

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBURT HICKMAN, JR., A/K/A
WILLIAM HICKS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Jun 06 2023 01:13 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No: C-12-278699-1

Docket No: 86554

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
WILBURT HICKMAN # 62150,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

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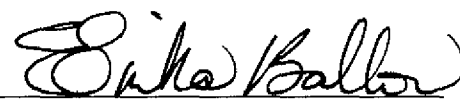
1 DEFENDANT'S REQUESTS 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,
2 41, 42: All requests made in these enumerated items are GRANTED as unopposed pursuant to
3 E.D.C.R. 3.20 and pursuant to the requirements of disclosure under Brady v. Maryland, 373 U.S. 83
4 (1963), and its progeny, BUT DOES NOT include dissemination of the National Crime Information
5 Center (NCIC) database;

6 DATED 17th day of October, 2012.

7
8 
9 DISTRICT COURT JUDGE
10

11 Submitted by:

12 PHILIP J. KOHN
13 CLARK COUNTY PUBLIC DEFENDER

14 By 
15 ERIKA D. BALLOU, #8365
16 Deputy Public Defender
17
18
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28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the above and foregoing ORDER was made via e-
3 filing to PDMotions@ccdancv.com and via facsimile to the Clark County District Attorney's Office
4 (455-6980) on this 18th day of October, 2012.

5 /s/ Jane Palmer

6 By _____
7 Employee of the Clark County Public Defender's
8 Office

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25
26 Case Name: William Hicks
27 Case No.: C-12-278699-1
28 Dept. No.: V

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 17 2013

Denise Trujillo
DENISE TRUJILLO DEPUTY

SUBT
Law Offices of Mitchell Posin, Chtd.
Mitchell L. Posin, Esq.
Nevada Bar No.: 002840
850 East Bonneville Avenue
Las Vegas, Nevada 89101
702.382.2222

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	Case No.: C-12-278699-1
)	
Plaintiff,)	Dept. No.: 5
)	
v.)	
)	
WILBURT HICKMAN, a.k.a.)	
WILLIAM HICKS,)	
Defendant.)	

SUBSTITUTION OF ATTORNEYS

MITCHELL POSIN, ESQ., is hereby substituted as attorney for the Defendant in the above-entitled action in place of and instead of ERIKA D. BALLOU, ESQ.

DATED this 16 day of April, 2013

Wilburt Hickman
WILBURT HICKMAN

I hereby consent to the above and foregoing substitution.

DATED this 17th day of April, 2013

Erika D. Ballou
ERIKA D. BALLOU, ESQ.

I hereby accept the above substitution as attorney for the Defendant LAURA WEBB.

DATED this 17 day of April, 2013

Mitchell L. Posin
MITCHELL L. POSIN, ESQ.
Nevada Bar No.: 002840
POSIN & POSIN
601 South Tenth Street, Suite 100
Las Vegas, Nevada 89101
(702) 382-2222


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #011390
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-

WILBURT HICKMAN,
aka William Hicks, #0905481

Defendant.

CASE NO: C278699

DEPT NO: V

SECOND SUPPLEMENTAL NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: WILBURT HICKMAN, aka William Hicks, Defendant; and

TO: ERIKA BALLOU, Deputy Public Defender, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

ROBERT GOFF, DR. - A medical doctor employed by North Vista Hospital. He is
an expert in the area of general treatment of trauma victims and will give medical opinions
as to his diagnosis and treatment of Anyla Hoye.

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1
2 The substance of each expert witness' testimony and a copy of all reports made by or
3 at the direction of the expert witness has been provided in discovery.

4 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8
9 BY /s/ Christopher S. Hamner
10 CHRISTOPHER S. HAMNER
11 Deputy District Attorney
12 Nevada Bar #011390

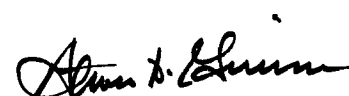
13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of Second Supplemental Notice of Expert Witnesses, was
15 made this 20th day of June, 2013, by facsimile transmission to:

16 ERIKA BALLOU, Deputy Public Defender
17 455-5112

18
19 BY: /s/ C. Cintola
20 C. Cintola
21 Employee of the District Attorney's Office

22
23
24
25
26
27 cc/L3
28



CLERK OF THE COURT

NWEW1
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #011390
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-

WILBURT HICKMAN,
aka William Hicks, #0905481
Defendant.

CASE NO: C278699-1

DEPT NO: V

THIRD SUPPLEMENTAL NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: WILBURT HICKMAN, aka William Hicks, Defendant; and

TO: ERIKA BALLOU, Deputy Public Defender, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
BARAGA, MARK	Basch Construction, 6226 Sandhill Rd., Las Vegas, NV
BROWN, MARK	Brown Delacy Claim Service 2235 E. Flamingo Rd. #201H, Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	North Vista Hospital
CORBIN, D.	LVMPD P#7941
GROVE, SAMIRA	Unknown

1 GOFF, ROBERT DR. North Vista Hospital
2 1409 E. Lake Mead Blvd., North Las Vegas, NV
3 HUTTON, CRAIG Antich Church, 3950 N. Las Vegas Blvd., Las Vegas, NV
4 MADDEN, KEVIN Antich Church, 3950 N. Las Vegas Blvd., Las Vegas, NV
5 RAFALOVICH, MARCO Clark County District Attorney's Office-Investigator
6 SEVERS, ERICA Antich Church, 3950 N. Las Vegas Blvd., Las Vegas, NV
7 SCHLEI, DON Basch Construction, 6226 Sandhill Rd., Las Vegas, NV

8
9 These witnesses are in addition to those witnesses endorsed on the Information and
10 any other witness for which a separate Notice has been filed.

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

14 BY /s/ Christopher S. Hamner
15 CHRISTOPHER S. HAMNER
16 Deputy District Attorney
17 Nevada Bar #011390

18 CERTIFICATE OF FACSIMILE TRANSMISSION

19 I hereby certify that service of Third Supplemental Notice of Witnesses, was made
20 this 20th day of June, 2013, by facsimile transmission to:

21 ERIKA BALLOU, Deputy Public Defender
22 455-5112

23 BY: /s/ C. Cintola
24 C. Cintola
25 Employee of the District Attorney's Office
26

27 cc/L3
28


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #011390
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-

WILBURT HICKMAN,
aka William Hicks, #0905481

Defendant.

CASE NO: C278699

DEPT NO: V

AMENDED SECOND SUPPLEMENTAL NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: WILBURT HICKMAN, aka William Hicks, Defendant; and

TO: MITCHELL POSIN, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

ROBERT GOFF, DR. - A medical doctor employed by North Vista Hospital. He is
an expert in the area of general treatment of trauma victims and will give medical opinions
as to his diagnosis and treatment of Anyla Hoye.

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1
2 The substance of each expert witness' testimony and a copy of all reports made by or
3 at the direction of the expert witness has been provided in discovery.

4 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8
9 BY /s/ Christopher S. Hamner
10 CHRISTOPHER S. HAMNER
11 Deputy District Attorney
12 Nevada Bar #011390

13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of Amended Second Supplemental Notice of Expert
15 Witnesses, was made this 21st day of June, 2013, by facsimile transmission to:

16 MITCHELL POSIN, ESQ.
17 382-7496

18
19 BY: /s/ C. Cintola
20 C. Cintola
21 Employee of the District Attorney's Office
22
23
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27 cc/L3
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CLERK OF THE COURT

NWEW1
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #011390
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-

WILBURT HICKMAN,
aka William Hicks, #0905481
Defendant.

CASE NO: C278699-1

DEPT NO: V

AMENDED THIRD SUPPLEMENTAL NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: WILBURT HICKMAN, aka William Hicks, Defendant; and

TO: MITCHELL POSIN, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
BARAGA, MARK	Basch Construction, 6226 Sandhill Rd., Las Vegas, NV
BROWN, MARK	Brown Delacy Claim Service 2235 E. Flamingo Rd. #201H, Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	North Vista Hospital
CORBIN, D.	LVMPD P#7941
GROVE, SAMIRA	Unknown

1 GOFF, ROBERT DR. North Vista Hospital
2 1409 E. Lake Mead Blvd., North Las Vegas, NV
3 HUTTON, CRAIG Antich Church, 3950 N. Las Vegas Blvd., Las Vegas, NV
4 MADDEN, KEVIN Antich Church, 3950 N. Las Vegas Blvd., Las Vegas, NV
5 RAFALOVICH, MARCO Clark County District Attorney's Office-Investigator
6 SEVERS, ERICA Antich Church, 3950 N. Las Vegas Blvd., Las Vegas, NV
7 SCHLEI, DON Basch Construction, 6226 Sandhill Rd., Las Vegas, NV

8
9 These witnesses are in addition to those witnesses endorsed on the Information and
10 any other witness for which a separate Notice has been filed.

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

14 BY /s/ Christopher S. Hamner
15 CHRISTOPHER S. HAMNER
16 Deputy District Attorney
17 Nevada Bar #011390

18 CERTIFICATE OF FACSIMILE TRANSMISSION

19 I hereby certify that service of Amended Third Supplemental Notice of Witnesses,
20 was made this 21st day of June, 2013, by facsimile transmission to:

21 MITCHELL POSIN, ESQ.
22 382-7496

23 BY: /s/ C. Cintola
24 C. Cintola
25 Employee of the District Attorney's Office
26

27 cc/L3
28


CLERK OF THE COURT

NWEW1
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #011390
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-

WILBURT HICKMAN,
aka William Hicks, #0905481

Defendant.

CASE NO: C278699-1

DEPT NO: V

FOURTH SUPPLEMENTAL NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: WILBURT HICKMAN, aka William Hicks, Defendant; and

TO: MITCHELL POSIN, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

NAME

ADDRESS

DELUCCA, GERRI

C.C.R. #82, Offical Court Reporter

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1
2 These witnesses are in addition to those witnesses endorsed on the Information and
3 any other witness for which a separate Notice has been filed.

4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001565

7 BY /s/ CHRISTOPHER S. HAMNER
8 CHRISTOPHER S. HAMNER
9 Deputy District Attorney
Nevada Bar #011390

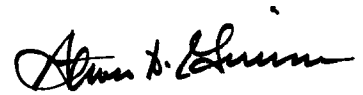
10 CERTIFICATE OF FACSIMILE TRANSMISSION

11 I hereby certify that service of Fourth Supplemental Notice of Witnesses, was made
12 this 23rd day of August, 2013, by facsimile transmission to:

13 MITCHELL POSIN, ESQ.
14 382-7496

15
16
17 BY: /s/ C. Cintola
18 C. Cintola
Employee of the District Attorney's Office
19
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28 cc/L3



CLERK OF THE COURT

NOTC

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #011390
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-

WILBURT HICKMAN,
aka William Hicks, #0905481

Defendant.

CASE NO: C-12-278699-1
DEPT NO: V

NOTICE OF HABITUAL CRIMINALITY

COMES NOW, the STATE OF NEVADA, through STEVEN B. WOLFSON, District Attorney, by and through CHRISTOPHER S. HAMNER, Deputy District Attorney, and hereby places Defendant WILBURT HICKMAN, aka William Hicks on notice of the State's intent to enhance the Defendant's punishment pursuant to the provisions of NRS 207.010 in the event of conviction of some or all of the counts charged in the Information. This notice is filed pursuant to the provisions of NRS 207.010 and 173.095.

DATED this 23rd day of August, 2013.

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

BY /s/ CHRISTOPHER S. HAMNER
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #011390

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Notice Of Habitual Criminality, was made this 23rd day of August, 2013, by facsimile transmission to:

MITCHELL POSIN, ESQ.
382-7496

BY: /s/ C. Cintola
C. Cintola
Employee of the District Attorney's Office

cc/L3


CLERK OF THE COURT

INFO
STEVEN B. WOLFSON
District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #0011390
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-

WILBURT HICKMAN, aka
William Hicks, #0905481

Defendant.

Case No: C-12-278699-1

Dept No: V

SECOND AMENDED
INFORMATION

STATE OF NEVADA)
COUNTY OF CLARK) ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That WILBURT HICKMAN, aka William Hicks, the Defendant(s) above named, having committed the crimes of **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481.2e); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471) and BURGLARY (Category B Felony - NRS 205.060)**, on or about the 18th day of December, 2011, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases

made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANNEESAH FRANKLIN, a human being, by striking the said ANNEESAH FRANKLIN with a deadly weapon, to-wit: a Cadillac.

COUNT 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANYLA HOYE, a human being, by striking the said ANYLA HOYE with a deadly weapon, to-wit: a Cadillac.

COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ALLEN BURSE, a human being, by driving a Cadillac at or in the direction of the said ALLEN BURSE with a deadly weapon, to-wit: a Cadillac.

COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill WASHINGTON THOMPSON, a human being, by driving a Cadillac at or in the direction of the said WASHINGTON THOMPSON, being inside and/or in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

COUNT 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill MARQUETTE JENKINS, a human being, by driving a Cadillac at or in the direction of the said MARQUETTE JENKINS, being inside and/or in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

COUNT 6 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill RAHMEKA ADAMS, a human being, by driving a Cadillac at or in the direction of the said RAHMEKA ADAMS, being inside and/or in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

1 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

2 did then and there, without authority of law, and malice aforethought, willfully and
3 feloniously attempt to kill SHARON POWELL, a human being, by driving a Cadillac at or
4 in the direction of the said SHARON POWELL, being inside and/or in front of the said
5 ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

6 COUNT 8 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

7 did then and there, without authority of law, and malice aforethought, willfully and
8 feloniously attempt to kill TIFFANY TRASS, a human being, by driving a Cadillac at or in
9 the direction of the said TIFFANY TRASS, being inside and/or in front of the said
10 ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

11 COUNT 9 - BATTERY WITH USE OF A DEADLY WEAPON

12 did then and there wilfully, unlawfully, and feloniously use force or violence upon
13 the person of another, to-wit: ANNEESAH FRANKLIN, with use of a deadly weapon, to-
14 wit: a Cadillac, by driving said Cadillac at an occupied building, striking the said
15 ANNEESAH FRANKLIN.

16 COUNT 10 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
17 SUBSTANTIAL BODILY HARM

18 did then and there wilfully, unlawfully and feloniously use force or violence upon the
19 person of another, to-wit: ANYLA HOYE, age nine (9) years old, with use of a deadly
20 weapon, to-wit: a Cadillac, by driving said Cadillac through the entrance of the said
21 ANTIOCH CHURCH, resulting in substantial bodily harm to the said ANYLA HOYE.

22 COUNT 11 - ASSAULT WITH A DEADLY WEAPON

23 did then and there wilfully, unlawfully, feloniously and intentionally place another
24 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
25 to use physical force against another person, to-wit: ALLEN BURSE, with use of a deadly
26 weapon, to-wit: a Cadillac, by driving said Cadillac at the said ALLEN BURSE in an
27 attempt to strike him.

28 ///

1 COUNT 12 - ASSAULT WITH A DEADLY WEAPON

2 did then and there wilfully, unlawfully, feloniously and intentionally place another
3 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
4 to use physical force against another person, to-wit: WASHINGTON THOMPSON, with
5 use of a deadly weapon, to-wit: a Cadillac, by the said WASHINGTON THOMPSON,
6 being inside or in front of a church, having to move to the side to avoid Defendant, who
7 drove said Cadillac at the said WASHINGTON THOMPSON.

8 COUNT 13 - ASSAULT WITH A DEADLY WEAPON

9 did then and there wilfully, unlawfully, feloniously and intentionally place another
10 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
11 to use physical force against another person, to-wit: MARQUETTE JENKINS, with use of a
12 deadly weapon, to-wit: a Cadillac, by the said MARQUETTE JENKINS, being inside or in
13 front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at
14 the said MARQUETTE JENKINS.

15 COUNT 14 - ASSAULT WITH A DEADLY WEAPON

16 did then and there wilfully, unlawfully, feloniously and intentionally place another
17 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
18 to use physical force against another person, to-wit: RAHMEKA ADAMS, with use of a
19 deadly weapon, to-wit: a Cadillac, by the said RAHMEKA ADAMS, being inside or in
20 front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at
21 the said RAHMEKA ADAMS.

22 COUNT 15 - ASSAULT WITH A DEADLY WEAPON

23 did then and there wilfully, unlawfully and feloniously attempt to use physical force
24 against another person, to-wit: SHARON POWELL, with use of a deadly weapon, to-wit: a
25 Cadillac, by the said SHARON POWELL, being inside or in front of a church, having to
26 move to the side to avoid Defendant, who drove said Cadillac at the said SHARON
27 POWELL.

28 ///

COUNT 16 - ASSAULT WITH A DEADLY WEAPON

did then and there wilfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt to use physical force against another person, to-wit: TIFFANY TRASS, with use of a deadly weapon, to-wit: a Cadillac, by the said TIFFANY TRASS, being inside or in front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at the said TIFFANY TRASS.

