT DENIED THE MOTION. ON FEBRUARY 10, 2020, THE STATE FILED AN AMENDED INFORMATION REQUESTING SEVERANCE OF THE CHARGES OF CUNDRSHIP OR POSSESSION OF A FIREARM BY A PROHIBITED PERSON. AFTER A FOUR DAY TRIAL, DANKO WAS CONVICTED ON ALL COUNTS AND SENTENCED TO

### II. ARGUMENT

ACCORDING TO THE STATE'S WITNESSES, DANKO, AND AN UNKNOWN ASSAULT ARRIVED AT MR. WOODS' EX-COURTESY HOUSE AT 566 LINN LANE IN LAS VEGAS, NEVADA ON OCTOBER 1, 2019, AND OPENED FIRE, SHOOTING ESPINOZA AND SANCHEZ, MISSING WOODS, THEN FLED THE SCENE IN AN "OLOGY TOYOTA."

1 Woods testified, that the shooter was a BOLD HISPANO  
2 HISPANIC MALE, WAS WEARING A RED SHIRT. LATER IN  
3 TRIAL, DONKO INTERRUPTED TRIAL, AND HELD AN IMPROMPTU  
4 BENCH CONFERENCE WITH THE JUDGE, OUTSIDE THE PRESENCE  
5 OF THE JURY, WHERE HE REQUESTED THE COURT TO REMOVE  
6 COUNSEL, BECAUSE HE FELT AS IF THEY WERE NOT WORKING  
7 FOR HIM. HE ALSO ASKED WHY THE SHIRT WAS NOT TESTED  
8 FOR GUN SHOT RESIDUE, WHICH HAD BEEN ADMITTED BY THE  
9 STATE AS EVIDENCE WITH MATCHING DNA TO HIM, BUT IS  
10 TOLD THAT IT WAS EITHER HE STUCK WITH HIS CURRENT  
11 COUNSEL OR HE HAD TO REPRESENT HIMSELF.

12 HAD COUNSEL PREPARED FOR TRIAL, THE SHIRT, WHICH  
13 IS THE FOCAL POINT OF DONKO'S INNOCENCE, WOULD HAVE  
14 BEEN TESTED AND SHOWN THAT THERE WAS GSR ON IT,  
15 EXONERATING HIM AS THE SHOOTER.

### 16 III. LEGAL ARGUMENT

17 PETITIONS FOR EXTRAORDINARY WRITS ARE ADDRESSED TO  
18 THE SOUND DISCRETION OF THE SUPREME COURT OF NEVADA AND  
19 ANY ISSUE WHEN THERE IS NO PLAIN, SPEEDY AND ADEQUATE  
20 REMEDY AT LAW. SEE, STATE V. SECOND JUDICIAL DISTRICT COURT  
21 EX. REL. COUNTY OF WASHOE, 11 P.3d 1209, — NEV. — (2000).

22 A WRIT OF HABEAS CORPUS IS ISSUED TO COMPEL PERFORMANCE  
23 OF AN ACT WHICH THE LAW ESPECIALLY ENJOINS AS A DUTY  
24 RESULTING FROM AN OFFICE, TRUST OR STATION. SEE, LEWIS V. SEYMOUR,  
25 69 P.2d 1212, 96 N.W. 846 (1980).

26 A WRIT OF HABEAS CORPUS MAY ISSUE TO CONTROL ARBITRARY OR  
27 CAPRICIOUS EXERCISE OF DISCRETION. SEE BRUNES V. SIXTH JUDICIAL  
28 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR CLARK COUNTY, 748

1 P.2d 483, 103 Nev. 671 (1987)

2 THIS COURT HAS ALSO HELD THAT THE ACTIONS SOUGHT TO BE  
3 COMPELLED MUST BE ONE ALREADY REQUIRED BY LAW. SEE MANDATE  
4 COUNTY V. STATE, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,  
5 20 P.3d 800, — Nev. — (2001).

6 MANDAMUS IS THE APPROPRIATE VEHICLE FOR CHALLENGING  
7 CONTESTED ORDERS ENTERED BY THE DISTRICT COURT. SEE, ANGELL  
8 V. EIGHTH JUDICIAL DISTRICT COURT AND FOR THE CAUSE OF  
9 CLARK, 839 P.2d 1329, 108 Nev. 923 (1992).

10 IT HAS ALSO BEEN HELD THAT A WRIT OF MANDAMUS IS PROPER  
11 WHEN THE PETITIONER RAISES URGENT AND IMPORTANT ISSUE(S) OF  
12 LAW REQUIRING CLARIFICATION BY THE SUPREME COURT. SEE,  
13 FICKES V. DOUGLASS COUNTY, 3 P.3d 661, — Nev. — (2001).

14 IV. CONCLUSION.

15 WHEREFORE, ALL OF THE ABOVE STATED REASONS, APPELLANT  
16 RESPECTFULLY REQUESTS THIS HONORABLE COURT TO ORDER  
17 THAT THE RED SHIRT IN STATES EVIDENCE, BE TESTED FOR  
18 GUNSHOT RESIDUE BY THE CLACK COUNTY CRIME LAB,  
19 WITHIN A REASONABLE AMOUNT OF TIME AS REQUIRED BY  
20 NRS 34.830.

21 DATED THIS 11 DAY OF MAY, 2022.

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RESPECTFULLY SUBMITTED,

APPELLANT



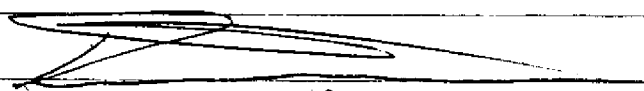
CERTIFICATE OF SERVICE

I HEREBY CERTIFY PURSUANT TO N.R.C.P 5(b) THAT I AM  
THE APPELLANT IN THE FOLLOWING PETITION FOR WRIT OF  
MANDAMUS, AND THAT ON THIS DAY \_\_\_\_\_ OF \_\_\_\_\_  
2022, I DID SERVE TRUE AND CORRECT COPY OF THE ABOVE  
MENTIONED DOCUMENT, BY GIVING IT TO A PRISON OFFICIAL AT  
THE LANSICK CORRECTIONAL CENTER LIBRARY TO DEPOSIT  
IN THE U.S. MAIL, SEALED IN AN ENVELOPE, POSTAGE  
PRE-PAYED AND ADDRESSED AS FOLLOWS:

ELIZABETH A BROWN  
CLERK OF SUPREME COURT

STEVEN B. WALSON  
CLARK COUNTY DIST. ATTY.  
200 LEWIS AVE, 3RD FLOOR  
LAS VEGAS, NV 89155  
(702) 458-4211

DATED THIS 11 DAY OF MAY, 2022

  
APPELLANT IN PRO SE



1 ASTA

2  
3  
4  
5  
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
7 **STATE OF NEVADA IN AND FOR**  
8 **THE COUNTY OF CLARK**  
9

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 TED MICHAEL DONKO,

14 Defendant(s),  
15

Case No: C-19-345584-1

Dept No: XVII

16  
17 **CASE APPEAL STATEMENT**  
18

19 1. Appellant(s): Ted Michael Donko

20 2. Judge: Michael Villani

21 3. Appellant(s): Ted Michael Donko

22 Counsel:

23 Ted Michael Donko #1080899  
24 1200 Prison Rd.  
Lovelock, NV 89419

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney  
28 200 Lewis Ave.  
Las Vegas, NV 89101

(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: December 18, 2019

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 81075, 83037

12. Child Custody or Visitation: N/A

Dated This 23 day of May 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Ted Michael Donko



**OPPS**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JOHN AFSHAR  
Deputy District Attorney  
Nevada Bar #14408  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

TED MICHAEL DONKO,  
#2668752

Defendant.

CASE NO: C-19-345584-1

DEPT NO: XVII

STATE'S OPPOSITION'S TO DEFENDANT'S PETITION FOR WRIT OF MANDAMUS

DATE OF HEARING: JUNE 20, 2022  
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN AFSHAR, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Petition for Writ of Mandamus.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 19, 2019, Ted Michael Donko (hereinafter “Defendant”) was charged by  
4 way of Information with the following crimes: Counts 1 & 2 - Battery With Use Of A Deadly  
5 Weapon Resulting in Substantial Bodily Harm (Category B Felony- NRS 200.481); Counts 3,  
6 4 & 4 - Attempt Murder With Use Of A Deadly Weapon (Category B Felony- NRS 200.010,  
7 200.030, 193.330, 193.165); Count 6 – Assault With A Deadly Weapon (Category B Felony-  
8 NRS 200.471); and Count 7- Discharging Firearm At Or Into Occupied Structure, Vehicle,  
9 Aircraft, or Watercraft (Category B Felony- NRS 202.285); Count 8 – Ownership Or  
10 Possession Of Firearm By Prohibited Person (Category B Felony – NRS 202.360).

11 On February 10, 2020, in open Court, an Amended Information was filed with only the  
12 original seven charges. Defendant’s jury trial began that same day and lasted four days. The  
13 jury returned a verdict of guilty as to all seven counts. Thereafter, in open court, a Second  
14 Amended Information was filed in Open Court charging Defendant with Ownership Or  
15 Possession Of Firearm By Prohibited Person (Category B Felony – NRS 202.360). The jury  
16 returned a verdict of guilty.