COUNT 17 - BURGLARY

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit a felony, to-wit: Attempt Murder and/or Battery and/or Assault, that certain building occupied by ANTIOCH CHURCH, located at 3950 North Las Vegas Boulevard, Las Vegas, Clark County, Nevada.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar #001565

BY /s/ Christopher S. Hamner
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #0011390

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
ADAMS, Rahmeka	3950 N. Las Vegas Blvd., Las Vegas, NV
BURSE, Allen	ANTIOCH CHURCH 3950 N. Las Vegas Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	C.C. DETENTION CENTER RECORDS
CUSTODIAN OF RECORDS OR DESIGNEE	L.V. METROPOLITAN POLICE DEPT DISPATCH
CUSTODIAN OF RECORDS	L.V. METROPOLITAN POLICE DEPT

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OR DESIGNEE
FRANKLIN, Anneesah
GREEN, Darren
HOYE, Anyla
JENKINS, Marquette
POWELL, Sharon
THOMPSON, Washington
TRASS, Tiffany

RECORDS
2049 Jesse Scott St., Las Vegas, NV
LVMPD #6881
2049 Jesse Scott St., Las Vegas, NV
5370 E. Craig Rd #2187, Las Vegas, NV
3861 Autzen Statium Wy, Las Vegas, NV
ANTIOCH CHURCH
3950 N. Las Vegas Blvd., Las Vegas, NV
4540 S. Maryland Pkwy, Las Vegas, NV

DA#11F21695X/ckb
LVMPD EV#1112181478
(TK12)

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JURL

SEP - 3 2013

DISTRICT COURT
CLARK COUNTY, NEVADA

BY *Denise Trujillo*
DENISE TRUJILLO, DEPUTY

State of Nevada

CASE NO. : C-12-278699-1

vs

Wilburt Hickman

DEPT. NO.: Department 5

JURY LIST

1 Alford William	7. Debra Power
2. Ivis Kam-Pamintuan	8. Robert Soncini
3. Dorinda James	9. Ingrid Fitzgerald
4. Terrence Koepke	10. William Capron
5. Heather Lawson	11. Phoebe Cooper
6. Katherine Schwendemann	12. Katarina Tadich

ALTERNATES

1. Brittany Hayes	2. Mitchell Ebert

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP - 6 2013

BY: Andrea Davis
ANDREA DAVIS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA
VS
WILBURT HICKMAN

CASE NO.: C-12-278699-1

DEPARTMENT 5

DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 6th day of September, 2013.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: Andrea Davis
Andrea Davis, Deputy Clerk of the Court

JURY INSTRUCTION NO. 12

If the jury believes from the evidence that the condition of the defendant, from intoxication ~~or otherwise~~, was such to show that there was no *specific intention* to cause the death of an individual, they cannot find the defendant guilty of attempted murder.¹²

~~will offer but not
give~~

Defense proposed but not given.

Carol Ellworth

¹² NRS 193.220 When voluntary intoxication may be considered.

JURY INSTRUCTION NO. 13

In order to convict the defendant of attempted murder, the jury must find either that the defendant was in control of his mental faculties and entertained an intent to kill when the crime occurred, or that he had formed this intent before he lost control of his faculties, mere intent to harm or intimidate is not sufficient to warrant a guilty verdict for attempted murder.¹³ "Nothing less than a criminal intent to kill must be shown."¹⁴

~~Will offer but not be given~~
will

Defense proposed but not given.

Cecily Elsworth

¹³ *Ford v. State*, 102 Nev. 136 (1986).

¹⁴ *Keys v. State*, 104 Nev. 739 (1988).

1 INST

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP - 9 2013

BY, Andrea M. Davis
ANDREA DAVIS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 WILBURT HICKMAN, aka
12 William Hicks, #2888968)

Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 18th day of December, 2011, the Defendant committed the offenses of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481.2e); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471) and BURGLARY (Category B Felony - NRS 205.060), within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANNEESAH FRANKLIN, a human being, by striking the said ANNEESAH FRANKLIN with a deadly weapon, to-wit: a Cadillac.

COUNT 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANYLA HOYE, a human being, by striking the said ANYLA HOYE with a deadly weapon, to-wit: a Cadillac.

COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ALLEN BURSE, a human being, by driving a Cadillac at or in the direction of the said ALLEN BURSE with a deadly weapon, to-wit: a Cadillac.

COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill WASHINGTON THOMPSON, a human being, by driving a

1 Cadillac at or in the direction of the said WASHINGTON THOMPSON, being inside and/or
2 in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

3 COUNT 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

4 did then and there, without authority of law, and malice aforethought, willfully and
5 feloniously attempt to kill MARQUETTA JENKINS, a human being, by driving a Cadillac
6 at or in the direction of the said MARQUETTA JENKINS, being inside and/or in front of the
7 said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

8 COUNT 6 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

9 did then and there, without authority of law, and malice aforethought, willfully and
10 feloniously attempt to kill RAHMEKA ADAMS, a human being, by driving a Cadillac at or
11 in the direction of the said RAHMEKA ADAMS, being inside and/or in front of the said
12 ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

13 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

14 did then and there, without authority of law, and malice aforethought, willfully and
15 feloniously attempt to kill SHARON POWELL, a human being, by driving a Cadillac at or
16 in the direction of the said SHARON POWELL, being inside and/or in front of the said
17 ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

18 COUNT 8 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

19 did then and there, without authority of law, and malice aforethought, willfully and
20 feloniously attempt to kill TIFFANY TRASS, a human being, by driving a Cadillac at or in
21 the direction of the said TIFFANY TRASS, being inside and/or in front of the said
22 ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

23 COUNT 9 - BATTERY WITH USE OF A DEADLY WEAPON

24 did then and there wilfully, unlawfully, and feloniously use force or violence upon
25 the person of another, to-wit: ANNEESAH FRANKLIN, with use of a deadly weapon, to-
26 wit: a Cadillac, by driving said Cadillac at an occupied building, striking the said
27 ANNEESAH FRANKLIN.

1 COUNT 10 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
2 SUBSTANTIAL BODILY HARM

3 did then and there wilfully, unlawfully and feloniously use force or violence upon the
4 person of another, to-wit: ANYLA HOYE, age nine (9) years old, with use of a deadly
5 weapon, to-wit: a Cadillac, by driving said Cadillac through the entrance of the said
6 ANTIOCH CHURCH, resulting in substantial bodily harm to the said ANYLA HOYE.

7 COUNT 11 - ASSAULT WITH A DEADLY WEAPON

8 did then and there wilfully, unlawfully, feloniously and intentionally place another
9 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
10 to use physical force against another person, to-wit: ALLEN BURSE, with use of a deadly
11 weapon, to-wit: a Cadillac, by driving said Cadillac at the said ALLEN BURSE in an
12 attempt to strike him.

13 COUNT 12 - ASSAULT WITH A DEADLY WEAPON

14 did then and there wilfully, unlawfully, feloniously and intentionally place another
15 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
16 to use physical force against another person, to-wit: WASHINGTON THOMPSON, with
17 use of a deadly weapon, to-wit: a Cadillac, by the said WASHINGTON THOMPSON,
18 being inside or in front of a church, having to move to the side to avoid Defendant, who
19 drove said Cadillac at the said WASHINGTON THOMPSON.

20 COUNT 13 - ASSAULT WITH A DEADLY WEAPON

21 did then and there wilfully, unlawfully, feloniously and intentionally place another
22 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
23 to use physical force against another person, to-wit: MARQUETTA JENKINS, with use of
24 a deadly weapon, to-wit: a Cadillac, by the said MARQUETTA JENKINS, being inside or
25 in front of a church, having to move to the side to avoid Defendant, who drove said Cadillac
26 at the said MARQUETTA JENKINS.

1 COUNT 14 - ASSAULT WITH A DEADLY WEAPON

2 did then and there wilfully, unlawfully, feloniously and intentionally place another
3 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
4 to use physical force against another person, to-wit: RAHMEKA ADAMS, with use of a
5 deadly weapon, to-wit: a Cadillac, by the said RAHMEKA ADAMS, being inside or in
6 front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at
7 the said RAHMEKA ADAMS.

8 COUNT 15 - ASSAULT WITH A DEADLY WEAPON

9 did then and there wilfully, unlawfully and feloniously attempt to use physical force
10 against another person, to-wit: SHARON POWELL, with use of a deadly weapon, to-wit: a
11 Cadillac, by the said SHARON POWELL, being inside or in front of a church, having to
12 move to the side to avoid Defendant, who drove said Cadillac at the said SHARON
13 POWELL.

14 COUNT 16 - ASSAULT WITH A DEADLY WEAPON

15 did then and there wilfully, unlawfully, feloniously and intentionally place another
16 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
17 to use physical force against another person, to-wit: TIFFANY TRASS, with use of a deadly
18 weapon, to-wit: a Cadillac, by the said TIFFANY TRASS, being inside or in front of a
19 church, having to move to the side to avoid Defendant, who drove said Cadillac at the said
20 TIFFANY TRASS.

21 COUNT 17 - BURGLARY

22 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit a
23 felony, to-wit: Attempt Murder and/or Battery and/or Assault, that certain building occupied
24 by ANTIOCH CHURCH, located at 3950 North Las Vegas Boulevard, Las Vegas, Clark
25 County, Nevada.

26 It is the duty of the jury to apply the rules of law contained in these instructions to the
27 facts of the case and determine whether or not the Defendant is guilty of one or more of the
28 offenses charged.

1 Each charge and the evidence pertaining to it should be considered separately. The
2 fact that you may find the Defendant guilty or not guilty as to one of the offenses charged
3 should not control your verdict as to any other offenses charged.
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INSTRUCTION NO. 4

Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate and specific intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove attempted murder.

INSTRUCTION NO. 5

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

INSTRUCTION NO. 6

If an illegal yet unintended act results from the intent to commit a crime, that act is also considered illegal. Under the doctrine of "transferred intent", original malice is transferred from one against whom it was entertained to the person who actually suffers the consequences of the unlawful act. For example, if a person intentionally directs force against one person wrongfully but, instead, hits another, his intent is said to be transferred from one to the other though he did not intend it in the first instance.

INSTRUCTION NO. 7

During an attack upon a group, the intent to kill does not need to be directed at one particular individual to find the defendant guilty of attempted murder, however, the jury must still determine beyond a reasonable doubt that the defendant had the specific intent to kill someone in the group. Mere intent to harm or intimidate is not sufficient to warrant a guilty verdict.

You are instructed that if you find a defendant guilty of Attempt Murder you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means:

- (a) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or
- (b) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

Battery is the intentional and unwanted exertion of force or violence upon another, however slight.

A Battery With Use of a Deadly Weapon is any willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon.

If substantial bodily harm results to the victim of a battery, the crime committed is Battery Resulting in Substantial Bodily Harm.

If a Battery is committed with the use of a deadly weapon and it results in substantial bodily harm, then the crime is Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

Battery is the intentional and unwanted exertion of force or violence upon another, however slight.

As used in these instructions, "substantial bodily harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
2. Prolonged physical pain.

INSTRUCTION NO. 12

An Assault is unlawfully attempting to use physical force against another person, or intentionally placing another person in reasonable apprehension of immediate bodily harm.

To constitute an assault, it is not necessary that any actual injury be inflicted.

INSTRUCTION NO. 13

You are instructed that if you find a defendant guilty of Assault, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a defendant committed Assault With the Use of a Deadly Weapon, then you are instructed that the verdict of Assault With the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Assault, but you do find that an Assault was committed, then you are instructed that the verdict of Assault is the appropriate verdict.

You are instructed that you cannot return a verdict of both Assault With the Use of a Deadly Weapon and Assault.

INSTRUCTION NO. 15

Every person who, by day or night, enters any building or structure, with the intent to commit a assault and/or battery and/or a felony therein is guilty of Burglary.

In Nevada, the crime of Attempt Murder is a felony.

INSTRUCTION NO. 16

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular intent is a necessary element to constitute a particular crime, the fact of his intoxication may be taken into consideration in determining such intent.

INSTRUCTION NO. 17

If the jury finds that the defendant, at the time of the crime, had, by drinking intoxicating liquors, made himself incapable mentally of entertaining the specific intent to kill, then he is not guilty of attempted murder. However if the defendant had the capacity to form the intent to kill, and conceives and acts upon such intent, it is not a defense to the crime of attempted murder that he was intoxicated.

INSTRUCTION NO. 18

Battery is a general intent crime. Therefore, any claim, or evidence of drinking alcohol or voluntary intoxication by the defendant is no defense to a charge of Battery.

When a person is accused of committing a particular crime and at the same time and by the same conduct may have committed another offense of lesser grade or degree, the latter is with respect to the former, a lesser included offense.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however, be found guilty of any lesser included offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The offense of Battery With a Deadly Weapon Resulting in Substantial Bodily Harm, necessarily includes the lesser offenses of Battery With a Deadly Weapon and/or Battery Resulting in Substantial Bodily Harm and/or Battery.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 21

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 22

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the Defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 24

The credibility or believability of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 25

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 26

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

ORIGINAL

3:34 PM

VER

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT

SEP - 9 2013

CLARK COUNTY, NEVADA

BY, Andrea H. Davis
ANDREA DAVIS, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILBURT HICKMAN, aka
William Hicks, #0905481

Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

VERDICT

We, the jury in the above entitled case, find the Defendant WILBURT HICKMAN, as follows:

COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(ANNEESAH FRANKLIN)

(please check the appropriate box, select only one)

- ☐ Guilty of Attempt Murder With Use of a Deadly Weapon
☐ Guilty of Attempt Murder
☐ Not Guilty

COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(ANYLA HOYE)

(please check the appropriate box, select only one)

- ☐ Guilty of Attempt Murder With Use of a Deadly Weapon
☐ Guilty of Attempt Murder
☐ Not Guilty

COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(ALLEN BURSE)

(please check the appropriate box, select only one)

- ☐ Guilty of Attempt Murder With Use of a Deadly Weapon
☐ Guilty of Attempt Murder
☐ Not Guilty

COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(WASHINGTON THOMPSON)

(please check the appropriate box, select only one)

- ☐ Guilty of Attempt Murder With Use of a Deadly Weapon
☐ Guilty of Attempt Murder
☐ Not Guilty

COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(MARQUETTA JENKINS)

(please check the appropriate box, select only one)

- ☐ Guilty of Attempt Murder With Use of a Deadly Weapon
☐ Guilty of Attempt Murder
☐ Not Guilty

COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(RAHMEKA ADAMS)

(please check the appropriate box, select only one)

- ☐ Guilty of Attempt Murder With Use of a Deadly Weapon
☐ Guilty of Attempt Murder
☐ Not Guilty

COUNT 7 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(SHARON POWELL)

(please check the appropriate box, select only one)

- ☐ Guilty of Attempt Murder With Use of a Deadly Weapon
☐ Guilty of Attempt Murder
☐ Not Guilty

1 **COUNT 8** - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
2 (TIFFANY TRASS)

3 *(please check the appropriate box, select only one)*

- 4 ☐ Guilty of Attempt Murder With Use of a Deadly Weapon
5 ☐ Guilty of Attempt Murder
6 ☐ Not Guilty

7 **COUNT 9** - BATTERY WITH USE OF A DEADLY WEAPON
8 (ANNEESAH FRANKLIN)

9 *(please check the appropriate box, select only one)*

- 10 ☒ Guilty of Battery With Use of a Deadly Weapon
11 ☐ Guilty of Battery
12 ☐ Not Guilty

13 **COUNT 10** - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
14 SUBSTANTIAL BODILY HARM
(ANYLA HOYE)

15 *(please check the appropriate box, select only one)*

- 16 ☒ Guilty of Battery With Use of a Deadly Weapon Resulting in Substantial
17 Bodily Harm
18 ☐ Guilty of Battery With Use of a Deadly Weapon
19 ☐ Guilty of Battery Resulting in Substantial Bodily Harm
20 ☐ Guilty of Battery
21 ☐ Not Guilty

22 **COUNT 11** - ASSAULT WITH A DEADLY WEAPON
23 (ALLEN BURSE)

24 *(please check the appropriate box, select only one)*

- 25 ☒ Guilty of Assault With Use of a Deadly Weapon
26 ☐ Guilty of Assault
27 ☐ Not Guilty
28

COUNT 12 – ASSAULT WITH A DEADLY WEAPON
(WASHINGTON THOMPSON)

(please check the appropriate box, select only one)

- ☒ Guilty of Assault With Use of a Deadly Weapon
☐ Guilty of Assault
☐ Not Guilty

COUNT 13 – ASSAULT WITH A DEADLY WEAPON
(MARQUETTA JENKINS)

(please check the appropriate box, select only one)

- ☒ Guilty of Assault With Use of a Deadly Weapon
☐ Guilty of Assault
☐ Not Guilty

COUNT 14 – ASSAULT WITH A DEADLY WEAPON
(RAHMEKA ADAMS)

(please check the appropriate box, select only one)

- ☒ Guilty of Assault With Use of a Deadly Weapon
☐ Guilty of Assault
☐ Not Guilty

COUNT 15 – ASSAULT WITH A DEADLY WEAPON
(SHARON POWELL)

(please check the appropriate box, select only one)

- ☒ Guilty of Assault With Use of a Deadly Weapon
☐ Guilty of Assault
☐ Not Guilty

COUNT 16 – ASSAULT WITH A DEADLY WEAPON
(TIFFANY TRASS)

(please check the appropriate box, select only one)

- ☒ Guilty of Assault With Use of a Deadly Weapon
☐ Guilty of Assault
☐ Not Guilty

1 **COUNT 17 – BURGLARY**

2 *(please check the appropriate box, select only one)*

3 ☒ Guilty of Burglary

4 ☐ Not Guilty

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6
7 DATED this 9th day of September, 2013.