17 On April 20, 2020, Defendant was adjudged guilty of all counts and sentenced to the  
18 Nevada Department of Corrections (“NDOC”) as follows: **COUNT 1** - a MAXIMUM of  
19 SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24)  
20 MONTHS; **COUNT 2** - a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole  
21 eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with COUNT 1; **COUNT 3**  
22 - a MAXIMUM of NINETY-SIX (96) MONTHS with a MINIMUM parole eligibility of  
23 THIRTY-SIX (36) MONTHS, plus a CONSECUTIVE term of THIRTY (30) MONTHS with  
24 a MINIMUM parole eligibility of TWELVE (12) MONTHS for the Use of a Deadly Weapon,  
25 CONSECUTIVE to COUNT 2; **COUNT 4** - a MAXIMUM of NINETY-SIX (96) MONTHS  
26 with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS, plus a CONSECUTIVE  
27 term of THIRTY (30) MONTHS with a MINIMUM parole eligibility of TWELVE (12)  
28 MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 3; **COUNT 5** - a  
MAXIMUM of NINETY-SIX (96) MONTHS with a MINIMUM parole eligibility of

1 THIRTY-SIX (36) MONTHS, plus a CONSECUTIVE term of THIRTY (30) MONTHS with  
2 a MINIMUM parole eligibility of TWELVE (12) MONTHS for the Use of a Deadly Weapon,  
3 CONSECUTIVE to COUNT 4; **COUNT 6** - a MAXIMUM of THIRTY (30) MONTHS with  
4 a MINIMUM parole eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT  
5 5; **COUNT 7** – a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM parole  
6 eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 6; and **Bifurcated**  
7 **COUNT 1, originally COUNT 8** – a MAXIMUM of THIRTY (30) MONTHS with a  
8 MINIMUM parole eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 7;  
9 with ONE HUNDRED FIFTY (150) DAYS credit for time served. The AGGREGATE  
10 TOTAL sentence is FOUR HUNDRED THIRTY-EIGHT (438) MONTHS MAXIMUM with  
11 a MINIMUM of ONE HUNDRED SIXTY-EIGHT (168) MONTHS. The Amended  
Judgement of Conviction was filed on May 25, 2021.<sup>1</sup>

12 On April 21, 2020, Defendant filed a Notice of Appeal. Given that an Amended  
13 Judgment of Conviction was filed, Defendant filed a Notice of Appeal on June 1, 2021. On  
14 April 20, 2022, the Nevada Court of Appeals affirmed Defendant's Judgment of Conviction.  
15 Remittitur issued May 16, 2022.

16 On May 20, 2022, Defendant filed the instant Petition for Writ of Mandamus. The  
17 State's Opposition follows.

### 18 ARGUMENT

19 As per NRS 34.160, a district court judge does not have jurisdiction to issue a writ of  
20 mandamus to itself. The statute reads as follows:

21 The writ may be issued by the supreme court, a district court or a judge of  
22 the district court, to compel the performance of an act which the law  
23 especially enjoins as a duty resulting from an office, trust or station; or to  
24 compel the admission of a party to the use and enjoyment of a right or office  
25 to which he is entitled and from which he is unlawfully precluded by such  
26 inferior tribunal, corporation, board or person. When issued by a district  
court or a judge of the district court it shall be made returnable before the  
district court.

27  
28 <sup>1</sup> The original Judgement of Conviction filed April 28, 2020, contained a clerical error thus an Amended Judgment of Conviction was filed.

1 Even if the District Court wished to entertain Defendant's petition, it could not do so for lack  
2 of jurisdiction. In addition, Defendant has filed this instant motion with the District Court yet  
3 his motion clearly reads "In the Supreme Court of Nevada." Therefore, it appears that  
4 Defendant filed his motion in the wrong court.

5 As the district court judge lacks jurisdiction, the Defendant's Writ of Mandamus must  
6 be denied.

7 **CONCLUSION**

8 Based on the foregoing the State respectfully requests that Defendant's Petition for Writ  
9 of Mandamus be DENIED.

10 DATED this 7th day of June, 2022.

11 Respectfully submitted,

12 STEVEN B. WOLFSON  
13 Clark County District Attorney  
14 Nevada Bar #001565

15 BY /s/ JOHN AFSHAR  
16 JOHN AFSHAR  
17 Deputy District Attorney  
18 Nevada Bar #14408  
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28 19F24531X/jh/GANG

*Heather L. Hume*  
CLERK OF THE COURT

**ORDR**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
ROBERT B. TURNER  
Chief Deputy District Attorney  
Nevada Bar #006526  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

TED MICHAEL DONKO,  
#2668752  
Defendant.

CASE NO: C-19-345584-1

DEPT NO: XVII

**ORDER DENYING IN PART AND GRANTING IN PART AS TO DEFENDANT'S  
PETITION FOR WRIT OF MANDAMUS; DEFENDANT'S MOTION TO WAIVE  
FILING FEE FOR PETITION FOR WRIT OF MANDAMUS**

DATE OF HEARING: June 20, 2022  
TIME OF HEARING: 08:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 20th day of June, 2022, the Defendant not being present, REPRESENTED BY ROBERT J. GULLO, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through ROBERT B. TURNER, Chief Deputy District Attorney, and the Court having heard the arguments of counsel, based on the pleadings and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Mandamus, shall  
2 be, and it is DENIED; DEFENDANT'S MOTION TO WAIVE FILING FEE FOR PETITION  
3 FOR WRIT OF MANDAMUS shall be, and it is GRANTED.

4 Mr. Gullo advised that he would be withdrawing as counsel in order for Defendant to  
5 proceed with his Habeas Petition. The Court inquired as to whether the Defendant had filed  
6 any Motion for Appointment of Counsel. Mr. Gullo was not aware that he did.

7 Court noted Defendant was requesting the Court issue a Writ of Mandamus against  
8 itself, which it did not have jurisdiction to do.

9 COURT ADOPTED the Procedural History as set forth by the State.

10  
11 Dated this 1st day of July, 2022

12 

13  
14 STEVEN B. WOLFSON  
15 Clark County District Attorney  
Nevada Bar #001565

7AA 916 2880 97D7  
Michael Villani  
District Court Judge

16  
17 BY /s/ ROBERT B. TURNER  
18 ROBERT B. TURNER  
19 Chief Deputy District Attorney  
20 Nevada Bar #006526  
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28 19F24531X/jh/GANG

1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-19-345584-1

7 vs

DEPT. NO. Department 17

8 Ted Donko  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/1/2022

15 Dept 25 Law Clerk

Dept25LC@clarkcountycourts.us

16 Robson Hauser

Robson.Hauser@clarkcountynv.gov

17 Brett Spratt

brett.spratt@clarkcountynv.gov

18 Public Defender's Office

pdclerk@clarkcountynv.gov

19 Carrie Connolly

connolcm@ClarkCountyNV.gov

20 Jennifer Garcia

Jennifer.Garcia@clarkcountyda.com

21 Eileen Davis

Eileen.Davis@clarkcountyda.com

22 DeLois Williams

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23 Dept 25 JEA Knight

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24 Sharon Nichols

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25 Robert Cangemi

CangemiRobert@yahoo.com

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Victoria Boyd	boydv@clarkcountycourts.us
De'Awna Takas	takasd@clarkcountycourts.us
Dept 6 Law Clerk	dept06lc@clarkcountycourts.us
PD Motions	motions@clarkcountyda.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 84755  
District Court Case No. C345584

**FILED**

JUL - 7 2022

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDERS this appeal DISMISSED."

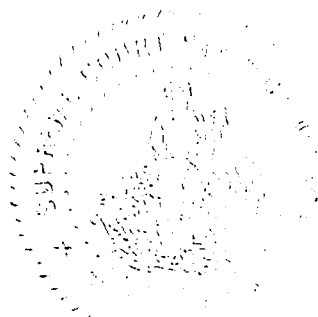
Judgment, as quoted above, entered this 9th day of June, 2022.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
July 05, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Sandy Young  
Deputy Clerk

C-19-345584-1  
CCJD  
NV Supreme Court Clerks Certificate/Judgm  
4998415




IN THE SUPREME COURT OF THE STATE OF NEVADA

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84755

**FILED**

JUN 09 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

***ORDER DISMISSING APPEAL***

This is a pro se appeal from "the Findings of Fact, Conclusions of Law and Order Denying/Dismissing Petition for Writ of Habeas Corpus." Eighth Judicial District Court, Clark County; Michael Villani, Judge.

This court's review of this appeal reveals a jurisdictional defect. The documents before this court indicate that a petition has not been filed in district court case number C-19-345584-1, the case number designated in this appeal.<sup>1</sup> Thus, this appeal is premature. See NRS 177.015(3) (stating that a defendant only may appeal from a final judgment or verdict). In addition, it does not appear from the district court docket and minute

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<sup>1</sup>A habeas corpus petition was filed in related district court case number A-22-852928-W. Appellant may file an appeal in that district court case number after a written judgment or order is filed.

entries that the district court has entered any appealable order.  
Accordingly, this court

ORDERS this appeal DISMISSED.

*Hardesty*, J.  
Hardesty

*Stiglich*, J.  
Stiglich

*Herndon*, J.  
Herndon

cc: Hon. Michael Villani, District Judge  
Ted Michael Donko  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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

TED MICHAEL DONKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 84755**  
District Court Case No. C345584

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: July 05, 2022

Elizabeth A. Brown, Clerk of Court

By: Sandy Young  
Deputy Clerk

cc (without enclosures):

Hon. Michael Villani, District Judge  
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District  
Attorney  
Ted Michael Donko

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on JUL - 7 2022.

HEATHER UNGERMANN

Deputy District Court Clerk

**RECEIVED  
APPEALS**

**JUL - 6 2022**

**CLERK OF THE COURT**

FILED

AUG 25 2022

*John L. Blum*  
CLERK OF COURT

1 Ted Michael Donko #1080899

2 1200 prison RD

3 Lovelock, NV, 89419

4 Lovelock correctional center

5

6

IN THE SUPREME COURT OF THE STATE OF NEVADA

7

★ ★ ★ ★ ★

8 TED MICHAEL DONKO

CASE NO. C-19-345584-1  
OR

9

APPELLANT

A-22-852928-W

10 VS.

DEPT NO

11 THE STATE OF NEVADA

September 26, 2022  
8:30 AM

12

Respondent

13

NOTICE OF MOTION FOR EVIDENTIARY HEARING

14

Comes now, TED MICHAEL DONKO, Respectfully Requests

15

to have a Evidentiary hearing WHICH WAS NEVER DONE

16

DONKO ASKED ATTORNEY TO DO A MOTION FOR THIS

17

WHICH WAS NEVER DONE DONKO ALSO HAS THE RIGHT

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to provide EVIDENCE ON HIS BEHALF THAT CAN PROVE

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HIS INNOCENCE IT WOULD ONLY BE FAIR FOR DONKO

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to GET AN ATTORNEY AND HAVE A EVIDENTIARY HEARING.

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#1080899

IED Donko

1200 PRISON RD.

XCC

LOVELOCK, NV, 89419

LOVELOCK CORRECTIONAL CENTER



USPS POSTAGE  
ZIP 89419 \$001.44  
02 4W  
000036900 AUG 23 2022

Regional Justice Center  
Eighth Judicial District  
200 Lewis Ave 3rd Floor  
Las Vegas, NV, 89155



**RSPN**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JOHN AFSHAR**  
Deputy District Attorney  
Nevada Bar #014408  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

TED MICHAEL DONKO,  
#2668752  
  
Defendant.

CASE NO: C-19-345584-1

DEPT NO: XVII

**STATE'S RESPONSE TO DEFENDANT'S  
NOTICE OF MOTION FOR EVIDENTIARY HEARING**

DATE OF HEARING: September 26, 2021  
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN AFSHAR, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Notice of Motion for Evidentiary Hearing.

This Response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 19, 2019, TED MICHAEL DONKO (hereinafter “Defendant”) was  
4 charged by way of Information as follows: Counts 1 and 2 – Battery with Use of a Deadly  
5 Weapon Resulting in Substantial Bodily Harm (Category B Felony – NRS 200.481); Counts  
6 3, 4, and 5 – Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS  
7 200.010, 200.030, 193.330, 193.165); Count 6 – Assault with a Deadly Weapon (Category B  
8 Felony - NRS 200.471 - NOC 50201); Count 7 – Discharging Firearm At or Into Occupied  
9 Structure, Vehicle, Aircraft, or Watercraft (Category B Felony – NRS 202.285); and Count 8  
10 – Ownership or Possession of Firearm by Prohibited Person (Category B Felony – NRS  
11 202.360).

12 On February 10, 2020, the State filed an Amended Information whereby it severed  
13 Count 8 – Ownership or Possession of Firearm by Prohibited Person. Defendant’s jury trial  
14 commenced that same day. On February 13, 2020, the State filed a Second Amended  
15 Information that reflected the bifurcated charge of Ownership or Possession of Firearm by  
16 Prohibited Person.

17 On February 13, 2020, after four (4) days of trial, the jury found Defendant guilty of  
18 the following: Counts 1 and 2 – Battery with Use of a Deadly Weapon; Counts 3, 4, and 5 –  
19 Attempt Murder with Use of a Deadly Weapon; Count 6 – Assault with a Deadly Weapon;  
20 and Count 7 – Discharging Firearm At or Into Occupied Structure, Vehicle, Aircraft,  
21 Watercraft. After reaching this verdict, the second phase of the trial, involving solely  
22 Defendant’s bifurcated charge Ownership or Possession of Firearm by Prohibited Person,  
23 commenced. V AA 949. The jury also found Defendant guilty of such charge.

24 On April 20, 2020, the district court adjudicated Defendant guilty of all charges and  
25 orally pronounced the following terms of years for his sentence to the Nevada Department of  
26 Corrections (“NDOC”): Count 1 – 24 to 60 months; Count 2 – 24 to 60 months, concurrent  
27 with Count 1; Count 3 – 36 to 96 months, consecutive to Counts 1 and 2, plus 12 to 30 months  
28 for the Use of a Deadly Weapon, consecutive to Count 3;1 Count 4 – 36 to 96 months, plus a

1 consecutive term of 12 to 30 months for the Use of a Deadly Weapon, to run consecutive to  
2 Count 3; Count 5 – 36 to 96 months, plus 12 to 30 months for the Use of a Deadly Weapon,  
3 to run consecutive to Count 4; Count 6 – 12 to 30 months, to run concurrent; Count 7 – 12 to  
4 30 months, to run concurrent; and Count 8 – 12 to 30 months, to run concurrent.

5 The Court further clarified that the only sentences that would run consecutive were “the  
6 three Attempt Murders with Use of a Deadly Weapon,” Defendant would receive an aggregate  
7 sentence of 12 to 31.5 years, including the deadly weapon enhancements, the District Court  
8 would retain jurisdiction over the restitution, and he would receive 150 days credit for time  
9 served. The Judgment of Conviction was filed on April 28, 2020, provided the aforementioned  
10 sentences, and clarified more fully that Count 3 would run consecutive to Counts 1 and 2, but  
11 listed the aggregate total sentence, including the deadly weapon enhancements, as 144 to 378  
12 months, and the aggregate sentence, not including the deadly weapon enhancements, as 108  
13 to 288 months.

14 On June 3, 2020, the State filed a Notice of Motion and Motion to Address Aggregate  
15 Sentence Calculations, wherein the State argued that the appropriate aggregate sentence, based  
16 upon the charges at sentencing, was 168 to 438 months. On November 24, 2020, the District  
17 Court explained by way of Minute Order that while it made a clerical error in calculating the  
18 aggregate sentence, it appropriately held that the weapons enhancements would run  
19 consecutive to the Attempt Murder charges and Count 3 would run consecutive to Counts 1  
20 and 2. Accordingly, the District Court found that the appropriate aggregate sentence was 168  
21 to 438 months and ordered that an Amended Judgment of Conviction be filed.

22 The Amended Judgment of Conviction was filed on May 25, 2021. Defendant filed a  
23 Notice of Appeal on June 1, 2021. The Nevada Court of Appeals affirmed the Judgment of  
24 Conviction on April 20, 2022. Remittitur issued on May 16, 2022.

25 On May 20, 2022, under Case No. C-19-345584-1, Defendant filed a Petition for Writ  
26 of Mandamus. The State filed State’s Opposition to Defendant’s Petition for Writ of  
27 Mandamus on June 7, 2022. The District Court denied the Petition for Writ of Mandamus on  
28 June 20, 2022. The Order Denying in Part and Granting in Part as to Defendant’s Petition for

1 Writ of Mandamus; Defendant's Motion to Waive Filing Fee for Petition of Writ of Mandamus  
2 was filed on July 1, 2022.

3 On May 20, 2022, Defendant filed a Petition for Writ of Habeas Corpus (Post-  
4 Conviction) and a Motion for Appointment of Attorney in Case No. A-22-852928-W. The  
5 State filed State's Response to Donko's Petition for Writ of Habeas Corpus (Post-Conviction)  
6 and Motion for Appointment of Counsel on July 6, 2022. The District Court denied the Petition  
7 and Motion for Appointment of Counsel on July 27, 2022. The Findings of Fact, Conclusions  
8 of Law and Order was filed on August 19, 2022. Defendant filed a Notice of Appeal on August  
9 25, 2022. The Nevada Supreme Court dismissed Defendant's appeal because of a jurisdictional  
10 defect. Remittitur issued on July 5, 2022.

11 Under Case No. C-19-345584-1, Defendant filed a Notice of Motion for Evidentiary  
12 Hearing on August 25, 2022. The State's Response follows.