8 
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FOREPERSON

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JURL

SEP - 9 2013

DISTRICT COURT

BY,

Andrea Davis

ANDREA DAVIS, DEPUTY

CLARK COUNTY, NEVADA

State of Nevada

CASE NO. : C-12-278699-1

vs

Wilburt Hickman

DEPT. NO.: Department 5

AMENDED JURY LIST

1 William Alford	7. Debra Power
2. Ivis Kam-Pamintuan	8. Robert Soncini
3. Dorinda James	9. Ingrid Fitzgerald
4. Terrance Koepke	10. William Capron
5. Heather Lawson	11. Phoebe Cooper
6. Kathryn Schwendemann	12. Katarina Tadich

ALTERNATES

1. Brittany Hayes	2. Mitchell Ebert

OCT 07 2013

24

MC
DA
AOR
PP

Motion
Wilburt Hickman Jr.
330 S. Casino Center
Las Vegas, NV 89101

DISTRICT COURT
CLARK COUNTY, NEVADA

C-12-278699-1

Electronically Filed
10/11/2013 10:48:45 AM

STATE OF NEVADA

Plaintiff,

vs.

Wilburt Hickman Jr.
905481
Defendant

Case No.:

Dept. No.:

Docket No.:

Date:
Time:

~~C-12-278699-1~~
~~11-1-13~~
~~9:00am~~

5

CLERK OF THE COURT

11-4-13
9:00am

Notice of Motion AND Motion for Ineffective
ASSISTANCE of Counsel AND Motion for New Trial

Comes Now, Wilburt Hickman Jr. the defendant, by and through, himself (Pro Se) to respectfully request that Your Honorable Court, that my Conviction be Set aside due to INEFFECTIVE ASSISTANCE OF Counsel, STRICKLAND vs Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Also, the defendant, humbly request that Your Honor appoint independent Counsel for the defendant and allow Mitchell Posin, ESQ., Withdraw as Counsel of Record.

CLERK OF THE COURT

OCT 14 2013

RECEIVED

This motion is made and based on all the papers and Pleadings ON file herein, the Attached Points AND Authorities in Support hereof, AND ORAL Arguement at the time of hearing, if deemed necessary by this Honorable Court.

Dated this 1st day of October, 2013.

Points of Authorities fact

ON September 10th 2013, I Wilburt Hickman^{Jr} the (defendant) Was Convicted in District Court, department 5. Immediately after the reading of the verdict (guilty), I asked my Counsel (Posin) to file a motion for a New Trial. He assured me that he would start the motion as soon as possible and that we had 30 Calendar days to Submit the motion for Consideration by Your Honorable Court. I learned that my Counsel had misrepresented the facts about how many days we had to file a "motion for a trial" (emphasis added). Ever Since I retained my Counsel Service, I have been denied my Constitutional right to "effective Representation" due wholly to the inadequate and deficient actions of my Counsel (emphasis added).

Counsel's innate and detrimental actions Comports to nothing more than a blatant violation of the defendant's due Process rights. I have been unduly prejudiced and Suffered manifest injustice because of my Counsel's refusal or failure to:

1. Communicate (visits, calls) or Respond to Correspondence
2. Provide me with any Discovery (Brady material), ever after being asked multiple times about Specific discovery material
3. File any motions (pretrial motions or a motion Period)
4. Have an investigator Perform any investigative duties Pertaining to my Case. Even after I asked him to (emphasis added)
5. Provide me with a copy of my Preliminary hearing transcript
6. Provide me with any reports from expert witnesses
7. allow me the Opportunity to listen to all the audible recordings (911 calls, witnesses interviews, etc.) in regards to my Case
8. Attempt to tender a Plea agreement on my behalf
9. File a motion for a new trial before the expiration of the 7 day deadline
10. inform me of the Contents (gist) of the numerous Sidebar discussions and chamber meeting between the State, my Counsel, and the Judge.
11. Object to any of the Prosecutorial misconduct during trial
12. File a motion to Compel discovery
13. Discuss any Possible defenses or Pertinent matters about my Case or trial Strategies.
14. Use due diligence to prepare for trial and was obviously deficient as a Lawyer for Relying Solely on the Prosecutor's files for trial

1
2 15. Sufficiently inquiry into toxicology reports, medical
3 reports and records, impeachment evidence on any and
4 all State witnesses, witnesses Criminal histories and
5 any potential incentives provide to any State witness
6 to testify against me, Officer's Disciplinary and Mis-
7 Conduct records

8 16. Admit into evidence reports, bills, documents, and
9 receipts, which could have proving my innocence.

10 17. Discuss anything about my case when he did visit and
11 those few times that he did visit it was only to Complain
12 that he was retained to negotiate a deal and that
13 the \$1,500.00 he was paid was not enough to go to trial
14 as Counsel of Record (emphasis added)

15 The following issues are based on my belief:

16 1. Counsel did not have reports and files that he
17 needed to prepare for trial, Counsel even had to
18 get transcripts from the Sister

19 2. Allowed State witnesses to commit Perjury

20
21 A defendant has a unqualified right to legal
22 assistance that expresses loyalty to his client. Counsel
23 for the defendant has done nothing to properly represent
24 me since the day, his services were retained by me and even
25 after I was found guilty. This alone is a viable and suitable

1
2 claim for ineffective assistance of counsel.

3 Candel vs Burnell, No. 92-5530 D.C. No. CV-90-6419-
4 WJR: filed May 25th, 1994 (9th Cir.)

5 Counsel has failed to provide a level of effective legal
6 representation that is entitled to me through and by
7 the 6th amendment of the Constitution of the United
8 States of America (emphasis added).
9

10 Therefore, the defendant contends that although counsel was
11 retained in this case, the actions of counsel, of lack, thereof,
12 has created unfair prejudice and obstacles which do not
13 comport with fair and reasonable representation that is
14 duly owed to the defendant.

15 Notwithstanding the strong policy favoring autonomy
16 "ethical Profession and Constitutional Principles", establishes
17 counsel's standards owed to his or her client. See
18 American Bar Association (ABA) and Professional Respons-
19 ibility Code (CPR).

20 Not only is there a conflict between counsel and client,
21 counsel has been ineffective since the moment he was retained
22 (emphasis added). All faith and trust has been diminished
23 as a result of counsel's ineffectiveness and his action or
24 lack thereof, and a "showing" of conflict of interest requires
25 no showing of prejudice. The effectiveness in assistance of
26 counsel is an individual most ³⁰⁶dearest and fundamental right,

1 For without it, every other right the defendant
2 has to assert becomes affected (emphasis added).
3 The defendant prays that this Honorable grants
4 this motion. The defendant has no other recourse
5 to address his Counsel's ineffectiveness but to
6 Submit this motion to your Honorable Court.
7
8

9 ...

10 ...

11 ...

12 ...

13 ...

14 ...

15 ...

16 DATED THIS 1st day of October, 2013.

17 I, Wilburt Hickmans JR., do

18 solemnly swear, under the penalty of perjury, that

19 the above information and facts is accurate,

20 correct, and true to the best of my knowledge.

21 NRS 171.102 and NRS 208.165.

22 Wilburt Hickman Jr. Respectfully submitted,
23 William Hicks Wilburt Hickman Jr.
24 William Hicks
25 # 905481

Defendant

Wilbur Hickman Jr. #405481
330⁵⁰ Casino Center Blvd.
LV, NV. 89101



The Honorable Judge Carolyn
Eilsworth

200 E. Lewis Ave.
LV, NV. 89155

Department #1

Clerk
of
Court

11/11/94 11:11 AM

24

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

STATE OF NEVADA
VS
WILBURT HICKMAN

CASE NO: C-12-278699-1

Department 5

NOTICE OF CHANGE OF HEARING

The hearing on Notice of Motion and Motion for Ineffective Assistance of Counsel and Motion for New Trial, presently set for November 1st, 2013, at 9:00 AM, has been moved to the, 4th day of November, 2013 at 9:00 AM and will be heard by Judge Carolyn Ellsworth.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Salevao Asifoa
S.L. Asifoa, Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2013:

☒ I mailed, via first-class mail, postage fully prepaid the foregoing Notice of Change of Hearing to:

Wilburt Hickman, Jr. #905481

330 S. Casino Center Blvd.

Las Vegas, Nevada 89101

☒ I placed a copy of the foregoing Notice of Change of Hearing in the appropriate attorney folder located in the Clerk of the Court's Office:

Mitchell L. Posin – Posin, Chtd.

Steven B. Wolfson

/s/ Salevao Asifoa
S.L. Asifoa, Deputy Clerk of the Court

OCT 07 2013

24

MC
DA
AOR
PP

Motion
Wilburt Hickman Jr.
330 S. Casino Center
Las Vegas, NV 89101

DISTRICT COURT
CLARK COUNTY, NEVADA

C-12-278699-1

Electronically Filed
10/11/2013 10:48:45 AM

STATE OF NEVADA

) Case No.:

~~C-12-278699-1~~ *Alvin D. Blum*

Plaintiff,

) Dept. No.:

5

CLERK OF THE COURT

vs.

) Docket No.:

Wilburt Hickman Jr.
905481
Defendant

Date: ~~11-1-13~~
Time: ~~9:00am~~

11-4-13
9:00am

Notice of Motion AND Motion for Ineffective
ASSISTANCE of Counsel AND Motion for New Trial

Comes Now, Wilburt Hickman Jr. the defendant, by and
through, himself (Pro Se) to respectfully request that
Your Honorable Court, that my Conviction be
Set aside due to INEFFECTIVE ASSISTANCE OF
Counsel, STRICKLAND vs Washington, 466 U.S.
668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
• Also, the defendant, humbly request that Your
Honor appoint independent Counsel for the defend-
ant and allow Mitchell Posin, ESQ., Withdraw as
Counsel of Record.

CLERK OF THE COURT

RECEIVED
OCT 14 2013

2 This motion is made and based on all the papers and Pleadings
3 ON file herein, the Attached Points AND Authorities in Support
4 hereof, AND ORAL Arguement at the time of hearing, if deemed
5 necessary by this Honorable Court.

6 Dated this 1st day of October, 2013.

7
8 Points of Authorities
9 fact
10

11 ON September 10th 2013, I Wilburt Hickman^{Jr.} the (defendant)
12 Was Convicted in District Court, department 5. Immediately
13 after the reading of the verdict (guilty), I asked my
14 Counsel (Posin) to file a motion for a New Trial. He assured
15 me that he would start the motion as soon as possible and that
16 we had 30 Calendar days to Submit the motion for
17 Consideration by Your Honorable Court. I learned that my
18 Counsel had misrepresented the facts about how many days we had
19 to file a "motion for a trial" (emphasis added). Ever Since I
20 retained my Counsel Service, I have been denied my Constitutional
21 right to "effective Representation" due wholly to the inadequate
22 and deficient actions of my Counsel (emphasis added).

23 Counsel's innate and detrimental actions Comports to
24 nothing more than a blatant violation of the defendant's
25 due Process rights. I have been unduly prejudiced and Suffered
26 manifest injustice because of my Counsel's refusal or failure to:
27 ...

1. Communicate (visits, calls) or Respond to Correspondence
2. Provide me with any Discovery (Brady material), ever after being asked multiple times about Specific discovery material
3. File any motions (pretrial motions or a motion Period)
4. Have an investigator Perform any investigative duties Pertaining to my Case. Even after I asked him to (emphasis added)
5. Provide me with a copy of my Preliminary hearing transcript
6. Provide me with any reports from expert witnesses
7. allow me the Opportunity to listen to all the audible recordings (911 calls, witnesses interviews, etc.) in regards to my Case
8. Attempt to tender a Plea agreement on my behalf
9. File a motion for a new trial before the expiration of the 7 day deadline
10. inform me of the Contents (gist) of the numerous Sidebar discussions and chamber meeting between the State, my Counsel, and the Judge.
11. Object to any of the Prosecutorial misconduct during trial
12. File a motion to Compel discovery
13. Discuss any Possible defenses or Pertinent matters about my Case or trial Strategies.
14. Use due diligence to prepare for trial and was obviously deficient as a Lawyer for Relying Solely on the Prosecutor's files for trial

1
2 15. Sufficiently inquiry into toxicology reports, medical
3 reports and records, impeachment evidence on any and
4 all State witnesses, witnesses Criminal histories and
5 any potential incentives provide to any State witness
6 to testify against me, Officer's Disciplinary and Mis-
7 Conduct records

8 16. Admit into evidence reports, bills, documents, and
9 receipts, which could have proving my innocence.

10 17. Discuss anything about my case when he did visit and
11 those few times that he did visit it was only to Complain
12 that he was retained to negotiate a deal and that
13 the \$1,500.00 he was paid was not enough to go to trial
14 as Counsel of Record (emphasis added)

15 The following issues are based on my belief:

16 1. Counsel did not have reports and files that he
17 needed to prepare for trial, Counsel even had to
18 get transcripts from the Sister

19 2. Allowed State witnesses to commit Perjury

20
21 A defendant has a unqualified right to legal
22 assistance that expresses loyalty to his client. Counsel
23 for the defendant has done nothing to properly represent
24 me since the day, his services were retained by me and even
25 after I was found guilty. This alone is a viable and suitable

1
2 claim for ineffective assistance of counsel.

3 Candel vs Burnell, No. 92-5530 D.C. No. CV-90-6419-
4 WJR: filed May 25th, 1994 (9th Cir.)

5 Counsel has failed to provide a level of effective legal
6 representation that is entitled to me through and by
7 the 6th amendment of the Constitution of the United
8 States of America (emphasis added).

9
10 Therefore, the defendant contends that although counsel was
11 retained in this case, the actions of counsel, of lack, thereof,
12 has created unfair prejudice and obstacles which do not
13 comport with fair and reasonable representation that is
14 duly owed to the defendant.

15 Notwithstanding the strong policy favoring autonomy
16 "ethical Profession and Constitutional Principles", establishes
17 counsel's standards owed to his or her client. See
18 American Bar Association (ABA) and Professional Respons-
19 ibility Code (CPR).

20 Not only is there a conflict between counsel and client,
21 counsel has been ineffective since the moment he was retained
22 (emphasis added). All faith and trust has been diminished
23 as a result of counsel's ineffectiveness and his action or
24 lack thereof, and a "showing" of conflict of interest requires
25 no showing of prejudice. The effectiveness in assistance of
26 counsel is an individual most³¹⁴ precious and fundamental right,

1 For without it, every other right the defendant
2 has to assert becomes affected (emphasis added).
3 The defendant prays that this Honorable grants
4 this motion. The defendant has no other recourse
5 to address his Counsel's ineffectiveness but to
6 Submit this motion to your Honorable Court.
7
8

9 ...

10 ...

11 ...

12 ...

13 ...

14 ...

15 ...

16 DATED THIS 1st day of October, 2013.

17 I, Wilburt Hickmans JR., do

18 solemnly swear, under the penalty of perjury, that

19 the above information and facts is accurate,

20 correct, and true to the best of my knowledge.

21 NRS 171.102 and NRS 208.165.

22 Wilburt Hickman Jr
23 William Hicks

Respectfully submitted,

Wilburt Hickman Jr.
William Hicks
905481

Defendant

Wilbur T. Hickman Jr. # 405481
330⁵⁰ Casino Center Blvd.
LV, NV. 89101



The Honorable Judge Carolyn
Eilsworth

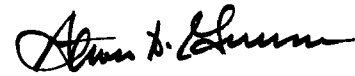
200 E. Lewis Ave.
LV, NV. 89155

Department #1

Clerk
of
Court

11/11/94 11:11 AM

24



CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565

5 CHRISTOPHER HAMNER
6 Deputy District Attorney
7 Nevada Bar #011390
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

CASE NO: C-12-278699-1

13 WILBURT HICKMAN, aka,
14 William Hicks,
15 #0905481

DEPT NO: V

16 Defendant.

17 **STATE'S OPPOSITION TO DEFENDANT'S NOTICE OF MOTION AND**
18 **MOTION FOR INEFFECTIVE ASSISTANCE OF COUNSEL AND**
19 **MOTION FOR NEW TRIAL**

20 DATE OF HEARING: November 4, 2013

21 TIME OF HEARING: 9:00 A.M.

22 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
23 District Attorney, through CHRISTOPHER HAMNER, Deputy District Attorney, and
24 hereby submits the attached Points and Authorities in Opposition to Defendant's Notice Of
25 Motion And Motion For Ineffective Assistance Of Counsel And Motion For New Trial.