### 13 **ARGUMENT**

#### 14 **I. NO EVIDENTIARY HEARING IS WARRANTED**

15 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 16 1. The judge or justice, upon review of the return, answer and  
17 all supporting documents which are filed, shall determine  
18 whether an evidentiary hearing is required. A petitioner must not  
19 be discharged or committed to the custody of a person other than  
20 the respondent *unless an evidentiary hearing is held*.
- 21 2. If the judge or justice determines that the petitioner is not  
entitled to relief and an evidentiary hearing is not required, he  
shall dismiss the petition without a hearing.
- 22 3. If the judge or justice determines that an evidentiary hearing  
is required, he shall grant the writ and shall set a date for the  
hearing.

23 (emphasis added). The Nevada Supreme Court has held that if a petition can be resolved  
24 without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110  
25 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002).  
26 A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
27 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
28 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction

1 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
2 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it  
3 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It  
4 is improper to hold an evidentiary hearing simply to make a complete record. See State v.  
5 Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district  
6 court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make  
7 as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

8 Further, the United States Supreme Court has held that an evidentiary hearing is not  
9 required simply because counsel’s actions are challenged as being unreasonable strategic  
10 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge  
11 post hoc rationalization for counsel’s decision-making that contradicts the available evidence  
12 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis  
13 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
14 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
15 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
16 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
17 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

18 Here, there is no need for an evidentiary hearing as there are no pending matters in Case  
19 No. C-19-345584-1 for which an evidentiary hearing could be held. An evidentiary hearing is  
20 not warranted even if Defendant meant to relate his request to his Petition filed in Case No.  
21 A-22-852928-W. That Petition has already been denied. Accordingly, there is no need for an  
22 evidentiary hearing in either case.

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1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests this Court deny Defendant's  
3 Notice of Motion for Evidentiary Hearing.

4 DATED this 1st day of September, 2022.

5 Respectfully submitted,

6 STEVEN B. WOLFSON  
7 Clark County District Attorney  
8 Nevada Bar #014408

9 BY /s/ JOHN AFSHAR  
10 JOHN AFSHAR  
11 Deputy District Attorney  
12 Nevada Bar #05734

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing was made this 1st day of  
15 September 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 TED MICHAEL DONKO, BAC #1080899  
17 LOVELOCK CORRECTIONAL CENTER  
18 1200 PRISON ROAD  
19 LOVELOCK, NEVADA 89419

20 BY /s/ Janet Hayes  
21 Secretary for the District Attorney's Office  
22  
23  
24  
25  
26  
27

28 19F24531X/jh/GANG



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

September 02, 2022

**Attorney:** Public Defender  
Clark County Public Defender  
309 S 3rd Street Suite #2  
Las Vegas NV 89101

**Case Number:** C-19-345584-1/  
A-22-852928-W  
**Department:** Department 17

**Defendant:** Ted Michael Donko

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Notice Of Motion For Evidentiary Hearing**

**Rule 3.70. Papers which May Not be Filed**

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,  
DC Criminal Desk # 27  
Deputy Clerk of the Court



1 Ted Michael Donko #1080899  
2 1200 prison RD  
3 Lovelock, NV, 89419  
4 Lovelock correctional center  
5

6 IN THE SUPREME COURT OF THE STATE OF NEVADA  
7 ★★★★★

8 TED Michael Donko  
9 Appellant  
10 VS.  
11 THE STATE OF NEVADA  
12 Respondent

CASE NO. C-19-345584-1  
OR  
A-22-852928-W  
DEPT NO \_\_\_\_\_

13 NOTICE OF MOTION FOR EVIDENTIARY HEARING

14 Comes now, TED Michael Donko, Respectfully Requests  
15 TO have a Evidentiary hearing WHICH WAS NEVER DONE  
16 Donko ASKED ATTORNEY TO DO A MOTION FOR THIS  
17 WHICH WAS NEVER DONE DONKO ALSO HAS THE RIGHT  
18 TO PROVIDE EVIDENCE ON HIS BEHALF THAT CAN PROVE  
19 HIS INNOCENCE IT WOULD ONLY BE FAIR FOR DONKO  
20 TO GET AN ATTORNEY AND HAVE A EVIDENTIARY HEARING.

21  
22  
23 RECEIVED

24 AUG 25 2022

25 CLERK OF THE COURT  
26  
27

#1080899

TED Donko

1200 PRISON RD.

X-CC

LOVELOCK, NV, 89419

LOVELOCK CORRECTIONAL CENTER



Regional Justice Center  
Eighth Judicial District  
200 Lewis Ave 3rd Floor  
Las Vegas, NV, 89155

RECEIVED  
JUL 23 2022  
FBI LAS VEGAS

RECEIVED  
AUG 22 2022  
LCC LAW LIBRARY

# DOCUMENTARY EXHIBITS

MARI STA	STATE'S EXHIBIT 202 C345584	ATION HIBIT
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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**PHOTO LINE-UP WITNESS INSTRUCTIONS**

NAME: WOODS, DEANDRE  
ADDRESS: [REDACTED]  
PHONE NUMBER: [REDACTED]

EVENT #: 191000002219  
INTERVIEWED BY: J. MARTIN 15026  
LOCATION: S/A  
DATE & TIME: 10/9/19 1516

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: [Signature]

DATE & TIME: 10/9/19 1918

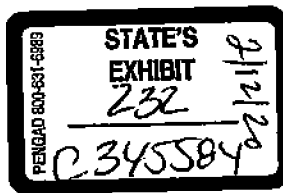
STATEMENT:

5 the person that shot a me and  
was asking for shorty. 95% sure

SIGNED: [Signature]

DATE & TIME: 10/9/19 1923  
PHOTO LINE ID#: 48649

OFFICER'S NAME & P#: J. MARTIN 15026



<b>Las Vegas Metropolitan Police Department</b> <b>Forensic Laboratory</b> <b>Report of Examination</b> <b>Latent Prints</b>	<b>Distribution Date:</b> October 8, 2019 <b>Agency:</b> LVMPD <b>Location:</b> NEAC <b>Primary Case #:</b> 191000002219 <b>Incident:</b> Assault WDW, Battery WDW <b>Requester:</b> NEAC INV. Sgt. <b>Lab Case #:</b> 19-11301.2
	<b>Subject(s):</b> Ted DONKO (AFIS)

The following evidence item(s) were received and examined:

**Latent Print Examination**

Lab Item #	Impound Pkg #	Card #	Description	Results, Opinions, and Interpretations
Item 9	004934 - 1	---	9 LIFT(S)/PHOTO(S)	
		Q8	One lift card from the license plate between left front seat and center console [8] 1993 Toyota Corolla VIN/1NXAE04E7PZ096 445	One suitable print(s) marked A: A - LVMPD database searched with positive results. Identified to the left middle finger of DONKO, Ted.
		---	8 LIFTS	Does not meet Administrative AFIS criteria, not selected for AFIS search

**Exemplar Prints**

Name
DONKO, Ted

This examination is limited to latent prints selected for AFIS search. Additional latent prints are available and can be requested for comparison in this case. If further comparisons are needed to the above listed individuals or additional individuals, please submit a Forensic Lab Request through Property Connect. Be sure to include the names and identifiers of all individuals to be compared.

If any of the above latent prints were searched through the AFIS with negative results and registered in the database, they will be deleted from AFIS when the case reaches the statute of limitations.

The evidence is returned to secure storage.

Technical Reviewer: Forensic Scientist Heather Gouldthorpe P#8646

Start date of testing: 10-06-2019      End date of testing: 10-06-2019

This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.

Unless otherwise specified, any latent prints listed above were analyzed utilizing the applicable components of the ACE-V method.

*Kathryn Aoyama*

Kathryn M Aoyama, #8025  
Forensic Scientist II

- END OF REPORT -



MARKET STATE	<div>STATE'S EXHIBIT 233 C345584</div>	ION BIT
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<b>Las Vegas Metropolitan Police Department</b> <b>Forensic Laboratory</b> <b>Report of Examination</b> <b>Biology/DNA Forensic Casework</b>		<b>Distribution Date:</b> December 19, 2019 <b>Agency:</b> LVMPD <b>Location:</b> Gang/Vice Bureau <b>Primary Case #:</b> 19100002219 <b>Incident:</b> Assault WDW, Battery WDW <b>Requester:</b> Jason Marin <b>Lab Case #:</b> 19-11301.3
<b>Subject(s):</b>	TED DONKO (Suspect)	

The following evidence items were received and examined:

Lab Item #	Impound Pkg #	Impound Item #	Description
Item 10	004934 - 2	2	Red "Skyland" t-shirt, size 4XL
Item 10.1			- Swabbing of the inner neck area and inner armpit areas
Item 11	014111 - 1	1	Reference standard from Ted Donko

FS II Kimberly Dannenberger P# 13772 performed examination and sample collection on the above evidentiary item(s). Additional personnel may have conducted laboratory processing in this case. Refer to the case file for this information.

#### Results, Opinions and Interpretations:

##### DNA STR Processing

The following items were subjected to PCR amplification at the following STR genetic loci: TH01, D3S1358, vWA, D21S11, TPOX, DYS391, D1S1656, D12S391, SE33, D10S1248, D22S1045, D19S433, D8S1179, D2S1338, D2S441, D18S51, FGA, D16S539, CSF1PO, D13S317, D5S818, and D7S820. The sex-determining Amelogenin locus was also examined. Where applicable, STRmix was used for interpretation.

##### Lab Item 11: Reference standard from Ted Donko

A full male DNA profile was obtained.

##### Lab Item 10.1 Swabbing of the inner neck area and inner armpit areas of the Red "Skyland" t-shirt

Number of contributors:	2, at least one male	
Approximate mixture proportions:	99:1	
Individually included:	Ted Donko (Item 11)	LR = at least 13.6 octillion, $13.6 \times 10^{27}$

The probability of observing the mixture DNA profile is at least 13.6 octillion times more likely if it originated from Ted Donko (Item 11) and one unknown random contributor than if it originated from two unknown random contributors.

##### Notes:

- DNA extracts generated during the analysis of this case and/or cuttings taken from the evidence may be available for future testing.
- The reported DNA profile results can aid in answering questions regarding who may have deposited DNA on an item of evidence and where this DNA was deposited. However, the presence or absence of a DNA profile cannot answer questions with regards to the timeframe and/or circumstances in which the DNA was deposited on an item of evidence.
- For comparison purposes, please collect reference buccal swab(s) from individuals believed to be involved in (or who have had reasonable access to) this incident. When a reference buccal swab is obtained, please submit a Forensic Laboratory Request in Property Connect to complete the case.
- Where applicable, likelihood ratios (LR) were calculated to assess whether each submitted reference standard is statistically included or excluded, individually, as a contributor to the reported DNA profile(s). The reported LR value for an "Individually Included" reference standard is reflective of the likelihood ratio calculation associated with the listed individual, without being considered in combination with other reference standards, except where an "Assumed Contributor" is denoted.
- Mixture proportions signify the approximate percentage of each contributor to the mixture DNA profile.
- The likelihood ratios are based upon propositions that can explain the evidence. This includes assumptions as to the number of contributors present in the DNA profile and, unless otherwise noted, that each unknown contributor is unrelated to the named reference standards. Since a range of propositions might explain the evidence, either interested party to this case, prosecution and/or defense, may request an additional likelihood ratio that incorporates an additional proposition more accurately representing their position. All requests must be submitted in a timely manner, must be reasonable given the test results, and must be within the capability and validated application of the program used.
- Statistical probabilities were calculated using the recommendations of the National Research Council (NRC II) utilizing the NIST database (Hill, C.R., Duewer, D.L., Kline, M.C., Coble, M.D., Butler, J.M. (2013) U.S. population data for 29 autosomal STR loci. Forensic Sci. Int. Genet. 7: e82-e83 and Steffen, C., Coble, M., Gettings, K., Vallone, P. Corrigendum to 'U.S. Population Data for 29 Autosomal STR Loci' [Forensic Sci. Int. Genet. 7 (2013) e82-83]. Forensic Sci. Int. Genet. 31 (2017) e36-e40). The probability that has been reported is the most conservative value obtained from the US Caucasian (CAU), African American (AA), and Hispanic (HSP) population databases. All likelihood ratios calculated by the LVMPD are truncated to three significant

figures.

The evidence is returned to secure storage.

Dates of laboratory testing: 12/3/19 – 12/12/19

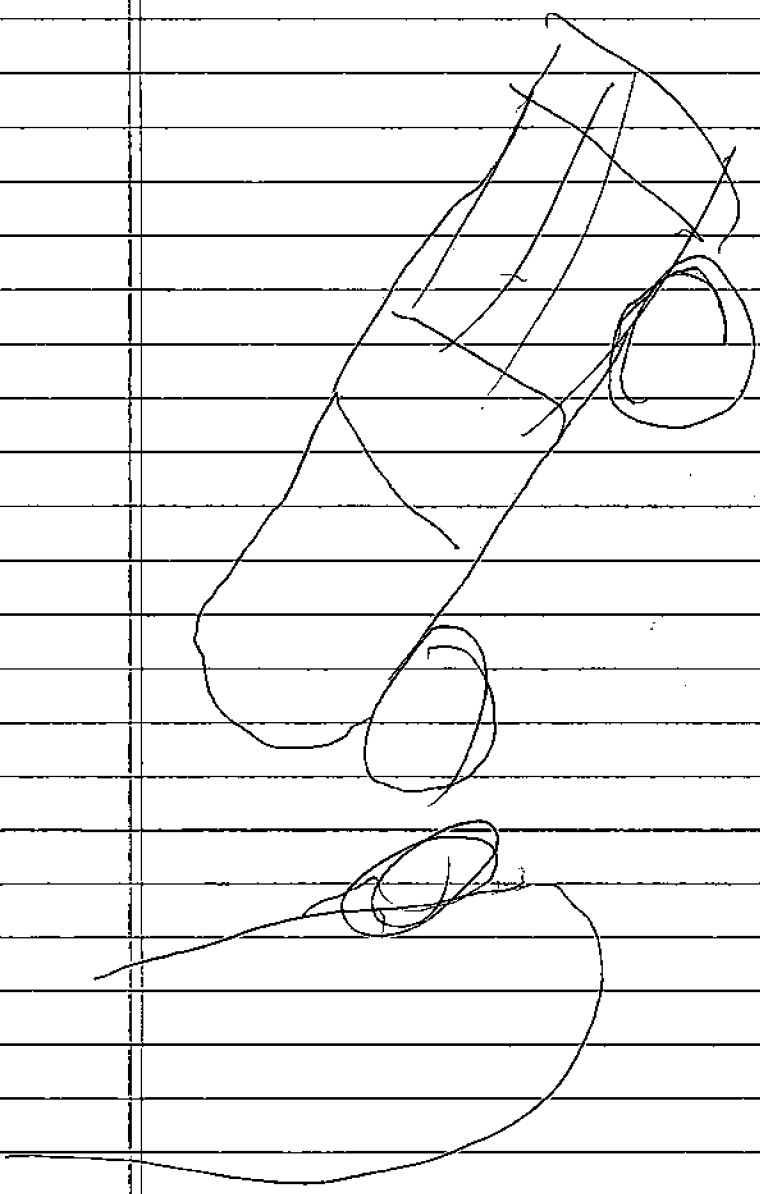
This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.

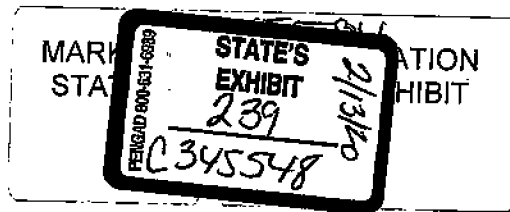


---

Allison Rubino, #14784  
Forensic Scientist II

- END OF REPORT -





DEC 4 0 050



ORIGINAL

FILED

FEB 02 2012

*Alvin L. Williams*  
CLERK OF COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C274598-1

-VS-

DEPT. NO. X

TED MICHAEL DONKO  
#2668752

Defendant.

JUDGMENT OF CONVICTION

(PLEA OF GUILTY) :

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor), in violation of NRS 205.220, 205.222, 193.330; thereafter, on the 18<sup>th</sup> day of January, 2012, the Defendant was present in Court with his counsel, BRENT PERCIVAL, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty under the felony statute of said offense and, in addition to the \$25.00 Administrative Assessment Fee, the Defendant is sentenced as follows: TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC); with FIFTY-FIVE (55) DAYS Credit for Time Served. As the Fee

C-11-274598-1  
JOC  
Judgment of Conviction  
1762486



2

1 and Genetic Testing have been previously imposed, the Fee and Testing in the current  
2 case are WAIVED.  
3  
4

5 DATED this 31<sup>st</sup> day of January, 2012  
6

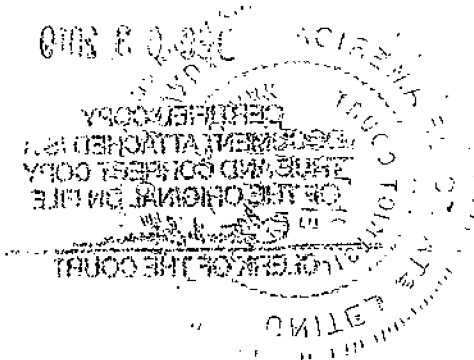
7 Jessie Walsh  
8 JESSIE WALSH LG  
9 DISTRICT JUDGE  
10

11 DEC 03 2019  
12

13 CERTIFIED COPY  
14 DOCUMENT ATTACHED IS A  
15 TRUE AND CORRECT COPY  
16 OF THE ORIGINAL ON FILE  
17

18 [Signature]  
19 CLERK OF THE COURT  
20  
21  
22  
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24  
25  
26  
27  
28

MARKET STATE	STATE'S EXHIBIT	ION BIT
	240	2/13/10
C345548		





**JUDG**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

  
CLERK OF THE COURT

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**THE STATE OF NEVADA,**  
Plaintiff,

-vs-

**TED DONKO,**  
aka Ted Michael Donko, #2668752  
Defendant.

CASE NO: C-13-288886-1

DEPT NO: II

**JUDGMENT OF CONVICTION**  
**(PLEA OF GUILTY)**

On the 17th day of April, 2013, the Defendant appeared before the Court herein with his counsel, JESSICA MURPHY, Deputy Public Defender, and entered a plea of guilty to the crime(s) of ATTEMPT BATTERY WITH SUBSTANTIAL BODILY HARM (Category D Felony/Gross Misdemeanor), in violation of NRS 193.330, 200.481; thereupon, without a presentence report to the Court,

THE DEFENDANT IS HEREBY ADJUDGED guilty of ATTEMPT BATTERY WITH SUBSTANTIAL BODILY HARM (Gross Misdemeanor) and, in addition to the \$25.00 Administrative Assessment Fee, the Defendant is sentenced as follows: to Clark County Detention Center (CCDC) for NINE (9) MONTHS to run CONCURRENT with Case Number C274598 with ZERO (0) days credit for time served.