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

///

///

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On December 20, 2011, a Criminal Complaint was filed against Wilburt Hickman
4 (hereinafter "Defendant") charging him with Counts 1 & 2 – Battery with Use of a Deadly
5 Weapon, Counts 3-8 Assault with a Deadly Weapon, Count 9 – Invasion of the Home and
6 Count 10 – Malicious Destruction of Property. On January 4, 2012, an Amended Criminal
7 Complaint was filed in open court charging Defendant with Counts 1-8 – Attempt Murder
8 with Use of a Deadly Weapon, Count 9 – Battery with Use of a Deadly Weapon, Count 10 –
9 Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm, Counts 11-16 –
10 Assault with a Deadly Weapon, Count 17 – Invasion of the Home and Count 18 – Malicious
11 Destruction of Property. Following a preliminary hearing held on January 4, 2012, based on
12 the testimony provided at the hearing, the State amended Count 17 to a Burglary Count. At
13 the conclusion of the hearing, Justice of the Peace Diana Sullivan bound Defendant over on
14 all 18 counts.

15 On September 3, 2013, a jury trial was began. On September 9, 2013, the jury found
16 the Defendant guilty of Counts 9 through 17 and hung on Counts 1-8.¹ On September 25,
17 2013, the State informed the Court that it was dismissing Counts 1-8 and would not proceed
18 with a second jury trial on those counts given the number of felonies he was convicted of
19 during the first trial and his extensive prior record. The Court dismissed Counts 1-8 with
20 prejudice and set sentencing for December 4, 2013.

21 On October 17, 2013, the Defendant, who is currently represented by counsel,
22 Mitchell Posin, filed the instant motion seeking to dismiss Mr. Posin as well as a new trial on
23 the basis of Mr. Posin's purported ineffective assistance. The State's opposition is as
24 follows:

25 ///

26 ///

27 _____

28 ¹ Count 18 was dismissed by the State prior to the beginning of trial.

1 THE DEFENDANT'S MOTION IS A FUGITIVE DOCUMENT

2 Defendant was represented by counsel when he filed the instant motion, and thus, it is
3 a fugitive document per EJDRC 7.40(a), which states:

4 When a party has appeared by counsel, the party cannot thereafter
5 appear on the party's own behalf in the case without the consent of the
6 court. Counsel who has appeared for any party must represent that party
7 in the case and shall be recognized by the court and by all parties as
having control of the case. The court in its discretion may hear a party
in open court although the party is represented by counsel.

8 Defense counsel Mitchell Posin, Esq., substituted in and confirmed as counsel on
9 April 17, 2013. Currently, Defendant is still represented by Mr. Posin, notwithstanding
10 Defendant's pending motion, when he filed the instant document, which should not have
11 been filed but rather "marked with the date received and a copy forwarded to that attorney
12 for such consideration as counsel deems appropriate." EJDRC 3.70.

13 Because this is a fugitive document, it should be dismissed.²

14 ///

15 ///

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26 _____
27 ² It should also be noted that the entire basis of the fugitive motion stems from claims of ineffective assistance of
28 counsel. These types of claims are premature, as the Defendant will have opportunity to raise all of these claims in a
post-conviction petition for writ of habeas corpus. However, such a petition can only be filed when and if his direct
appeal to the Nevada Supreme Court is denied.

1 CONCLUSION

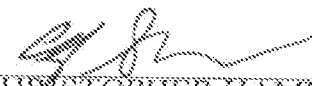
2 Wherefore, the State respectfully requests that Defendant's Notice of Motion and
3 Motion for Ineffective Assistance of Counsel and Motion for New Trial be DENIED,

4 DATED this 30th day of October, 2013.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY


10 CHRISTOPHER HAMNER
11 Deputy District Attorney
12 Nevada Bar #011390

13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of the above and foregoing was made this 30th day of
15 October, 2013, by facsimile transmission to:

16 MITCHELL POSIN, ESQ.
17 FAX NO. 382-7496

18 BY

/s/ E. Goddard

19 E. Goddard
20 Secretary for the District Attorney's Office
21
22
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28 CH/erg/L-1

*** TX REPORT ***

TRANSMISSION OK

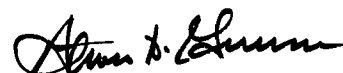
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RESULT	OK	

**THIS SEALED
DOCUMENT,
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322 - 334
WILL FOLLOW VIA
U.S. MAIL**

ORIGINAL

Electronically Filed
11/26/2013 12:33:28 PM

NOT
WILBURT HICKMAN, JR.
330 S. Casino Center
Inmate #905481
Las Vegas, Nevada 89101
Defendant, in Proper Person



CLERK OF THE COURT

DISTRICT COURT,
CLARK COUNTY, NEVADA

STATE OF NEVADA.

Plaintiff,

-vs-

WILBURT HICKMAN, JR.
AKA WILLIAM HICKS

Defendant.

CASE NO: C-12-278699-1

DEPT. NO.: 5

HEARING DATE:

HEARING TIME:

NOTICE OF MOTION

TO: Plaintiff, District Attorney's Office, 200 S. Lewis, 3rd floor, Las Vegas, Nevada
89101.

FROM: Defendant, Wilbert Hickman, Proper Person, Las Vegas, Nevada

PLEASE TAKE NOTICE that Defendant, Wilbert Hickman, Proper Person will bring the
foregoing NOTICE OF MOTION and MOTION FOR CONTINUANCE ON GROUNDS
OF ABSENCES OF WITNESSES AND DISCOVERY EVIDENCE, REQUESTING
NEW COUNSEL AND NEW TRIAL TO SUBMIT NEW EVIDENCE on hearing on this
motion for the relief requested will be held before the Eight Judicial District Court, Clark County
located at: 200 S. Lewis Avenue, Las Vegas, Nevada 89101, Department 5 on the (day) 09 of
(month) DECEMBER, (year) 2013 in Department V at (the) 9:00 A.m.

22 Nov. 2013
(date)

Wilbert Hickman
(print name)

Wilbert Hickman
(signature)

ORIGINAL

Electronically Filed
11/26/2013 12:31:09 PM

AFFT
WILBURT HCKMAN, JR.
330 S. Casino Center
Inmate #905481
Las Vegas, Nevada 89101
Defendant, in Proper Person


CLERK OF THE COURT

DISTRICT COURT,
CLARK COUNTY, NEVADA

STATE OF NEVADA.

Plaintiff,

-vs-

WILBURT HICKMAN, JR.
aka WILLIAM HICKS

Defendant.

CASE NO: C-12-278699-1
DEPT. NO.: 5

HEARING DATE:

HEARING TIME:

DEFENDANT'S AFFIDAVIT OF SUPPORT FOR MOTION FOR CONTINUANCE

ON GROUNDS OF ABSENCES OF WITNESS TESTIMONIES AND DISCOVERY

EVIDENCE

STATE OF NEVADA)
)ss
COUNTY OF CLARK)

1. I, Wilburt Hickman, Jr., Defendant, Proper Person, do solemnly swear to testify herein to the truth, the whole truth and nothing but the truth.

2. That I am the Defendant in the above-entitled case.

3. On December 18, 2011, the I drove to my daughter's church, New Antioch Christian Fellowship Church, 3950 N. Las Vegas Blvd., Las Vegas, Nevada 89115, to speak to her about an argument we had the day before. I went to apologize and pray. She did not want me at her church. She works for Metro Police Department. Security was call and they wrestled me to the ground and broke my arm.

1 4. I got in my car to drive to the hospital and ran into the side of the church. The
2 Ambulance was called for me.

3 5. There was a little girl injured in the midst of the confusion. She was getting out of the
4 way of the scuffle and suffered a broken toe.

5 6. From the time I left my home to go to see my daughter at the church, I was on the phone
6 with my sister, Beatrice Hickman, in Philadelphia. She was going to talk her neice, once I got to
7 the church.

8 7. My sister heard the scuffle, her neice yelling, me yelling out my arm is broke, me getting
9 into my car, the crash into the building, sirens, screams, and the conversations in the ambulance.

10 8. I was charged with eight counts of assault with a deadly weapon, eight counts of
11 attempted murder with a deadly weapon, two counts of battery with a deadly weapon, and
12 burglary.

13 9. On April 17, 2013, the Public Defendant's office was allowed to withdraw and Mr.
14 Mitchell Posin, Esq., was confirmed as my attorney.

15 10. Mr. Posin had been accepting money from me six months prior to confirming counsel.

16 11. Mr. Posin filed a Motion for Discovery but failed to thoroughly prepare for trial.

17 12. There was no police report, blood alcohol results, no witnesses interviewed on my behalf.

18 13. There were no witnesses, photos, medical reports, ambulances reports, and blood alcohol
19 reports, police report entered as discovery documents or subpoena.

20 14. There were no investigations conducted in my case.

21 15. He did not call or interview witnesses that I requested he contact through subpoenas.

22 16. He never went over outlines or drafts of opening statements.

23 17. There were no cross examination plans for defense witnesses (which he had none).

24 18. Mr. Posin did not have the preliminary transcriptions of the prosecution witnesses.

25 19. He never sought any experts to testify on my behalf.

1 21. He did not visit me before trial to discuss the police report, my medical reports, medical
2 reports of those victims, I was supposed to have injured and other pertinent information.

3 22. The last time Mr. Posin visited me, he told the me that both him and the Prosecutor had
4 reached a deal in my case.

5 23. That he was going to instruct the jury on dismissing the eight counts of assault with a
6 deadly weapon and the eight counts of attempted murder with a deadly weapon, on the grounds
7 of voluntary intoxication.

8 24. On August 26, 2013, there was a Calendar Call hearing was conducted. Both Side
9 (Prosecutor and the Defense) announce "Ready Trial."

10 25. On September 3, 2013, Mr. Posin was given the jury List.

11 26. On September 6, 2013, Proposed Jury Instructions were *Not* Used at Trial.

12 27. On September 9, 2013, there was a new Jury List. Mr. Posin and the prosecuting attorney
13 failed to instruct the Jury to the voluntary intoxication on the eight counts of assault of a deadly
14 weapon, burglary and the eight counts of attempted murder with a deadly weapon.

15 28. September 9, 2013, the jury returned a verdict of guilty on eight counts of attempted
16 murder with a deadly weapon. Sentencing is to be December 4, 2013.

17 29. November 4, 2013, Mr. Posin withdrew as counsel for the Defense.

18 30. Mr. Posin clearly has demonstrated his ineffectiveness as my Defense Attorney.

19 31. Mr. Posin clearly had violated my sixth amendment rights to effective counsel.

20 32. My life has been turned upside down from this experience. I have been incarcerated for
21 close to two years.
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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Wilburt Hickman, being first duly sworn deposes and says:

That I am the Petitioner in the above –entitled action; that I have read the above and foregoing **Defendant's Affidavit in Support of Motion On Grounds For Continuance Due to the Absence of Witness Testimonies and Discovery Evidence.** I know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as for those matters, I believe them to be true.

DATED this 22 day of (Month) Nov, (year) 2013.

By:

(Your signature) Wilburt Hickman Jr

(Your name) _____

SUBSCRIBED and SWORN to before
Me this 22 day of

November, 2013



Shesha Sheppard
NOTARY PUBLIC

///

///

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///

///

///

ACKNOWLEDGEMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 22 day of NOV-2013, before me, the undersigned Notary Public in
and for the said County and State, personally appeared Defendant, Wilburt
Hickman, in PROPER PERSON known to me to be the person described in and who
executed the foregoing instrument, and who acknowledged to me that he did so
freely and voluntarily and for the uses and purposed therein mentioned.

WITNESS my hand and official seal.


NOTARY PUBLIC

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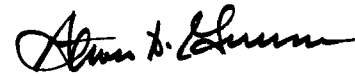
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CERT
WILBURT HICKMAN JR.
330 S. Casino Center
Inmate #905481
Las Vegas, Nevada 89101
Defendant, in Proper Person


CLERK OF THE COURT

DISTRICT COURT,
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

-vs-

WILBURT HICKMAN JR.
aka WILLIAM HICKS

Defendant(s).

CASE NO: C-12-278699-1

DEPT. NO.: 5


HEARING DATE: 12/9/13

HEARING TIME: 9:00 am.

RECIPT OF COPY

RECEIPT OF A COPY of the NOTICE OF MOTION and MOTION FOR
CONTINUANCE ON GROUNDS OF ABSENCES OF WITNESSES AND DISCOVERY
EVIDENCE, REQUESTING NEW COUNSEL AND NEW TRIAL TO SUBMIT NEW

EVIDENCE is hereby acknowledged this 3 day of Dec,
2013.


District's Attorney's Office
ATTN: Mr. Hamner
200 S. Lewis, 3rd floor
Las Vegas, Nevada 89101

DEC 16 2013

ORDER

2 Wilburt Hickman JR. #905481

3 330 S. Casino Center

4 Las Vegas, NV 89101

5 in Proper Person

PLEASE FILE
LEFT SIDE

C-12-278699-1

LSF

Left Side Filing
3270049



DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA
11 Plaintiff,

CASE NO : C-12-278699-1

DEPT NO : 5

12 -VS-

13 Wilburt HICKMAN JR.
14 #905481 Defendant

Date of Hearing: _____

Time of Hearing: _____

Proper Person Order for Transcript

17 Upon the proper person application of the above-named
18 Defendant, Wilburt Hickman Jr., Pro Se, and good Cause
19 therefore,

20 IT IS HEREBY ORDERED, that the certified court
21 reporter/recorder _____, prepare at the State's
22 expense, a Certified transcript of the trial proceeding
23 for Case C-12-278699-1 heard on September 3, 2013
24 in District Court Department 5.

25 Dated this 9 day of December, 2013.

Submitted by:

26 ~~Wilburt Hickman Jr.~~
27 Wilburt Hickman JR.

District Court Judge

Certificate of Service

The foregoing Proper Person Order was Served by
mailing it first class, Postage prepaid on December 9,
2013 to the followings:

District Court
200 Lewis Ave
Las Vegas, NV 89155

By: Wilburt Hickman Jr.
Wilburt Hickman JR.
330 S. Casino Center
Las Vegas, NV 89101

Witness by: Ronnie Edwards
Ronnie Edwards



**CLARK COUNTY COURTS
EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**



REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-0530
FAX (702) 474-2434

**PLEASE FILE
LEFT SIDE**

Steven D. Grierson
Clerk of the Court

Assistant Clerk of the Court

Attorney: Mitchell Posin

Case: C-12-278699-1

Defendant: Wilburt Hickman # 905481

Dept: 5

Attached are pleadings received by the Office of the District Court Clerk:

Pleadings: Motion to Compel Disclosure of Exculpatory Evidence

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS34.730 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).

Deputy Clerk of the Court

#44 Criminal Desk

C-12-278699-1
LSF
Left Side Filing
3270046



DEC 16 2013

1 MOT

2 Wilburt Hickman Jr #905481

3 330 S. Casino Center

4 Las Vegas, NV 89101

5 Proper Person

6

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10 THE STATE OF NEVADA
11 Plaintiff,

12

13

-VS-

14

13 Wilburt Hickman Jr
14 #905481 Defendant

15

16

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18

19 Comes Now, the Defendant, Wilburt Hickman Jr, Proper
20 Person, requests this Honorable Court, to require the
21 State to produce any and all exculpatory evidence in
22 its actual or Constructive Possession as provided by
23 Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1164 (1963).
24 for the above entitled Case.

25 This motion is made and based upon all papers and
26 pleadings on file in this Case and the Memorandum of
27

CASE NO: C-12-278-699-1
DEPT NO: 5

Date:

Time:

1 Points and Authorities and any argument deemed
2 necessary at the time set for hearing of this Motion.
3 Dated this 9 day of December, 2013.

4
5 By: Wilbur Hickman Jr.
6 Wilbur Hickman Jr

7
8 NOTICE OF MOTION

9
10 TO: ALL PARTIES OF INTEREST

11 Please, Each and all of you, take Notice that
12 the Defendant's Motion to Compel exculpatory evidence
13 _____ on for hearing on _____ day of _____,
14 _____, in District Court Department _____ at _____ a.m.
15 or Soon thereafter.

16 Dated this 9 day of December, 2013.

17
18 By: Wilbur Hickman Jr.
19 Wilbur Hickman Jr
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

The Defendant was arrested and charged with
Some very serious felonies.

II. LEGAL ANALYSIS

Prior to trial the Prosecution must provide the
defense with any and all exculpatory evidence in its
actual or constructive possession pursuant to the
Due Process Clauses of the 5th and 14th Amendments
of the United States Constitution. Brady v. Maryland,
373 U.S. 83, 83 S.Ct. 1194 (1963); Kyles v. Whitley,
514 U.S. 418, 115 S.Ct. 1555 (1995). Hereafter this type
of exculpatory evidence will be referred to as "Brady
material". The State's duty to provide Brady material
to the defense applies regardless on how the State has
chosen to structure their overall discovery process.

Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936 (1999).

Brady material is evidence which is (1) material,
(2) relevant to guilt or punishment, (3) favorable to the

accused, and (4) within the actual or constructive possession of anyone acting on behalf of the State. Brady, Supra.

A. Materiality

When the defense makes a specific request for Brady material and the State does not provide such material, the Nevada Supreme Court has held that those are grounds for reversal of a conviction "... if there exists a reasonable possibility that the claimed evidence would have affected the judgment of the trier of facts." Roberts v. State, 110 Nev. 1121 (1994); Jiminez v. State, 112 Nev. 610 (1996); Bennett v. State, 119 Nev. 589 (2003).

Even if a specific request has not been made, reversal is warranted "... if there is a reasonable probability that, had the evidence been disclosed, the results of the proceeding would have been different." U.S. v. Bagley, 473 U.S. 667 (1985), Pennsylvania v. Ritchie, 480 U.S. 39 (1986). A reasonable "probability" is a probability sufficient to undermine the confidence in the outcome of the proceedings. Bagley at 682.

In this case, some specific request for evidence ~~are~~ made, and the evidence is considered "material" if there is a reasonable possibility that it could affect the fact finder judgment.

B. Relevancy to guilt or punishment

1 Brady material encompasses not only evidence which
2 might affect the defendant's guilt, but also includes
3 evidence which could mitigate a defendant's Sentence if
4 convicted. Jiminez v. State, 112 Nev. 610 (1996).

5 C. Favorability to the Accused

6 The Nevada Supreme Court has defined what evidence
7 is considered "favorable to the accused" and therefore
8 proper Brady material. In Mazzan v. Warden, 116
9 Nev. 48 (2000), the Court said:

10 Due process does not require simply the
11 disclosure of "exculpatory" evidence. Evidence also
12 must be disclosed if it provides grounds for the
13 defense to attack the reliability, thoroughness, and
14 good faith of the police investigation, to impeach
15 the credibility of the state's witnesses, or to
16 bolster the defense case against prosecutorial attacks.
17 Furthermore, "discovery in a criminal case is not
18 limited to investigative lead or reports that are
19 admissible in evidence." Evidence "need not have
20 been independently admissible to have been material."

21 Mazzan at 67. (citation omitted)

22 Therefore, Brady material under this standard,
23 would include, but not limited to, the following: forensic
24 testing which was ordered, but not done, or which was
25 completed but did not inculcate the defendant; Criminal
26 records or other evidence concerning State's Witnesses

1 which might their bias (e.g., Civil litigation, wit-
2 nesses payments, etc), or otherwise impeach their
3 Credibility; investigative leads or ordinarily appropriate
4 investigation which were not followed-up on or completed
5 by law enforcement; and, of course, anything which
6 is inconsistent with any prior or present Statements
7 of a State's witness, including failure to previously
8 make a Statement which is later made or testified
9 to. Of course, traditionally exculpatory evidence
10 such as that which could show that someone else
11 committed the charged crime or that no crime

12 occurred, would also be included as Brady material.

13 D. Actual or Constructive possession of the State and
14 duty to seek

15 The prosecutor has a duty to ferret out favorable
16 and material evidence in order to ensure that Justice
17 is done and the prosecutor's motive for withholding
18 evidence is immaterial. Timinez v. State, Supra.

19 1. Prosecutor's motive for withholding Brady material
20 is irrelevant and withholding violates due process.

21 A Suppression of material evidence justifies a
22 new trial irrespective of the good or bad faith
23 of the Prosecution. Giglio v U.S., 405 U.S. 150,
24 92 S.Ct. 736 (1972). In order to prevail the
25 Defendant is only required to show that the Sup-
26 pression undermined the outcome of the trial.

1 Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995).
2 The good faith or bad faith failure of the prosecutor
3 to produce extant evidence favorable to the accused
4 upon request of the accused results in a deprivation
5 of the right to a fair hearing as guaranteed by,
6 "Due Process of law under the 14th Amendment" of
7 the United States Constitution if the material
8 evidence is favorable to the accused on the issue of
9 guilt or punishment. Brady, Supra; Murre v Illinois,
10 408 U.S. 786, 33 L.Ed.2d 706 (1972).

11 The Pronouncement of the scope of discovery has been
12 reiterated by the Seminal United States Supreme Court
13 with reference to evidence that goes to the innocences
14 or guilt of the defendant in situations wherein the cred-
15 ibility of the witness is in issue, Giglio v. U.S., 405
16 U.S. 150, 31 L.Ed.2d 104 (1972). Evidence pointing towards
17 a witness' motive to fabricate comes within the principle
18 that the State has the obligation of providing material
19 evidence favorable to the defendant in order to ensure a
20 fair hearing. Napue v. Illinois, 360 U.S. 264, 3 L.Ed.
21 2d 1217 (1959).

22 The Nevada Supreme Court has stated, "It is a
23 violation of due process for the prosecutor to withhold
24 exculpatory evidence." Jiminez v. State, 112 Nev. 610,
25 618 (1996). further more, "... even if ... detectives
26 withheld reports without the prosecutor's knowledge,"
27

1 the State attorney is charged with Constructive
2 knowledge and possession of evidence withheld by other
3 State agents, such as law enforcement officers. "Id.,
4 112 Nev. at 620. (Citation Omitted) (emphasis added).

5 In addition, the defense asserts that other state agents,
6 such as probation and parole officers, Welfare Workers,
7 employees of Child Protective Services, Jail Personnel,
8 and similar agents of the State agents from whom the
9 Prosecution must affirmatively collect Brady material.

10 2. Prosecution's duty to seek out Brady material in its
11 Constructive Possession

12 In Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555
13 (1995), the United States Supreme Court made it clear
14 that the Prosecutor had an affirmative obligation to
15 obtain Brady material and provide it to the defense
16 even if the Prosecutor is initially unaware of its
17 existence and even when the defense does not make a
18 request for such evidence. Specifically, the Court said "
19 ... the individual prosecutor has a duty to learn of any
20 favorable evidence known to others acting on the gov-
21 ernment's behalf in the case, including the Police. The
22 District Attorney has a duty to inspect the files
23 of the Police and other State agents to determine
24 whether any discoverable evidence is contained in those
25 files. A prosecutor is required to exercise due diligence
26 in obtaining the documentation. State v. Tapia,

1 108 Nev. 494, 835 p.2d 22 (1992).

2 The Nevada Supreme Court has imposed the same
3 duty on the prosecutor as that discussed in Kyles.
4 Material the police possesses in constructively possessed
5 by the prosecution. Jiminez v. State, 112 Nev. 610,
6 918 p.2d 687 (1996). In other words, if detectives
7 or other state agents withhold their reports without
8 the prosecutor's knowledge, the prosecutor is still charged
9 with constructive knowledge and possession. Id at 620.

10 Although, the prosecution has an "open file" policy,
11 they are under an obligation to produce Brady material
12 it constructively possesses. The United States Supreme
13 Court has addressed this. In Strickler v. Greene,
14 119 S.Ct. 1936 (1999), the United States Supreme Court
15 explicitly held that a prosecutor's "open file" policy does
16 not in any way substitute or diminish the State's
17 obligation to turn over Brady material.

18 There can be little question, that despite the "
19 open file policy," the prosecution has an affirmative
20 duty to seek out the previously discussed Brady
21 material, regardless of whether such material is
22 in the hands of the prosecutor or in the hands and/
23 or control of any other state agent or entity acting
24 on the behalf of the State.

25 E. Continuing duty to Disclose

26 The Prosecutor's obligation to disclose is a

1 Continuing duty, NRS 174.295. The failure of the
2 Prosecutor to comply with this Continuing duty to
3 provide discovery pursuant to a discovery order allows the
4 Court discretion to prohibit the prosecution from
5 introducing into evidence all the evidence that was
6 covered by the Order and that was not disclosed.
7 F. Brady Request

8 Based on referenced law and analysis, the Defense
9 requests that the following Brady material be produced
10 by the State:

11 1. Witness Criminal Histories and Agreements

12 Pursuant to U.S. v. Price, 566 F.3d 900 (9th Cir. 2009)
13 (holding that the prosecution must produce its' witness'
14 Criminal records, prison records, and other information
15 relevant to Credibility).

16 ° Complete Criminal histories of all State witnesses
17 who are not police Officers specifically the alleged
18 Victim(s). The histories requested are not limited
19 to out-of-State arrests and convictions, outstanding
20 arrest warrants or bench warrants, Crimes of
21 Untruthfulness, and Cases which were dismissed or
22 not pursued by the Prosecution agency. In
23 addition any crimes of violence.

24 ° The existence, Substance, and manner of
25 execution or fulfillment, of any promises, Agree -

26 ///

ments, Understandings and arrangements, whether verbal or written, whether completed or not, between the State, its agents or attorneys, and any witness, or the witness' agents or attorneys or representatives, wherein the State has agreed, or purported to agree, either expressly or impliedly including but limited to the following (Giglio v. U.S., 405 U.S. 150, 92 S.Ct. 763 (1972)). Any agreements that may have been made or offered, regardless if it was accepted or not. Victim Pretrial Payments (Witness fees, etc.)

a. not to prosecute

b. not to prosecute for making or filing false charges.

c. To provide formal or informal grant of Statutory immunity.

d. State to recommend leniency at Sentencing.

e. To provide favorable treatment in jail or Prison.

2. Any reports/documents/statements regarding alleged Victim(s) using drugs:

This includes any reports, testing, court cases, CPS records etc.

3. Officers notes regarding this case:

Any handwritten or otherwise memorialized notes kept by the investigating officers in this case (to include those constructively possessed) including, but not limited to, any notes documenting alternate suspects, investigative leads

that were not followed up on, or any other matter bearing on the credibility of any state witness

4. Reports/Logs/Communication Re this Case

All 911 calls, logs, CADs, car to car and any other reports/logs/notes/texts/emails/SMS regarding this case, as well as any other incident leading up to this incident, including call(s) regarding this case.

5. Photos/Diagrams/Videos:

Any photographs taken regarding this case and diagrams drawn or any video in the State's actual OR Constructive Possession.

6. Impound Report:

A Copy of the impound report(s), Chain-of-Custody, regarding this case.

7. Statements:

Any written/recorded statements regarding this case or any events or incidents leading to this case, including and made by the Defendant(s). Statement will also include any the alleged Victim(s) has made in the course of this case to any agents of the State, for the scope of this case.

8. Reports Regarding any Testing/Examination/Treatment:

Regardless of the results, the defense is seeking any reports regarding any testing or examination of any nature (including medical, counseling, or

mental health) regarding this case. The names of the individuals with whom the Alleged Victim(s) has had any testing/treatment/examination with regard to the defendant(s). The defense also requests any documents provided to the experts who will testify in this case in order to prepare an effective cross-examination.

9. Reports from the Hospital/Ambulance

Any documents to include reports, records and notes from any hospital, medical facility, counseling facility and ambulance, that the State has in its actual or constructive possession from the said entities regarding the alleged victim(s) medical treatment.

10. Record/Reports Regarding the alleged victim(s) when he/she has alleged to be a victim of a crime by someone other than the Defendant.

Any documents to include reports, records, video, photos and notes regarding the alleged victim(s); when he/she alleged to be a victim of a crime. Also, to include any agreements for compensation and any requests the alleged victim(s) has/have made as an alleged victim of a crime.

11. Any evidence the State receives as a result of the Defendant's Subpoena(s)

///

1 12. Officer's Misconduct / Disciplinary Actions:

2 The defense is requesting both exculpatory and
3 material that is relevant to either guilty or
4 Punishment to include: Officer Misconduct,
5 disciplinary actions against the Officer(s),
6 impeachment evidence from the Officers'
7 Personnel file(s) - or elsewhere including all
8 Records of Internal Affairs investigations,
9 infraction, and any sanctions / disciplinary
10 actions for untruthfulness. In addition, the
11 defense requests any such impeachment
12 evidence for any of the State's agents who
13 work for Metro, who will be testifying.
14

15 Conclusion

16 Based on the legal analysis presented, the
17 defense is entitled to the items reference above
18 as well as any other Brady material in the
19 Prosecution's Control and/or actual or Constructive
20 Possession, prior to trial

21 Date this 9 day of December, 2013.

24 By: Willmet Hickman Jr
25 #905481

Declaration

I Wilburt Hickman Jr. makes the following declaration:
1. I am the declarant in the instant matter.

I declare that foregoing is true and correct
under the penalty of Perjury (53.045).

EXECUTED this 9 day of December 2013.

By: Wilburt Hickman Jr.
Pro Per Person
Wilburt Hickman Jr.

Certificate of Service

I Wilburt Hickman Jr. hereby certify that I mailed a copy of "Defendant's motion to Compel Disclosure of exculpatory evidence" by placing said motion into the U.S. mail on December 9, 2013 to the following:

Clerk of Courts
200^E Lewis Ave
Las Vegas, NV
89155

By: Wilburt Hickman Jr.
Wilburt Hickman Jr.

DEC 16 2013

MOT

Wilburt Hickman JR. #905481

330 S. Casino Center Blvd.

Las Vegas, NV 89101

IN Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA
Plaintiff,

Case No: C-12-278699-1

Dept NO: 5

-VS-

Wilburt Hickman JR.
#905481 Defendant

Date :

Time :

DEFENDANT'S MOTION TO PROCEED PRO PER

COMES NOW, Defendant, Wilburt Hickman JR.,
by and through himself, making record, and hereby
requests this Honorable Court to release Mitchell Posin ESQ.,
as Counsel of Record (again), and allow Mr. Hickman to
proceed proper.

This motion is made and based all papers and pleadings
on file for this case, the attached memorandum of points
and authorities hereto, the affidavit of the defendant, as
well as any oral argument deemed necessary at the
time of hearing.

1 Dated this 9 day of December, 2013.

2
3 Respectfully Submitted

4 Willbert Hickman Jr.
5 Willbert Hickman Jr.
6 330 S. Casino Center
7 Las Vegas, NV 89101

8 NOTICE OF MOTION

9 You, AND EACH OF YOU, will please take notice that
10 the undersigned will bring before the Court the
11 foregoing motion ("Defendant's motion to proceed pro per").
12 on for hearing on the _____ day of _____, 2013,
13 at _____ a.m. or soon thereafter.

14
15
16 Respectfully Submitted

17 Willbert Hickman Jr.
18 Willbert Hickman Jr.
19 330 S. Casino Center
20 Las Vegas, NV 89101

MEMORANDUM OF POINTS AND Authorities

AN accused, in the exercised of a free and intelligent choice, and with the considered approval of the Court, may waive trial by jury, and so likewise may competently and intelligently waive his Constitutional right to assistance of Counsel. Faretta v. California, 422 U.S. 806, 95 S.Ct 2525, 45 L.Ed.2d 562 (1974). In Faretta, the Seminal United States Supreme Court also noted that Counsel could not be forced upon a defendant (emphasis added). 422 U.S. 806, 815. Moreover, Nevada Supreme Court Rule 44 states in pertinent part, "nothing in these rules shall be so construed as to prevent any person from appearing in his own behalf in any Court in this State except the Supreme Court." (emphasis added).

In the instant Case, MR. Hickman should be allowed to represent himself.

Therefore base upon the above and foregoing the Undersigned Respectfully and humbly requests that this Court grants this motion and allow Mr. Hickman represent himself. So that he may file documents too.

Dated this 9 day of December 2013.

Respectfully Submitted
Wilburt Hickman Jr.
Wilburt Hickman JR.

330 S. Casino Center
Las Vegas, NV 89101

Certificate of Service

I hereby Certify that I place in the U.S. mail,
first class, postage prepaid, the foregoing "Defendants'
Motion to proceed Pro Per" on this 9 day of
December, 2013 to the following:

c/o
Clerk of Courts
200 Lewis Ave, 3rd floor
Las Vegas, NV 89155

By: Wilburt Hickman Jr.
Wilburt Hickman Jr.
330 S. Casino Center
Las Vegas, NV 89101

DEC 18 2013

MEM

Wilburt Hickman Jr. #905481

330 S. Casino Center Blvd.

Las Vegas, NV 89101

In Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA
Plaintiff,

-VS-

Wilburt Hickman JR.
Defendant

Case NO: C-12-278699-1

Dept NO: 5

Date:

Time:

MEMORANDUM TO THE COURT

Comes Now, Wilburt Hickman Jr., In Proper Person, in the above cited case through a memorandum to the Court making record of the following:

1. That today this re-appointed Mr. Posin as my Counsel, in violation of my Constitutional right to Represent myself.

2. That this court has repeatedly refused to hear my motion, one of which is for "Ineffective Assistance of Counsel, Farettia Motion, Continuance,

1 "Motion for New Trial on Newly Discovered Evidence",
2 and a motion for Reconsideration. This Court has
3 stated in open Court that the motion I have tried to
4 file are "fugitive documents". This Court has refused
5 to hold evidentiary hearing to see if there is any merit
6 to my factual claims. Today, in open Court Mr. Posin
7 handed the Defendant 10 pages and told the
8 defendant that was his complete discovery.

9 There is an actual conflict of interest between Mr.
10 Posin and the Defendant. Although, the Defendant
11 has repeatedly filed motions about Mr. Posin ineffective-
12 ness, this Court refuses to let Mr. Posin withdraw as
13 Counsel of Record (emphasis added). The Defendant's
14 Due Process Rights (6th, 8th, and 14th) are being
15 blatantly violated. This Court asked Mr. Posin if he had
16 filed an appeal his answer was "no", even though
17 this Defendant asked him to.

18 The Defendant, Wilburt Hickman Jr. is
19 entitled to appointment of disinterested Substitute
20 Counsel, to examine the witnesses, develop the evidence,
21 and argue the merits of the "Defendant's motion
22 for a new Trial based on ineffective assistance of
23 Counsel and Newly Discovered Evidence, and
24 Brady violations by the State." (emphasis Evidence)
25 Dated this 9 day of December 2013.