///

///

///

<input type="checkbox"/> Verdict Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition		

PAWPDOCS\JUDG\300\30083601.doc

C288886

BOND, if any, EXONERATED.

DATED this 24<sup>th</sup> day of May, 2013.

  
DISTRICT JUDGE 

DEC 03 2019

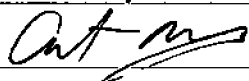
CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

  
CLERK OF THE COURT

cc/L3

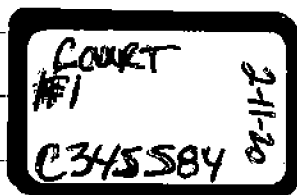
Is it possible to replay the  
footage?

- 733, Juror 8

Ant 

No obj., shown again

J. Bluth



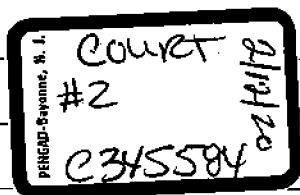
Is there any sort of probability  
related to how likely ~~the prints~~ the  
match is?

Juror 8, Badge 733

*[Signature]*

No obj., asked

*[Signature]*



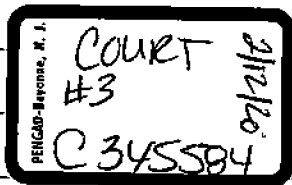
Was the victim  
facing the area where  
the shots came  
from or was ~~was~~ his  
back toward the  
shooter?

~~#156~~ #12

M. S. G.

No obj. asked

J. Blitt

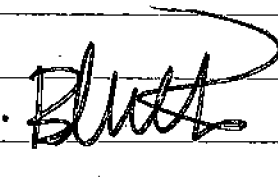


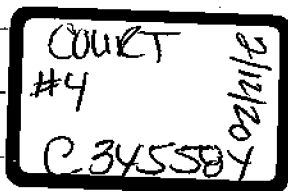
Do you remember anything regarding  
what the shooter was wearing?

Juror 8

-Ant 

No obj, asked

J. Bluth 

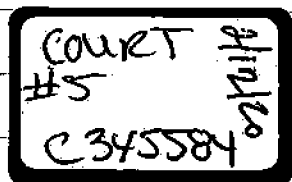


Juror # 11

Did the person you  
seen leaving the vehicle  
have any tattoos?

No obj. asked

J. Bluth

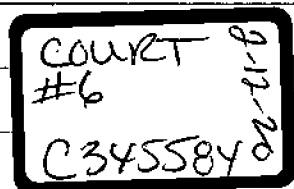


on <sup>Sept</sup> ~~March~~ 30<sup>th</sup> did the  
white man wear long  
sleeves or short sleeves  
to see the tatoos on  
the arms

No obj. asked

J. Blum

Juror #3



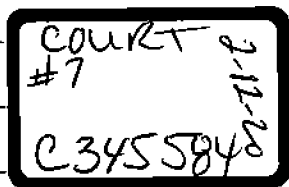


WAS the white truck  
pointing towards Christy  
Lane while parked in  
the driveway? And  
did the car turn in that  
same direction when it  
made it to Charleston?

Juror #1  
Patricia Hildreth

No obj. Asked

J. Blum

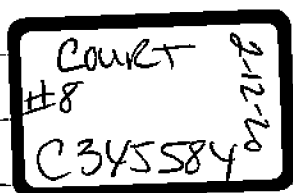


Did the man with  
the red shirt have  
a long-sleeved shirt  
on under the red  
shirt? Or were his  
arms bare?

Juror #1  
Patricia Alden

No obj. Asked

J. Bluth

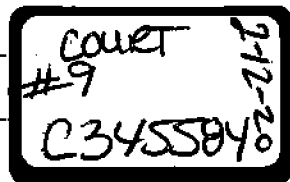


When the car was speeding, did it  
drive past your house?

Twice

~~On 1/2/12~~

Drove obj., overruled  
asked  
J. Blunt



Was a weapon ever recovered?

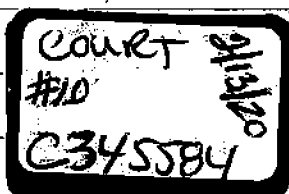
Juror 8,

- *cut*

No obj.

Asked

J. Blunt



Did investigators  
view an enhanced  
or zoomed in  
version of the video

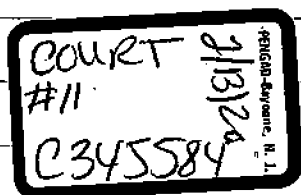
# 12

Mari Cay

No obj.

Asked

J. Bluth



#7

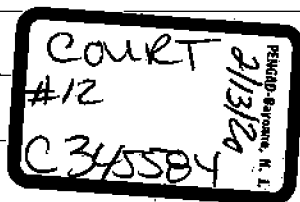
Were you able to  
find traffic or  
any other cameras  
with the car?

Rebecca Ricca

- No obj.

- Asked

J. Bluth



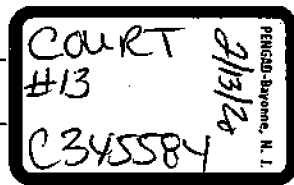
Can you explain how  
line-up photos were  
selected? Why did none  
match original description  
provided by MR. Woods?

JUROR #1  
patricia Hume

- No obj.

- Asked

J. Bluth



#7

Did you trace the  
vin number or  
license plate number?

~~where did~~

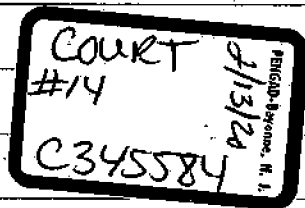
Any information?

Rebecca Ricu

-obj. by A

-Not given

J. Bluth





**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 20, 2019**

---

C-19-345584-1      State of Nevada  
                                 vs  
                                 Ted Donko

---

**December 20, 2019      10:00 AM      Initial Arraignment**

**HEARD BY:**    Wittenberger, Shannon      **COURTROOM:**    RJC Lower Level Arraignment

**COURT CLERK:**    Kristen Brown

**RECORDER:**    Sharon Nichols

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Derjavina, Ekaterina	Attorney
	Donko, Ted Michael	Defendant
	Public Defender	Attorney
	Richards, Daren B.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- DEFT. DONKO ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

**CUSTODY**

2/03/20 9:30 AM CALENDAR CALL (DEPT. 25)

2/10/20 10:30 AM JURY TRIAL (DEPT. 25)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 03, 2020**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**February 03, 2020      9:00 AM      All Pending Motions**

**HEARD BY:** Delaney, Kathleen E.**COURTROOM:** RJC Courtroom 15B**COURT CLERK:** Shelley Boyle**RECORDER:****REPORTER:** Robert Cangemi**PARTIES**

<b>PRESENT:</b>	Cannizzaro, Nicole J.	Attorney
	Donko, Ted Michael	Defendant
	Hauser, Robson M.	Attorney
	Shaygan-Fatemi, Kambiz	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- DEFT'S. MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL...CALENDAR CALL

**CALENDAR CALL**

Upon Court's inquiry, Mr. Shaygan-Fatemi noted he is trying the case with Mr. Hauser. Counsel jointly ANNOUNCED ready for trial. State made a record of their offer to Deft., noting the offer was rejected and is now revoked. Mr. Hauser concurred. COURT NOTED It is currently in a Med-Mal trial that is behind schedule. State estimated up to 12 witnesses and 5 days for trial. COURT ADVISED, matter REFERRED to Overflow; Trial date VACATED, to be RESET by the Overflow Judge. If something changes in the Court's current Med-Mal trial Court will notify counsel.

DEFT'S. MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL  
COURT NOTED, State did not file an Opposition. Mr. Hauser stated when the Motion was drafted he had concerns; there is nothing outstanding at this time. Ms. Cannizzaro noted she did not receive

PRINT DATE: 09/14/2022

Page 2 of 21

Minutes Date: December 20, 2019

a copy of the Motion State has turned over all discovery in Its possession and possession of the Las Vegas Metropolitan Police has been turned. COURT ORDERED, Motion GRANTED in PART / DENIED in PART. Motion GRANTED as to Requests 1 through 37 with the understanding the State has provided the information It has and there is nothing outstanding to be compelled. With the caveat as to Requests 1, 2 and 3, any notes or work product disclosures, Motion DENIED in PART. State is to comply with NRS 174.235(a). Additionally, as to Request 20, Motion GRANTED IN PART. GRANTED as to the State's inquiry having something to do with truthfulness, DENIED as to independent review of all personnel files. If there is something in the personnel file or something that Deft. is actually aware of or that should be investigated, or looked into, Court would do an incamera view as to that purpose. Mr. Hauser is to prepare the Order.