26 By: Wilburt Hickman Jr.
27 Wilburt Hickman Jr.

FILED

JAN 02 2014

John L. Johnson
CLERK OF COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C278699

-vs-

DEPT. NO. V

WILBURT HICKMAN
aka WILLIAM HICKS
#0905481

Defendant.

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1
– ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in
violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 2 – ATTEMPT MURDER
WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS 200.010,
200.030, 193.330, 193.165; COUNT 3 – ATTEMPT MURDER WITH USE OF A
DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330,
193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 5 –
~~ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Category B Felony in~~

- ☐ Not Prosecuted (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sent (before trial)
- ☐ Transferred (before/during trial)
- ☐ Other Manner of Disposition

- ☐ Bench Trial
- ☐ Dismissed
- ☐ Acquittal
- ☐ Guilty Plea with Sent (during trial)
- ☐ Conviction

1 violation of NRS 200.010, 200.030, 193.330, 193.165, of COUNT 6 – ATTEMPT
2 MURDER WITH USE OF A DEADLY WEAPON Category B Felony in violation of NRS
3 200.010, 200.030, 193.330, 193.165; COUNT 7 – ATTEMPT MURDER WITH USE OF
4 A DEADLY WEAPON Category B Felony in violation of NRS 200.010, 200.030,
5 193.330, 193.165; COUNT 8 – ATTEMPT MURDER WITH USE OF A DEADLY
6 WEAPON Category B Felony in violation of NRS 200.010, 200.030, 193.330, 193.165;
7 COUNT 9 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony) in
8 violation of NRS 200.4810; COUNT 10 – BATTERY WITH USE OF A DEADLY
9 WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in
10 violation of NRS 200.481.2e, COUNT 11 – ASSAULT WITH A DEADLY WEAPON
11 (Category B Felony) in violation of NRS 200.471, COUNT 12 – ASSAULT WITH A
12 DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 13 –
13 ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS
14 200.471, COUNT 14 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in
15 violation of NRS 200.471, COUNT 15 – ASSAULT WITH A DEADLY WEAPON
16 (Category B Felony) in violation of NRS 200.471, COUNT 16 – ASSAULT WITH A
17 DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, and COUNT 17 –
18 BURGLARY (Category B Felony) in violation of NRS 205.060; and the matter having
19 been tried before a jury and the Defendant having been found guilty of the crimes of
20 COUNT 9 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony) in
21 violation of NRS 200.4810; COUNT 10 – BATTERY WITH USE OF A DEADLY
22 WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in
23 violation of NRS 200.481.2e, COUNT 11 – ASSAULT WITH A DEADLY WEAPON
24 (Category B Felony) in violation of NRS 200.471, COUNT 12 – ASSAULT WITH A

1 DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, COUNT 13 –
2 ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS
3 200.471, COUNT 14 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in
4 violation of NRS 200.471, COUNT 15 – ASSAULT WITH A DEADLY WEAPON
5 (Category B Felony) in violation of NRS 200.471, COUNT 16 – ASSAULT WITH A
6 DEADLY WEAPON (Category B Felony) in violation of NRS 200.471, and COUNT 17 –
7 BURGLARY (Category B Felony) in violation of NRS 205.060; thereafter, on the 18TH
8 day of December, 2013, the Defendant was present in court for sentencing with his
9 counsel, Mitchell Posin, Esq., and good cause appearing,
10
11

12 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
13 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee
14 including testing to determine genetic markers, \$12,639.93 Restitution payable to
15 Anneesah Franklin, \$3,263.73 Restitution payable to Anyla Hoyer, and \$10,369.04
16 Restitution payable to Antioch Church; the Defendant is SENTENCED to the Nevada
17 Department of Corrections (NDC) as follows: AS TO COUNT 9 – Sentenced under the
18 SMALL HABITUAL STATUTE to a MAXIMUM of TWO HUNDRED – FIFTEEN (215)
19 MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS; AS TO COUNT
20 10 - Sentenced under the SMALL HABITUAL STATUTE to a MAXIMUM of TWO
21 HUNDRED – FIFTEEN (215) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60)
22 MONTH, to run CONSECUTIVE to Count 9; AS TO COUNT 11 - TO A MAXIMUM of
23 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16)
24 MONTHS, to run CONCURRENT with Count 10; AS TO COUNT 12 – TO A MAXIMUM
25 of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16)
26 MONTHS, to run CONCURRENT with Count 11; AS TO COUNT 13 - TO A MAXIMUM
27
28

1 of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16)
2 MONTHS, to run CONCURRENT with Count 12; AS TO COUNT 14 - TO A MAXIMUM
3 of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16)
4 MONTHS, to run CONCURRENT with Count 13; AS TO COUNT 15 - TO A MAXIMUM
5 of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16)
6 MONTHS, to run CONCURRENT with Count 14; AS TO COUNT 16 - TO A MAXIMUM
7 of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of SIXTEEN (16)
8 MONTHS, to run CONCURRENT with Count 15; and AS TO COUNT 17 - TO A
9 MAXIMUM of NINETY - SIX (96) MONTHS with a MINIMUM Parole Eligibility of
10 TWENTY-TWO (22) MONTHS, to run CONCURRENT with Count 16; with SEVEN
11 HUNDRED THIRTY-ONE (731) DAYS credit for time served. (COUNTS 1 THROUGH
12 8 were DISMISSED WITH PREJUDICE, on September 25, 2013.)
13
14
15
16

17 DATED this 30th day of December, 2013.

18
19 
20 CAROLYN ELLSWORTH
21 DISTRICT COURT JUDGE
22
23
24
25
26
27
28

FILED

JAN 06 2014

John L. Hickman
CLERK OF COURT

1 NOT

2 Wilburt Hickman JR. #905481

3 330 S. Casino Center

4 Las Vegas, NV 89101

5 Defendant, ~~In~~ proper person

C-12-278699-1
NOASC
Notice of Appeal (criminal)
3328938



6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 THE STATE OF NEVADA

11 Plaintiff,

12 - VS -

13 Wilburt HICKMAN JR.

14 #905481

Case No: C-12-278699-1

Dept No: 5

15
16 NOTICE OF DIRECT APPEAL

17 NOTICE is hereby given that, Wilburt Hickman Jr., the
18 Defendant, hereby gives proper Notice that the Defendant
19 is appealing his Judgment of conviction, enter in this action
20 on December 18, 2013, in District Court Department 5.

21 Dated this 30 day of December 2013.

22
23 RECEIVED

24 JAN - 6 2014

25 CLERK OF THE COURT

Wilburt Hickman
Wilburt Hickman
330 S. Casino Center
Las Vegas, NV 89101

Certificate of Service

I hereby Certify that I place in the U.S. mail,
first class, Postage Prepaid, a "Notice of Direct appeal"
to the following on the following date; 30 December, 2013.

c/o
Clerk of Courts

By: am 99
Wilburt Hickman

200 Lewis Ave
Las Vegas, NV 89155

10

11

District Court Judge C. Ellsworth

200 Lewis Ave

LV, NV 89155

15

District Attorney

200 Lewis Ave

LV, NV 89155

19

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21

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24

25

26

FILED

JAN 06 2014

John J. Hickman
CLERK OF COURT

1 Direct Appeal
2 Wilburt Hickman JR, # 905481
3 330 S. Casino Center
4 Las Vegas, NV 89101
5 IN Proper Person
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 THE STATE OF NEVADA
11 Plaintiff,

CASE NO: C-12-278699-1
DEPT NO: 5

12 -VS-

13 Wilburt Hickman JR.
14 # 905481

C-12-278699-1
DOC
Document Filed
3333201



15
16 DIRECT APPEAL
17

18 COMES NOW, the Defendant, Wilburt HICKMAN JR.,
19 IN Proper Person, to humbly and respectfully request that
20 this Honorable Court, set aside the Defendant's Conviction
21 based upon the reasons set for in this Appeal.
22

23 This Appeal is made and based on all papers, doc-
24 uments, and pleadings on file for this case, the
25 attached Memorandum of Points and authorities and the
26
27

JAN 06 2014

CLERK OF THE COURT

THIS PAGE ADDED BY IMAGING SERVICES

SOME PAGES IN THIS DOCUMENT ARE LIGHT OR UNREADABLE
IN ORIGINAL FORM AND HAVE BEEN DARKENED AS MUCH AS POSSIBLE.

exhibits attached hereto, and any Supplemental
motion or oral argument deemed needed by this Court.

Dated this 30 day of December, 2013.

Willburt Hickman

Willburt Hickman, Pro Per
330 S. Casino Center
Las Vegas, NV 89101

NOTICE OF APPEAL

TO: All Parties of Interest

You, and each of you, take notice that the Defendant's
"Direct Appeal" will come on for hearing on the 29 day of
~~JAN~~, 2014, in District Court Department V at 9:00
a.m..

Willburt Hickman

Willburt Hickman, Pro Per
330 S. Casino Center
Las Vegas, NV 89101

Declaration

Wilburt Hickman Jr. makes the following declaration:

1. I am the Declarant of this Declaration.

2. That I have read the foregoing "Direct Appeal", know the contents thereof, and hereby endorse the contents herein.

I declare under the penalty of Perjury that the foregoing is true and correct (NRS 53.045).

Executed on 12/30/13

Wilburt Hickman Jr.
Wilburt Hickman Jr.

Affidavit

STATE OF NEVADA } ss:

COUNTY OF CLARK }

Wilburt Hickman being first duly sworn and says:

That I, Wilburt Hickman Jr. ("Affiant") supports the foregoing "Direct Appeal" and knows the contents thereof.

That the Affiant affirms the above facts to be true and accurate under the Penalty of Perjury (53.045 NRS)

Wilburt Hickman Jr.
Wilburt Hickman Jr.

Certificate of Service

I, Wilburt Hickman Jr., hereby certify that I
placed a true and correct copy of the foregoing
"Direct Appeal" in the U.S. mail, first class, postage
prepaid to the following:

Dated 12/30/13



Wilburt Hickman JR.
330 S. Casino Center
Las Vegas, NV 89101

C/o
Clerk of Courts
200 Lewis Ave
Las Vegas, NV 89155

District Attorney
200 Lewis Ave
Las Vegas, NV 89155

Memorandum of Points And Authorities

I.

STATEMENT OF THE CASE

On December 18, 2011, the Defendant drove to his daughter's Church, to speak to her about some issues that they were having, the Defendant went also to pray and to attend the services that day. The Defendant's daughter did not want him at her church drunk, she had Security called. Security became aggressive and they wrestled the defendant to the ground and broke the Defendant's arm. The defendant was in so much pain, but he knew that he needed to get medical attention, so the Defendant got in his car to drive himself to the hospital, but ended up running (Drove) into the side of the Church. A little girl suffered a broken toe as she was getting out of the way of the scuffle. An ambulance was called for the Defendant. From the time the Defendant left his home to go to speak to his daughter, he was on the phone with his sister, Beatrice Hickman, in Philadelphia.

II.

STATEMENTS OF FACTS

On January 11, 2012, the Defendant had his Preliminary Hearing and was bounded up to district Court.

On January 12, 2012, the Defendant was arraigned in lower-level district Court. The Defendant Plead not

1 guilt and invoked his right to a Speedy trial. A trial
2 Date was Set for March 5, 2013.

3 On February 28, 2012, a Petition for Writ of Habeas
4 Corpus was filed on the defendant's behalf. Due to
5 the Writ of Habeas being filed the Defendant's trial
6 was reset for April 9, 2013. The Habeas Corpus was
7 granted and denied in part.

8 On April 17, 2013, the Public Defender's office was
9 allowed to Withdraw and MR. Mitchell Posin ("MR. Posin")
10 was Confirmed as Counsel of Record. Please note: Mr.
11 Posin accept \$1500⁰⁰ from the Defendant on 10/10/12, but
12 did not Confirm as Counsel until 6 months later.

13 on August 26, 2013, the Defendant's Calendar Call
14 hearing was conducted both sides announced "ready for
15 trial".

16 On September 9, 2013 the Defendant was ~~found~~ guilty
17 of multiple Charges.

18 On December 4 Mr. Posin was discharged as
19 Counsel of Record, by Judge Hardcastle.

20 On December 9, 2013, Judge C. Ellsworth reappointed
21 Mr. Posin, to represent the Defendant, against the Defend-
22 ant's protest.

23 On December 18, 2013 the Defendant was
24 Sentenced.

25 ///

26

III. ARGUMENT

A. Conflict of Interest AND ineffective assistance of Counsel

Since, Mr. Posin has been the Defendant's Counsel, the Defendant has been prejudiced and suffered manifest injustice based on Mr. Posin's ineffectiveness, refusal and/or failure to:

1. Notify the Court that the Defendant wish to represent himself, due to Counsel-Client Conflict;

2. Subpoena my witnesses for trial. He never even contacted the witnesses or interview them

3. Conduct any pre-trial investigation into any of the facts pertinent to my case.

4. Never sought an expert to discuss or explain what the theory of "Diminished Capacity" consisted of.

5. Communicated with the Defendant about any the evidence for or against him

6. File a motion for a new trial, like he promised the Defendant he would do

7. Provide the Defendant with any discovery (Brady material).

8. file any Subpoenas, motions, or writs

9. Inform the Defendant of the gist of the numerous Side-Bars

10. file a motion to Compel Discovery.

- 1 11. Discuss any possible defenses, or trial strategies.
- 2 12. Due Diligently prepare for trial and relied solely
- 3 on the prosecution's files for trial.
- 4 13. Admit into evidence report, bills, documents, and
- 5 receipts, which could have proved my innocence or mitigated
- 6 my sentence.
- 7 14. Sufficiently inquire into the toxicology reports,
- 8 the time that lapse before my blood was
- 9 drawn (3 hours) (over the two hour mark).
- 10 15. Seek exculpatory or impeachment material
- 11 on all state witnesses, especially officers.

12 16. Seek any medical records/reports of the defendants.

13 A Defendant has a Unqualified right to legal

14 assistance that is Constitutionally effective. Since Mr.

15 Posin was retained, he has utterly failed to provide

16 the Defendant with a level of effective legal

17 representation.

18 The Defendant contends that Mr. Posin

19 representation was deficient and failed his Duty as a

20 Lawyer. Mr. Posin Did not exercise his Knowledge or Skill

21 in this instant matter.

22 Mr. Posin willfully and deliberately failed to provide

23 the defendant with reasonable representation, due to

24 money issues. And Mr. Posin Knew or Should have known

25 that there was exculpatory evidence that only the

1 Defendant knew, but Mr. Posin failed to
2 confer with his client.

3 Mr. Posin also was told by his client
4 to investigate the state's witness fees and other
5 compensation.

6 The Defendant has consistently tried to notify
7 this court of the ineffectiveness of Mr. Posin and the
8 conflict between he and the Defendant. "When the
9 Defendant raises a seemingly substantial complaint
10 about counsel, the Judge has an obligation to inquire
11 thoroughly into the factual basis of the defendant's
12 dissatisfaction." Smith v Lockhart, 923 F.2d 1314, 1320
13 (8th Cir. 1991) (emphasis added) An inquiry into the
14 reasons for a defendant's dissatisfaction with his or
15 her lawyer is necessary for the trial court to determine
16 whether good cause for substitution of counsel exists.
17 U.S. v. Welty, 674 F.2d 185, 188 (3d Cir. 1982).

18 Once an actual conflict is shown, the Defendant
19 need demonstrate only "that some effect on counsel's
20 handling of particular aspects... was likely." U.S. v.
21 Miskinis, 966 F.2d 1263, 1268 (9th Cir. 1992). Mr. Posin
22 could not properly cross-examine witnesses because he
23 failed to file a motion to compel exculpatory
24 evidence. The Court has held that the Confrontational
25 Clause provides "the opportunity for effective

1 Cross-examination." Delaware V. Fensterer, 474
2 U.S. 15 (1985). Full Pre-trial disclosure of Discovery
3 in a Criminal Case also implicates a Defendant's
4 Right to effective assistance of Counsel Under
5 the Sixth Amendment.

6 The Defendant was denied his Constitutional
7 right to a fair trial, Due to ineffective assistance
8 of Counsel, Prosecutorial Misconduct and erroneous
9 Jury instruction. Mr. Posin's representation was
10 deficient "before, during, and after" trial. "To satisfy
11 the Constitution, Counsel must function as an advocate
12 for the Defendant, as opposed to a friend of the Court."
13 Jones Vs. Barnes, 463 U.S. 745, 758, 103 S. Ct. 3308,
14 3316, 77 L. Ed. 2d 987 (1983). Thus the appropriate
15 inquiry focuses on the adversary process. Similarly,
16 if Counsel entirely fails to subject the Prosecution's case
17 to meaningful adversarial testing, then there has been a
18 denial of the Sixth amendment right that makes that
19 adversarial process itself presumptively Unreliable."
20 Cronic, 466 U.S. 648, 104 S. Ct. at 2047.

21 The Proper Measure of an attorney's Performance
22 remains Simply reasonable under Prevailing Professional
23 norms. Strickland V. Washington, 466 U.S. at 688, 104
24 S. Ct. 2052. Mr. Posin failed to Secure the Defendant's
25 Phone records by Subpoena.

1 Also, the Defendant would like to emphasize these other
2 issues;

3 1. Mr. Posin Promised the Defendant that he had 30
4 days to file a motion for a new trial, and he would file the
5 motion for a new trial once the Defendant paid him more money.

6 2. Allow a witness by the Name of Mr. Thompson to
7 Commit perjury.

8 3. Did not have the transcript from my ~~pretrial~~ Preliminary
9 hearing, Mr. Posin had to get the transcript from my Sister.

10 4. Mr. Posin would not disclose any of the sidebar and
11 Chamber meeting that he, the Judge, and the state had.

12 5. Mr. Posin did not consult with the Defendant for any
13 strategic decision about trial or jury instructions.

14 6. Mr. Never showed me the toxicology report before or during
15 trial and the Defendant only received the Document once
16 Mr. Posin was allowed to withdraw as Counsel By Judge Hardcastle.

17 7. Counsel never thoroughly or aggressively question any witness
18 during trial.

19 8. Mr. Posin only signed on the for a Plea Agreement but
20 was told by Judge that he had to represent the Defendant
21 which created a Conflict.

22 9. Allowed the State to give the wrong Jury instruction
23 on 8 felony counts and did not object.

24 10. Never Prepared a Affirmative Defense based on
25 Voluntary intoxication.

11. Never introduce the toxicology report into evidence

12. Allowed the D.A. to allow State witnesses to fabricate statements, that were in contradiction to their Preliminary hearing statements.

13. Mr. Posin never introduced intrinsic evidence, that Defendant spent thousands of dollars on vehicle and that the victims were paid over \$30,000 & \$20,000 respectively.

14. Never allowed me to help at trial any time that I would try to inform of inconsistent statements by witnesses. Mr. Posin would tell me to be quiet.

15. Never required the State to disclose whether any of the officers testifying had any misconduct/disciplinary actions against, as *Miller v. Ryan* (9th Cir. 2013) required.

16. There was no trust or confidence between Mr. Posin and the Defendant.

17. Mr. Posin proceeded to trial with no discovery material and never petitioned the Court to make the State handover Brady material.

18. Mr. Posin only visited the Defendant 4 times in 2 years.

19. Never hired an expert to testify to the Defendant's Diminished Capacity.

20. In fact a Defendant who shows a conflict of interest need not demonstrate prejudice in order to obtain relief. Mr. Posin had no loyalty to his client, at all.

1 The Defendant had to file over 8 motions on his
2 own because Mr. Posin refused to do his duty
3 as an attorney. The defendant filed the following
4 motion but has not received in responses to them:

5 1. Faretta Motion

6 2. Motion to Compel Discovery

7 3. Reconsideration of ineffective assistance of Counsel
8 and motion for a new trial based on new evidence.

9 4. Motion for a New trial

10 5. Disqualification Of Judge C. Ellsworth.

11 The Defendant also has not received any
12 Discovery material except 3 pages. One of which
13 the Officer lied and said that my blood was drawn
14 within 2 hours (see exhibit 1) but the toxicology
15 report says that my blood was drawn after 3 hours.

16 Also, see exhibit 2 for witness fees, Mr. Posin
17 never requested such info on the witnesses testifying
18 for the State, thereby, he could not effectively
19 cross-examine the witnesses.

20 Conclusion

21 There is no doubt that there was a Conflict of inter-
22 est between Mr. Posin and the Defendant. Also,
23 Mr. Posin was ineffective, He did not provide his
24 Client with reasonable representation. Therefore,
25 the defendant, Prays that this Honorable Court

1 will grant the Defendant a new trial and appoint
2 the Defendant a new Lawyer. Also, the Court
3 asked Mr. Posin had he filed a appeal for the
4 Defendant he Stated, "no." The Defendant
5 requested that he file one but he said pay
6 me up front first. He is totally ineffective.


7
8 
9 Wilburt Hickman
10 330 S. Casino Center
11 Las Vegas, NV 89101
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EXHIBIT A

4-19-14

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION FOR THE WITHDRAWAL OF WHOLE BLOOD SAMPLE

EVENT #: 111218-1478

STATE OF NEVADA)

HICKMAN WILBERT

(Name of Person Blood Drawn From)

COUNTY OF CLARK)

Jenny Grant

(Print name of declarant drawing blood.)

being first duly sworn, deposes

and says THAT I AM A:

Registered Nurse

Nurse Practitioner

Licensed Practical Nurse

Medical Doctor

☒ Laboratory Technician/Assistant

Other (Specify)

Emergency Medical Technician

Physician Assistant

employed by:

Quest Diagnostics

That a regular part of my duties is the withdrawing of blood samples from persons and I am authorized to do so by:

Nevada State Board of Nursing.

Nevada Department of Human Resources / Health Division / Bureau of Licensure & Certification.

Nevada Board of Medical Examiners (Doctors Only).

3 hrs later

That on 12.18.11

(Date Drawn)

at 1149

(Time Drawn)

AM/PM, I withdrew a sample of blood in a medically

accepted manner (including using no alcohol solutions or alcohol-based swabs) from a person known to me 0.168

as

Hickman Wilbert

(Print name of person blood drawn from.)

That I kept the sample of blood in my sole custody or control and it remained in substantially the same condition

as when I first obtained it, until I delivered the sample to Officer D. Corbin P# 7941.

of the Las Vegas Metropolitan Police Department. I, Jenny Grant, do hereby

(Print Declarant Name)

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

Jenny Grant

Declarant Signature

Declarant Title

Lab Tech

Witness Signature

12-19-11

Date

IMPAIRED DRIVING REPORT

Event # 111218-1778ID # 905481

DOCUMENT PRESENTATION

- ☐ Difficulty Recognizing Paperwork ☐ Presented Wrong Paperwork ☐ Not in Possession of Documents (Identify what below)
☐ Not Responsive to Request ☐ No Problem Presenting Documents ☒ Other

WAS IN CARE OF CORD

Details

When I ARRIVED I got Vehicle INFO

VEHICLE EXIT

- ☐ Refused to Exit Vehicle ☐ Trouble Opening Door ☐ Leaned on Vehicle ☐ Stumbling/Staggering
☐ Falling Down ☐ No Problem with Exit ☒ Other

Details

WAS EXTRACTED BY CORD

PHYSICAL OBSERVATIONS OF DRIVER

Breath Odor: ☒ Alcoholic Beverage ☐ No Odor ☐ Other Odor ☐ Slight ☐ Mod ☐ StrongEyes: ☐ Normal ☒ Bloodshot ☐ Watery ☒ Glassy ☐ Fixed Focus Stare ☐ OtherPupil Size: ☐ Apparently Normal ☒ Dilated ☐ ConstrictedSpeech: ☐ Normal ☐ Stuttering ☐ Incoherent ☒ Slurred ☐ Confused ☐ OtherAttitude: ☐ Polite ☐ Cooperative ☐ Talkative ☐ Insulting ☐ Excited ☐ Indifferent☒ Argumentative ☐ Aggressive ☐ Combative ☐ Unresponsive ☐ OtherBalance: ☐ Sure ☐ Wobbling ☐ Falling ☐ Swaying ☐ Leaned on Object for SupportClothing: ☐ Unkempt ☐ Urinated On ☐ Unfastened ☐ Other

Details

TALK WITH SUSPECT IN BACK OF Ambulance Very Strong odor of Alcohol

INITIAL FIELD INTERVIEW

Are you currently under the care of a Doctor or Dentist? _____

Why did you see the Doctor or Dentist? _____

When did you last see the Doctor or Dentist? _____

What is the name of your Doctor or Dentist? _____

Do you have any physical and/or mental handicaps? _____

Do you have Epilepsy and/or Diabetes? _____

Describe any physical and or mental handicaps? _____

What medications are you taking, when and how much? _____

When was your last dose (date & time)? _____

When did the collision occur? _____

What road were you on? _____

Were you driving? YES

Who owns the vehicle? _____

What was your destination? _____

Where did you start? _____

What time did you leave? _____

What time is it now? _____

What is today's date? _____

Have you been drinking? YES THU NOHow much? 10What have you been drinking? B&D

When was your last drink? _____

Where was your last drink? Alcohol 0.168

Details

EXHIBIT B

CRIME

DA defends paying witnesses

By BETHANY BARNES

A version of this story was posted on lasvegassun.com at 2 a.m. Sunday.

A controversial practice by the District Attorney's Office that first came to light in 2009 — paying witnesses to attend pre-trial meetings with prosecutors — resurfaced last week in Clark County District Court and could have ramifications in future criminal cases.

Defense attorneys first discovered the practice after a witness admitted she'd lied under oath because she wanted her \$50 payment.

Where did she go after she met with prosecutors? To buy crack cocaine, according to news accounts.

A judge ordered a new trial, the defendant was acquitted and the Nevada American Civil Liberties Union and Public Defender Phil Kohn questioned the legality of the payments. The District Attorney's Office said it was a practice that had been in place for more than 20 years in Clark County.

Newspaper articles about the practice were published. Nothing changed.

Fast forward to 2013 and the attorneys whose case revealed the practice once again threw a fit over witness payments — and a judge and jury took heed.

At issue isn't the legality of payments, but the District Attorney's Office's handwritten records of receipts for the vouchers, which witnesses redeem for cash.

It's tough to cross-examine witnesses about what they may have received when the District Attorney's Office burns the receipts, defense attorneys Dayvid Figler and Daniel Bunin argued during a two-week trial that wrapped last week.

Clark County District Judge Elissa Cadish agreed.

Cadish instructed jurors they could view the witnesses as less credible because the District Attorney's Office destroyed evidence that would have showed the amount witnesses had been paid.

The county budgets about \$1.2 million for witness fees and mileage, said county spokesman Erik Pappa. Last year, the county spent about \$860,000 of the budgeted amount.

Figler had called Felicia Hernandez, a victim's advocate in the office, to the stand after the District Attorney's Office said there was no way to see how much witnesses had been paid because the handwritten records had been destroyed.

The District Attorney's Office regularly burns witness vouchers. [See Witnesses, Page 5]

DESTROYING EVIDENCE

COVERING UP PAYMENTS

REHEARSAL (TESTIMONY)

CONT. 2 of 2

bethany.barnes@lasvegassun.com / 990-7714 / @betbarnes

EXHIBIT C

Willbert Hickman Jr. # 905481

Name/ID
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

LEGAL
MAIL



c/o

Clerk of Courts
200 Lewis Ave.
Las Vegas, NV 89155



Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

Wilburt Hickman Jr. #905481
CCDC 330 S. Casino Center Blvd
Las Vegas, NV 89101

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

REPORT OF
INVESTIGATION
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20535

16


CLERK OF THE COURT

ASTA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

WILBURT HICKMAN aka WILLIAM HICKS,

Defendant(s),

Case No: C-12-278699-1
Dept No: V

CASE APPEAL STATEMENT

1. Appellant(s): Wilburt Hickman, Jr.

2. Judge: Carolyn Ellsworth

3. Appellant(s): Wilburt Hickman, Jr.

Counsel:

Wilburt Hickman, Jr. #905481
330 S. Casino Center Blvd.
Las Vegas, NV 89101

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

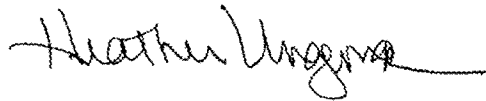
5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: No

- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
3 9. Date Commenced in District Court: January 10, 2012
4 10. Brief Description of the Nature of the Action: Criminal
5 Type of Judgment or Order Being Appealed: Judgment of Conviction
6 11. Previous Appeal: No
7 Supreme Court Docket Number(s): N/A
8 12. Child Custody or Visitation: N/A
9

10 Dated This 8 day of January 2014.

11 Steven D. Grierson, Clerk of the Court

12 
13

14 Heather Ungermann, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
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DEC 10 2013

MC Not
PP Wilburt Hickman Jr.
DA 330 S. Casino Center
LV, NV 89101
AOR Mitchell Posin

DISTRICT COURT

Ann D. Quinn

CLERK OF THE COURT

CLARK COUNTY, Nevada

State of Nevada

Plaintiff

C 278699

vs.

CASE NO. ~~C262784~~

Wilburt Hickman Jr.

DEPT. NO. ~~B & IV~~

#905481
Defendant

DOCKET NO. _____

NOTICE OF Motion And Motion for Reconsideration
of Motion for a New Trial Due to Ineffective
Assistance of Counsel And Conflict of Interest

Comes Now, Wilburt Hickman Jr., Pro Se, to move this
Honorable Court, to "Reconsider" the Defendant's "Motion
for a New trial due to Ineffective Assistance of Counsel,
Prosecutorial Misconduct, and Conflict of Interest. Also,
the Defendant, humbly and respectfully request that
this Court, Dismiss Mr. Mitchell Posin ESQ., as the
Defendant's Counsel of Record and appoint the Defendant
independent Counsel.

This Motion is based and made on all the papers,
Pleadings, and documents of file for this Case, the

RECEIVED

JAN 22 2014

CLERK OF THE COURT

1
2 attached Memorandum of Points and Authorities, and
3 any Oral Argument allowed by this Honorable Court.
4 Dated this 12 day of November, 2013.

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Wilburt Hickman JR.

Notice of Motion

To: ALL Parties of Interest

Please, each of you take Notice that the foregoing
Motion will come before District Court Dept. 5 on
12 day of ²⁰¹⁴ February, 2013, at 9:00 a.m. for hearing.
Dated this 12 day of November, 2013.

Wilburt Hickman JR.

Certificate of Service

I, Wilburt Hickman Jr., Certify that I placed
into the mail a "Motion for Reconsideration, etc." to
the following Person listed below:
Dated this 12 day of November, 2013.

3 C/o

4 Clerk of Courts

5 200 Lewis Ave.

6 Las Vegas, Nevada 89101

8 Witness by: ~~from Colonel~~
9 Ronnie Edwards

by: ~~Willburt Hickman Jr.~~
Willburt Hickman Jr.

10 I.

11 Memorandum of Points of Authorities

12 Statements of the Case

13
14 On January 4, 2012 the Defendant had his Prelim-
15 inary Hearing. At the Conclusion of the Preliminary
16 Hearing, the Defendant was Bound up to District
17 Court for Arraignment.

18 On January 12, 2012, the Defendant was arraigned
19 in lower-level District Court. The Defendant plead not
20 guilty and invoke his right to a Speedy trial. A trial
21 date was set for March 5, 2013, and a Calendar Call date
22 set for February 27, 2012.

23

24 ON February 28, 2012, a petition for Writ of Habeas
25 Corpus was filed on the Defendant's behalf. Due
26 to the Writ of Habeas Corpus being filed the

27

2 Defendant's trial date was reset.

3
4 On April 9, 2012, the Defendant's Writ of Habeas
5 Corpus was granted in part.

6
7 On April 17, 2013, the Public Defender's Office was
8 allowed to withdraw and Mr. Mitchell Posin ("Mr. Posin") was
9 confirmed as Counsel (Although, he was paid 6 months earlier. (See, Money release)

10
11 On August 23, 2013, a Notice of Habitual Criminality
12 was file by the Prosecutor.

13
14 On August 26, 2013, the Defendant's Calendar Call
15 hearing was conducted. Both Side (Prosecution and
16 the Defense) announce "Ready for Trial".

17
18 On September 3, 2013, the Defendant's trial began.

19 On September 9, 2013, the Jury returned a verdict
20 of guilty on several charges and hung on 8 counts.

21

II.

22

Argument

23

24 The Defendant was denied his Constitutionally
25 right to a fair trial. Due to ineffective assistance of
26 Counsel, Prosecutorial Misconduct, and erroneous Jury
27 instructions.

2. Mr. Posin did not have the Defendant's Complete Discovery, but still proceed to trial, without first getting the Defendant's informed Consent.

3. Mr. Posin refuse to use or hire an investigator for the Defendant's case. Mr. Posin claimed he need more money for that.

4. Did not interview the witnesses that the Defendant tolded him about and who wished to testify for the Defendant.

5. Mr. Posin did not visit Defendant before trial, to discuss the following important matters:

(a). Relevant documents prepared by investigators.

(b). Voir dire questions

(c). outline or draft of opening statement

(d). Cross-examination plans for all prospective prosecution

Witnesses

(e) direct-examination plans for all defense witnesses

(f) Prior statements of all Prosecution's witness (Mr.

Posin did not have Preliminary transcription).

(g) outline or draft of closing statements.

(h). Never developed a plan on how we would confer during trial

(i). Never discussed whether it would be better to not put on a defense and instead rely on the State failure to meet its Constitutional burden of Proving each element beyond a "reasonable doubt."

(J). Considered filing a pretrial motion to strike the Prosecution's "expert witness".

(K). Never filed any motions on the defendant's behalf.

(L). Never sought an expert to testify on the defendant's behalf.

(M) Never file a motion to Compel for the following matters:

1. Witnesses Criminal Histories -

"The existence, substance, and manner of execution or fulfillment, of any promises, agreements, understandings, and arrangements, whether verbal or written, whether completed or not, between the state, its agents or attorneys, and any witness or the witness' agents or attorneys or representatives, wherein the state has agreed, or purported to agree, either expressly or impliedly including but not limited to the following, (Biglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 [1972])."