CUSTODY

02/07/20 8:30 A.M. OVERFLOW (DC 10)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 07, 2020**

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C-19-345584-1      State of Nevada  
                                 vs  
                                 Ted Donko

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**February 07, 2020      8:30 AM      Overflow**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Keith Reed

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Donko, Ted Michael	Defendant
	Hauser, Robson M.	Attorney
	Lexis, Chad N.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- COURT ORDERED, case SET for Jury Trial February 10, 2020, 1:30 PM in Department 6. Motion To Withdraw Due To Conflict FILED IN OPEN COURT. Court stated findings and ORDERED, Motion To Withdraw Due To Conflict DENIED.

**CUSTODY**

2-10-20 1:30 PM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 10, 2020**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**February 10, 2020      1:30 PM      Jury Trial**

**HEARD BY:** Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:** De'Awna Takas**REPORTER:****PARTIES**

<b>PRESENT:</b>	Donko, Ted Michael	Defendant
	Goodman, Laura	Attorney
	Hauser, Robson M.	Attorney
	Lexis, Chad N.	Attorney
	Shaygan-Fatemi, Kambiz	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Amended Information FILED IN OPEN COURT. PROSPECTIVE JURORS PRESENT. Voir Dire. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy between Court and counsel regarding the ability of Prospective Juror #760 to serve on the panel. COURT ORDERED, Prospective Juror 760 EXCUSED. Ms. Goodman moved for the excusal of Prospective Juror 714. Argument in opposition by Mr. Shaygan-Fatemi. Court stated both sides will be able to speak with the Prospective Juror. Mr. Shagan-Fatemi requested Prospective Juror 772 be excused. Mr. Lexis advised he was going to ask some questions. Court stated counsel will be allowed to question the Prospective Juror. PROSPECTIVE JURORS PRESENT: Voir Dire. COURT ORDERED, matter CONTINUED; Prospective Jurors admonished and released. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding scheduling.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 11, 2020**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**February 11, 2020      11:00 AM      Jury Trial**

**HEARD BY:** Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:** De'Awna Takas**REPORTER:****PARTIES**

<b>PRESENT:</b>	Donko, Ted Michael	Defendant
	Goodman, Laura	Attorney
	Hauser, Robson M.	Attorney
	Lexis, Chad N.	Attorney
	Shaygan-Fatemi, Kambiz	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Mr. Hauser advised the Court in regards to an inadvertent contact he had with Prospective Juror #7 yesterday; the Prospective Juror asked where the stairs were. Court thanked counsel for the disclosure. PROSPECTIVE JURORS PRESENT: Voir dire. Peremptory Challenges EXERCISED. CONFERENCE AT BENCH. Voir dire. Peremptory Challenges EXERCISED. Jury IMPANELED. Amended Information read by the Clerk and Defendant's plea thereto announced. OUTSIDE THE PRESENCE OF THE JURY. Pursuant to stipulation, Mr Lexis advised the stolen vehicle will be referred to as the unregistered vehicle and unregistered license plate. JURY PRESENT: Opening statements on behalf of the State by Ms. Goodman, and on behalf of the Defendant by Mr. Shaygan-Fatemi. Testimony and exhibits presented. (See Worksheet). COURT ORDERED, proceedings CONTINUED; Jurors admonished and released. OUTSIDE THE PRESENCE OF THE JURY: At the requests of Ms. Goodman, COURT ORDERED, State's exhibits 168 & 179 WITHDRAWN.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 12, 2020**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**February 12, 2020      1:00 PM      Jury Trial**

**HEARD BY:** Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:** De'Awna Takas**REPORTER:****PARTIES**

<b>PRESENT:</b>	Donko, Ted Michael	Defendant
	Goodman, Laura	Attorney
	Hauser, Robson M.	Attorney
	Lexis, Chad N.	Attorney
	Shaygan-Fatemi, Kambiz	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- JURY PRESENT: Testimony and exhibits presented. (See worksheet). OUTSIDE THE PRESENCE OF THE JURY: Mr. Hauser stated the Defendant would like to address the Court in regards to self representation. Defendant stated he does not want to fire counsel and would like them to fight for him. Colloquy between Court and Defendant regarding his dissatisfaction with the performance of counsel and potential self representation. Upon inquiry of the Court, Defendant stated he will wait to make a decision as to self representation. JURY PRESENT: Testimony and exhibits presented. (See worksheet). COURT ORDERED, matter CONTINUED; Jurors admonished and released. OUTSIDE THE PRESENCE OF THE JURY: Record made by Mr. Shaygan-Fatemi, Mr. Lexis and the Court in regards to State's recall of witness Ramos.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 13, 2020**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**February 13, 2020      12:30 AM      Jury Trial**

**HEARD BY:** Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:** De'Awna Takas**REPORTER:****PARTIES**

<b>PRESENT:</b>	Donko, Ted Michael	Defendant
	Goodman, Laura	Attorney
	Hauser, Robson M.	Attorney
	Lexis, Chad N.	Attorney
	Shaygan-Fatemi, Kambiz	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Instructions settled. Mr. Lexis stated he reached out to Mr. Hauser to see if they wanted to recall witness Ramos and was told it was not necessary. Mr. Hauser concurred. Colloquy regarding redaction of State's Exhibit 232. Defendant inquired as how to go about getting a supervised hospital visit to see his mother on life support. Court stated a motion must be filed. Defendant advised he'd like to take the stand. Court informed the Defendant of his constitutional rights as to any testimony. Record made by Mr. Hauser, noting against the advise of counsel, Defendant will testify. Colloquy between Court and Defendant's criminal past, pending testimony and potential self representation by Defendant. Record made by Mr. Hauser regarding Defendant's pending testimony. JURY PRESENT. Testimony and exhibits presented. (See Worksheet). State REST. Defendant REST. OUTSIDE THE PRESENCE OF THE JURY: Colloquy, argument, regarding time line of the stolen vehicle and the relationship of it with the Defendants statement to the detectives when they make contact with him. JURY PRESENT: Testimony and exhibits presented. (See Worksheet). State REST. Closing arguments on behalf of the State by Ms. Goodman and on



behalf of the Defendant by Mr. Hauser. State's closing rebuttal argument by Mr. Lexis. At the hour of 4:31 PM, 2 Alternate Jurors were selected and the Jury retired to deliberate. OUTSIDE THE PRESENCE OF THE JURY: Mr. Shaygan-Fatemi inquired if the Defendant may stay with counsel during deliberations. Court stated it's up to the Corrections Officers. JURY PRESENT: At the hour OF 6:20 AM the Jury returned with a verdict at follows:

COUNT 1- GUILTY of BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

COUNT 2- GUILTY of BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (FERNANDO ESPINOZA).

COUNT 3 GUILTY of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (JONATHAN SANCHEZ)

COUNT 4 GUILTY of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (FERNANDO ESPINOZA)

COUNT 5, GUILTY of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (DEANDRE WOODS)

COUNT 6, GUILTY of ASSAULT WITH A DEADLY WEAPON (DEANDRE WOODS)

COUNT 7, GUILTY of DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT

Jury POLLED. Second Amended Information FILED IN OPEN COURT. Reading of Second Amended Information by the Clerk and Defendant's plea thereto announced. Opening statements WAIVED. Exhibits presented. (See worksheet). State REST. Defendant REST. Closing arguments on behalf of the State by Mr. Lexis and on behalf of the Defendant by Mr. Hauser. At the hour of 6:40 PM the Jury retired to deliberate. OUTSIDE THE PRESENCE OF THE JURY: Colloquy. Statement by Defendant in regards to the verdict not being fair, requested a copy of his Presentence Investigation Report prior to going to prison and advised he'll appeal. Mr. Shaygan-Fatemi stated he'll have a member of the appellant team reach out to the Defendant. JURY PRESENT. At the hour of 6:48 PM the Jury returned with a verdict of GUILTY to the charge of OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON. Court thanked and excused the Jury. OUTSIDE THE PRESENCE OF THE JURY: COURT ORDERED, matter REFEREED to the Division of Parole and Probation and SET for sentencing; Defendant REMANDED WITHOUT BAIL.

CUSTODY

4-1-20 9:30 AM SENTENCING

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**April 01, 2020**

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C-19-345584-1      State of Nevada  
                                 vs  
                                 Ted Donko

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**April 01, 2020      10:15 AM      Sentencing**

**HEARD BY:** Bluth, Jacqueline M.      **COURTROOM:** RJC Lower Level Arraignment

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:**      Donko, Ted Michael      Defendant  
                                 State of Nevada      Plaintiff  
                                 Turner, Robert B.      Attorney

**JOURNAL ENTRIES**

- Pursuant to the representations of Mr. Lexis, Mr. Turner advised Mr. Hauser is sick and would like a continuance until April 20th. COURT ORDERED, matter CONTINUED.