2. Officer's notes regarding Case -

Any handwritten or otherwise memorialized notes kept by the investigating officers in this (to include those constructively possessed)

3. Reports / Logs Communication Re this Case

All 911 calls, logs, CADS, Car to Car and any other reports/logs/notes regarding this event.

4. Photos / Diagrams / Videos

Any photos taken regarding this case and diagrams drawn, and any surveillance videos in the State's actual or constructive possession.

5. Impound Report

A copy of the impound report(s) regarding this case if one exists.

6. Reports Regarding any Testing / Examination / Treatments

Regardless of the results, any reports regarding any testing or examinations of any nature, regarding this case. Especially any documents provided to the experts who planned on testifying in this case.

7. Reports from the Hospital / Ambulance(s)

Any documents to include reports, records and notes from any hospital, medical facility, counseling facility, and ambulance(s) that the State has in its actual or constructive possession.

8. Officer's Misconduct / Disciplinary Action(s)

Pursuant to *Milke v. Ryan* 2013 WL 979127

• A-9 (Ariz.), 2013, in order to provide effective assistance of counsel, the defense counsel should request both exculpatory and impeachment material that is relevant either to guilt or punishment to include: Officer misconduct, disciplinary actions against officers, impeachment material from officers' personnel file -

1 or elsewhere including "all records of any Internal
2 Affairs investigations. Also, any such impeachment
3 material of any State's agents that works for Metro
4 who plans on testifying.

5
6 Mr. Posin never obtained the defendant's discovery nor
7 did he file a motion to obtain it "prior to trial,
8 the prosecution must provide the defense with any and
9 all exculpatory evidence in its actual or constructive
10 possession pursuant to the Due Process Clauses of the
11 fifth and 14th Amendments of the United States
12 Constitution. Brady v. Maryland, 373 U.S. 83, 83 S.Ct.
13 1194 (1963). Kyles v. Whitney, 514 U.S. 418, 115 S.Ct.
14 1555 (1995) (emphasis added). Mr. Posin obviously provided
15 ineffective assistance of counsel, due in large part to the
16 fact that he was upset with the Defendant for not
17 having more money to pay him. Mr. Posin was paid only to
18 secure a Plea Agreement nothing more. This is the reason
19 that Mr. Posin refused to spend any money investigating or
20 preparing a defense. This created a conflict between
21 the Defendant and Mr. Posin, Mr. Posin had divided
22 loyalties. "The Sixth Amendment guarantee of Assistance
23 of Counsel comprises two correlative rights: The right to
24 Counsel of reasonable competence and the right to Counsel's
25 undivided loyalty. Manhall v. Reed —, 847 F.2d
26 576, 579 (9th Cir. 1988). After trial, the Defendant's
27 Sister Call Mr. Posin and told him that the

1
2 Defendant Need to Speak With. Only after she
3 mention money did he agreed to visit the Defendant.
4 When Mr. Posin visit the Defendant asked Mr.
5 Posin to Send him a Copy of his Discovery and
6 any other documents that the defendant had
7 a right to, also. The Defendant asked Mr. Posin
8 to file an ineffective assistance of Counsel Motion.
9 Mr. Posin immediately pressed the button to leave
10 and stated, "You do it, Smart guy."

11
12 And Since the Defendant is not a Lawyer he
13 Cannot Say what other Constitutional duties Mr.
14 Posin failed to Provide to his client. "An accused's
15 right to be represented by Counsel is a fundamen-
16 tal Component of the Criminal Justice System,
17 Lawyers in Criminal Cases "are necessities not
18 Luxuries". Their Presence is essential because they
19 are the means through which the other rights
20 a person on trial are Secured, " U.S. v. Cronin, 466 U.S.
21 at 653, 104 S.Ct. 2043. "Thus the adversarial
22 Process by which the Sixth Amendment requires
23 that the accused have Counsel acting in the role
24 of an advocate." Anders v. California, 386 U.S. 738,
25 743, 87 S.Ct. 1396 (1967). In U.S. v. Decoster,
26 199 U.S.App.D.C. 359, 382, 624 f.2d 196, 219.
27 (1979) it was stated that, "In some cases

1 the performance of Counsel may be so inadequate
2 that, in effect, no assistance of Counsel is provided
3 (emphasis added).

4
5 C. Mr. Posin's Constitutionally ineffective Trial Representation
6 Below is a list of Mr. Posin's acts and omissions at trial:

- 7 1). failing to introduce toxicology report into evidence
- 8 2). failure to object to the State's erroneous Jury
- 9 instruction
- 10 3). failed to mention Defendant's intoxication
- 11 4). failed to have any Discovery (Brady Material)
- 12 ready for trial. Never reviewed Prosecution file.
- 13 5). failed to subpoena any witness or documents.
- 14 6). failed to hire an expert to counter State's
- 15 expert
- 16 7). failed to present to the Jury an Affirmative
- 17 Defense of Diminished Capacity (Voluntary intoxication)
- 18 8). failed to present all exculpatory evidence
- 19 9). failed to properly prepare for trial, never did
- 20 he consult or include the defendant trial preparation
- 21 10). failed to diligently cross-examine State witnesses
- 22 11). failed to share any of the conversations contents
- 23 of the many sidebars and Chamber Conferences,
- 24 and failed to have a conversation record to
- 25 preserve the record for collateral review.

12), failed to listen to the Defendant in trial when the Defendant who tell him a witness was lying, all he would say is shut up.

13), failed to mention the money the victims received from the Defendant's insurance company.

14), Never Called any of the witnesses that wanted to testify on the Defendant's behalf.

15), failed to tell the Judge what the D.A. told him ("Somebody has it in for him").

16), failed to mention when certain witnesses committed perjury

17), failed to present receipts, Bills, and other documents to show how much money the Defendant had invested into the vehicle.

Mr. Posin's Constitutionally deficient representation "before and during" trial denied the Defendant his right to a fair trial. "To satisfy the Constitution, Counsel must function as an advocate for the Defendant, as opposed to a friend of the Court," Jones v. Barnes, 463 U.S. 745, 758, 103 S.Ct. 3308, 3316, 77 L.Ed.2d 987 (1983). "Thus the appropriate inquiry focuses on the adversarial process. Similarly, if Counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the Adversary

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2 process itself presumptively unreliable." Cronic, 466
3 U.S. 648, 104 S.Ct. at 2047.
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A. Ineffective Assistance of Counsel.

1. To Satisfy Constitutional due process a defendant has a Sixth Amendment Right to effective assistance of Counsel. "Deficient" assistance of Counsel is representation that falls below an objective standard of reasonableness, Dawson v State, 108 Nev. 112, 115, 825 P.2d 593 (1992). "The Proper Measure of Attorney Performance Remains Simply Reasonable under prevailing Professional Norms. Strickland v. Washington, 466 U.S. at 688, 104 S.Ct. 2052. Mr. Posin's acts and Omissions undoubtably Confirm, that Mr. Posin's "Representation was Constitutionally ineffective. Below is a detail list of Mr. Posin's acts and omissions.

B. Mr. Posin's acts and Omission

1. Mr. Posin failed to provide his client with essential Pre-trial Counsel and advise Mr. Posin Sole Concern was how much money the Defendant Could Pay Him. Never Was there a Conversation about "trial Strategy", Possible Defenses, OR anything to do with the Defendant's Case. "The Sixth Amendment right to effective assistance to Counsel inheres to all Critical Stages" of a Criminal Proceeding unless Competently waived", U.S. v. Mateo, 950 F.2d 114, 47(1st Cir. 1991).

ACKNOWLEDGEMENT

1 STATE OF NEVADA
2 COUNTY OF CLARK SS.

3

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14

15 DATED THIS 4th day of December, 2013.

16 I, Wilburt Hickman Jr., do

17 solemnly swear, under the penalty of perjury, that

18 the above Motion Reconsideration is accurate,

19 correct and true to the best of my knowledge.

20 NRS 171.102 and NRS 208.165.

21

22

23

24

25

Respectfully Submitted,
Wilburt Hickman Jr.

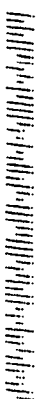
Wilbur Hickman Jr. #905481
330 So. Casino Center Blvd.
Las Vegas, NV. 89101



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UNITED STATES
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The Honorable Judge Carolyn Ellsworth
200 E. Lewis Ave.
Las Vegas, NV. 89155
Dept. #5

Clerk of The Court
Please Rush!





**CLARK COUNTY COURTS
EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3RD FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-0530
FAX (702) 474-2434

C-12-278699-1

LSF

Left Side Filing

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Steven D. Grierson
Clerk of the Court

Timothy Andrews
Assistant Clerk of the Court

ATTORNEY: Mitchell L Posin
DEFENDANT: Wilburt Hickman

Case Number: C-12-278699-1
Dept: Department 5

Attached are pleadings received by the Office of the District Court Clerk:

Pleadings: Judicial Notice Pursuant to Chapter 47 of Nev. Rev. Stats Seeking Disqualification
of Judge Carolyn Ellsworth

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS34.730 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).

Deputy Clerk of the Court
8 Criminal Desk

Dear Clerk of Court,

I am writing this brief note to reiterate that according to the Seminal Nevada Supreme Court, you are to file all documents so that there is an accurate record of the Court Proceedings Donoho v. District Court, 108 Nev. 1027, 842 P.2d 731 (1992)

1 MOT

2 Wilburt Hickman Jr. #905481

3 330 S. Casino Center

4 Las Vegas, NV 89101

5 In Proper Person

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA
10 Plaintiff,

CASE NO: C-12-278699-1
DEPT NO: 5

11 -VS-

12 Wilburt Hickman Jr.
13 #905481 Defendant

MEMORANDUM TO THE COURT

15 JUDICIAL NOTICE PURSUANT TO
16 CHAPTER 47 OF NEV. REV. STATS SEEKING
17 DISQUALIFICATION OF JUDGE CAROLYN ELLSWORTH

18 Please, take Notice, that the Defendant, Wilburt Hickman
19 Jr., hereby Serves upon the Court, Judicial Notice of the
20 Defendant's intent to have Judge Carolyn Ellsworth
21 Disqualified, in the instant Matter.

22 This Motion/Memo/Notice is made and based on
23 all papers and pleadings on file for this case, The
24 attached Points and Authorities, and the Defendant's

CLERK OF THE COURT

JAN 24 2013

RECEIVED

DEPARTMENT IX

DEC 23 2013

RECEIVED

1 Declaration, and any oral argument if deemed necessary.
2 Dated this 11 day of December, 2013.

3
4 Willbert Hickman Jr.
5 Wilbert Hickman Jr.
6 330 S. Casino Center
7 Las Vegas, NV 89101

8 NOTICE OF MOTION

9 Please, each of you take Notice that the Defendant's
10 Motion/Notice/Memo will come on for Hearing on the
11 day of _____, 2013, at _____ a.m., or soon thereafter.
12 Dated this 11 day of December 2013.

13
14 Willbert Hickman Jr.
15 Wilbert Hickman Jr.
16 330 S. Casino Center
17 Las Vegas, NV 89101

18 Certificate of Service

19 I hereby certify that I place my "Judicial Notice
20 pursuant to Chapter 47, etc" in the U.S. mail, first class,
21 postage prepaid on this 11 day of December, 2013 to the
22 following:

23
24 Chief Judge Togliatti
25 Clerk of Courts, Dist #9
26 200 Lewis Ave
27 Las Vegas, NV 89155

By: Willbert Hickman Jr.
Wilbert Hickman Jr.

Declaration

I, Wilburt Hickman Jr., the Declarant, first being duly Sworn and says:

1. This Declaration is made for Just and Good Cause.

2. That Judge C. Ellsworth refuses to allow the Defendant to represent himself, in violation of his Constitutional Right to.

3. That Judge C. Ellsworth refuses to hold a evidentiary hearing on the Defendant's of "ineffective assistance of Counsel", before, during and after trial.

4. That the Judge refuses to allow the Defendant to file any motion, even though the Judge knows that the Defendant's Counsel (Mr. Posin) will not file any motion because the defendant does not have any money to pay him.

5. That Judge C. Ellsworth refuses to hold an evidentiary hearing on the New found Evidence in the Case.

6. The Judge refuses to admonish the State to hand over all the Discovery (Brady material) in its possession.

7. That Judge C. Ellsworth is forcing Mr. Posin to represent the defendant, even though the Defendant has sought relief from Mr. Posin's representation, by filing numerous Memos and motions due to ineffective assistance of Counsel and the Conflict of interest between Mr. Posin and the Defendant. And

Judge C. Ellsworth is forcing Mr. Posin to file an appeal for the Defendant.

8. That Judge C. Ellsworth has repeatedly shown that
She cannot be impartial when it comes to the Defendant.

9. That the Defendant Constitutional Rights have been
Violated by Judge C. Ellsworth.

I Declare under the Penalty of Perjury that the
foregoing declaration is true and correct (NRS 53.045)

Dated this 11 day of December, 2013.

CONCLUSION

Wilbur Hickman Jr.
Wilbur Hickman Jr.

That the Defendant Prays that Judge C.
Ellsworth is recused from the Defendant's case and
that all the issues raised by the defendant (Motions and
Memorandums) are finally recognized and addressed.

DATED THIS 11 day of December, 2013.

I, Wilbur Hickman Jr., do

solemnly swear, under the penalty of perjury, that

the above information/statements is accurate,

correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

Wilbur Hickman Jr.
Wilbur Hickman Jr.

Defendant

January 8, 2014

Mr. Wilburt Hickman Jr.

#905481

Clark County Detention Center

330 Casino Center Blvd.

Las Vegas, NV 89101

Re: C-12-278699

Mr. Hickman:

I am in receipt of your document entitled "Judicial Notice Pursuant to Chapter 47 of Nev. Rev. Stats Seeking Disqualification of Judge Carolyn Ellsworth." I am enclosing said document with this letter. Department IX will not file the document on your behalf, as it is the responsibility of the Court Clerk's office to file documents for parties. Please be advised that you must properly file the document and serve all opposing parties with any motion you wish to be placed on calendar and decided by the Judge.

Sincerely,



Amanda Ebert

-- Law Clerk to the Honorable Chief Judge Jennifer Togliatti --

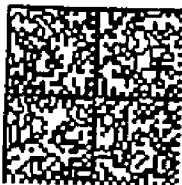


EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89155-2544



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**PRESORTED
FIRST CLASS**



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Mr. Wilbur Hickman Jr.
#905481 AKAs
Clark County Detention Center
330 Casino Center Blvd.
Las Vegas, NV 89101

TN-HICKS, Wilbur



Wilbert Hicks #905481

Name/ID
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

Chief Judge Togliatti
Clerk of Courts
200 Lewrs Ave, Dept #9
Las Vegas, NV 89155

LEGAL



LEGAL
MAIL


CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411
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-

WILBURT HICKMAN, aka,
William Hicks
#0905481

Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

STATE'S OPPOSITION TO DEFENDANT'S PRO PER DIRECT APPEAL

DATE OF HEARING: January 29, 2014

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through H. Leon Simon, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Direct Appeal.

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 January 1, 2011, Wilburt Hickman ("Defendant") was charged by way of
4 Information with: 8 counts of Attempt Murder with Use of a Deadly Weapon (Category B
5 Felony – NRS 200.010, 200.030, 193.330, 193.165) (Counts 1-8), 1 count of Battery with
6 Use of a Deadly Weapon (Category B Felony – NRS 200.481) (Count 9), 1 count of Battery
7 with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony –
8 NRS 200.481.2e)(Count 10), 6 counts of Assault with a Deadly Weapon (Category B Felony
9 – NRS 200.471) (Counts 11-16), 1 count of Burglary (Category B Felony – NRS
10 205.060)(Count 17), and 1 count of Malicious Destruction of Property (Category C Felony –
11 NRS 206.310, 193.155) (Count 18).

12 Before Defendant could proceed to trial, he filed a Pre-trial Petition for Writ of
13 Habeas Corpus on February 28, 2012. The State filed its Return to Writ of Habeas Corpus
14 on March 14, 2012. On March 28, 2012, the District Court granted and denied Defendant's
15 petition in part. The District Court filed its written Order on April 9, 2012, directing the
16 State to file an Amended Information reflecting the Court's order as to Count 15. Notice of
17 Entry was filed April 30, 2012.

18 The State complied with the District Court's order by filing an Amended Information
19 on April 3, 2012.

20 On August 23, 2013, the State filed a Notice of Intent to Seek Punishment as a
21 Habitual Criminal. Shortly thereafter, the State filed a Second Amended Information on
22 August 30, 2013, dismissing Count 18.

23 Defendant then proceeded to trial. Defendant's jury trial began on September 3,
24 2013. On September 9, 2013, the jury found Defendant guilty of Counts 9 through 17, but
25 hung on Counts 1-8. On September 25, 2013, the State informed the Court that it would not
26 be proceeding with a second jury trial on Counts 1-8 and moved to dismiss the counts. The
27 District Court dismissed Counts 1-8 with prejudice and set the case on calendar for
28 sentencing.

1 Before sentencing, Defendant filed a "Motion for Ineffective Assistance of Counsel
2 and Motion for New Trial" on October 17, 2013. The State filed its Opposition on
3 October 30, 