**CUSTODY**

4-20-20 10:15 AM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 20, 2020**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**April 20, 2020      10:15 AM      Sentencing**

**HEARD BY:** Bluth, Jacqueline M.      **COURTROOM:** RJC Lower Level Arraignment

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Hauser, Robson M.	Attorney
	Lexis, Chad N.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Argument by Mr. Lexis. Statement by Defendant. Argument by Mr. Hauser. Colloquy regarding Court's retention of jurisdiction over restitution. By virtue of the Jury verdict, Defendant DONKO ADJUDGED GUILTY OF COUNTS 1, & 2, BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F), COUNTS 3, 4, & 5, ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 6, ASSAULT WITH A DEADLY WEAPON (F), COUNT 7, DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT (F), AND COUNT 8, OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$150.00 DNA Analysis fee WAIVED, \$3.00 DNA Collection fee and \$250.00 Indigent Defense Civil Assessment fee, as to COUNT 1, Defendant SENTENCED to a MINIMUM OF TWENTY-FOUR (24) MONTHS AND A MAXIMUM OF SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), COUNT 2 a MINIMUM OF TWENTY-FOUR (24) MONTHS AND A MAXIMUM OF SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT WITH COUNT 1, COUNT 3, a MINIMUM OF THIRTY-SIX (36) MONTHS AND A MAXIMUM OF NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC) PLUS A CONSECUTIVE TERM OF A MINIMUM OF TWELVE (12) MONTHS AND A MAXIMUM OF

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THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC) CONSECUTIVE TO COUNTS 1 & 2, COUNT 4, a MINIMUM OF THIRTY-SIX (36) MONTHS AND A MAXIMUM OF NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC) PLUS A CONSECUTIVE TERM OF A MINIMUM OF TWELVE (12) MONTHS AND A MAXIMUM OF THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC) CONSECUTIVE TO COUNT 3, COUNT 5, a MINIMUM OF THIRTY-SIX (36) MONTHS AND A MAXIMUM OF NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC) PLUS A CONSECUTIVE TERM OF A MINIMUM OF TWELVE (12) MONTHS AND A MAXIMUM OF THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC) CONSECUTIVE TO COUNT 4, COUNT 6, a MINIMUM OF TWELVE (12) MONTHS AND A MAXIMUM OF THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT WITH COUNT 5, COUNT 7, a MINIMUM OF TWELVE (12) MONTHS AND A MAXIMUM OF THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT WITH COUNT 6, COUNT 8, a MINIMUM OF TWELVE (12) MONTHS AND A MAXIMUM OF THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT WITH COUNT 7; ONE HUNDRED FIFTY (150) DAYS credit for time served; jurisdiction RETAINED as to restitution; aggregate INCLUDING the deadly weapon enhancement is a MINIMUM OF ONE HUNDRED FORTY-FOUR (144) MONTHS, A MAXIMUM OF THREE HUNDRED SEVENTY-EIGHT (378) MONTHS; Aggregate NOT INCLUDING the deadly weapon enhancement is a MINIMUM OF ONE HUNDRED EIGHT (108) MONTHS AND A MAXIMUM OF TWO HUNDRED EIGHTY-EIGHT (288) MONTHS,

NDC

CLERK'S NOTE: Following proceedings, COURT ORDERED, sentence AMENDED as to aggregate sentence.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 15, 2020**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**June 15, 2020****10:15 AM****Motion****HEARD BY:** Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:** De'Awna Takas**REPORTER:****PARTIES**

<b>PRESENT:</b>	Hauser, Robson M.	Attorney
	Overly, Sarah	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Court stated the aggregate sentence should be 168/438 months. Ms. Overly concurred. Mr. Hauser argued it's believed that's what's in the Judgment of Conviction, but it's not certain that was the Court's intention at sentencing. Court stated JAVS will be reviewed and a minute order will be issued.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 24, 2020**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**November 24, 2020      3:00 AM      Minute Order**

**HEARD BY:** Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Having heard the State's Motion to Address Aggregate Sentence Calculations on June 15, 2020, the Court finds that the total aggregate sentence is properly reflected as 168 mos to 438 mos. Although the aggregate sentence was miscalculated on the day of sentencing, the Court's ruling on the actual charges was very specific. See Transcript of Sentencing at 12, 7- 8 ([Weapon Enhancement] will obviously run consecutive to the Attempt Murder, and Count 3 will run consecutive to Counts 1 and 2. ). The sentencing was put on the record as follows:

Ct 1: 24 60 mos

Ct 2: 24 60 mos concurrent to Count 1

Ct 3: 36 96 mos with consecutive 12-30 mos d/w enhancement and consecutive to Count 2

Ct 4: 36 96 mos with consecutive 12-30 mos d/w enhancement and consecutive to Count 3

Ct 5: 36 96 mos with consecutive 12-30 mos d/w enhancement and consecutive to Count 4

Accordingly, the total aggregate is properly reflected as 168 mos to 438 mos. An Amended Judgment of Conviction is to be filed in accordance with this Order. Sullivan v. State, 120 Nev. 537, 540, 96 P.3d 761, 764 (2004) ( A judgment of conviction may be amended at any time to correct a clerical error or to correct an illegal sentence. ). IT IS SO ORDERED.

**CLERK'S NOTE:** The above minute order has been distributed via e-mail to: District Attorney Sarah

PRINT DATE: 09/14/2022

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Minutes Date: December 20, 2019

Overly and Public Defender Robson M. Hauser. kar 11/24/20



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 25, 2020**

C-19-345584-1      State of Nevada  
                                 vs  
                                 Ted Donko

**November 25, 2020      3:00 AM      Minute Order**

**HEARD BY:** Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Having heard the State's Motion to Address Aggregate Sentence Calculations on June 15, 2020, the Court finds that the total aggregate sentence is properly reflected as 168 mos to 438 mos. Although the aggregate sentence was miscalculated on the day of sentencing, the Court's ruling on the actual charges was very specific. See Transcript of Sentencing at 12, 7 15 ( [Weapon Enhancement] will obviously run consecutive to the Attempt Murder, and Count 3 will run consecutive to Counts 1 and 2 . . . Count 4 . . . That will run consecutive to Count Number 3. Count Number 5 . . . That's to run consecutive to Count 4. ). The sentencing was put on the record as follows:

Ct 1: 24 60 mos

Ct 2: 24 60 mos concurrent to Count 1

Ct 3: 36 96 mos with consecutive 12-30 mos d/w enhancement and consecutive to Count 2

Ct 4: 36 96 mos with consecutive 12-30 mos d/w enhancement and consecutive to Count 3

Ct 5: 36 96 mos with consecutive 12-30 mos d/w enhancement and consecutive to Count 4

Accordingly, the total aggregate is properly reflected as 168 mos to 438 mos. An Amended Judgment of Conviction is to be filed in accordance with this Order. Sullivan v. State, 120 Nev. 537, 540, 96 P.3d 761, 764 (2004) ( A judgment of conviction may be amended at any time to correct a clerical error or to correct an illegal sentence. ). IT IS SO ORDERED.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: District Attorney Sarah Overly and Public Defender Robson M. Hauser. kar 12/1/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 20, 2022**

C-19-345584-1      State of Nevada  
vs  
Ted Donko

**June 20, 2022      8:30 AM      All Pending Motions**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht  
Odalys Garcia

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gullo, Robert J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff
	Turner, Robert B.	Attorney

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF MANDAMUS...MOTION TO WAIVE FILING FEE FOR PETITION FOR WRIT OF MANDAMUS

Defendant not present.

Upon Court's inquiry, Mr. Gullo advised he had received a copy of the pleadings and after speaking with his appeals team he would be requesting to withdraw as counsel in order for Defendant to proceed with his Habeas Petition. Court inquired whether Defendant had filed any Motion for appointment of counsel and Mr. Gullo advised he was unsure. Court noted Defendant was requesting the Court issue a Writ of Mandamus against itself, which it did not have jurisdiction to do. COURT ADOPTED the Procedural History as set forth by the State. COURT ORDERED, Petition for Writ of Mandamus DENIED, and Motion to Waive Filing Fee for Writ of Mandamus GRANTED; status check SET. State to prepare order. Court noted status check would be vacated if the order was received prior to the hearing date.

PRINT DATE: 09/14/2022

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Minutes Date: December 20, 2019

**C-19-345584-1**

NDC

07/11/22 8:30 AM STATUS CHECK: ORDER

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 01, 2022**

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C-19-345584-1      State of Nevada  
                                 vs  
                                 Ted Donko

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**July 01, 2022      3:00 AM      Status Check**

**HEARD BY:** Villani, Michael      **COURTROOM:** Chambers

**COURT CLERK:**  
Stephanie Rapel

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Order set to come before the Court on the July 11, 2022 Calendar at 8:30 A.M. COURT NOTES, Order was received on June 29, 2022. COURT ORDERED, matter VACATED.

CLERK'S NOTE: This Minute Order has been electronically served to all registered parties for Odyssey File & Serve. smr

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated September 9, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises five volumes with pages numbered 1 through 1158.

STATE OF NEVADA,

Plaintiff(s),

vs.

TED MICHAEL DONKO,

Defendant(s),

Case No: C-19-345584-1

*Related Case A-22-852928-W*

Dept. No: XVII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 14 day of September 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk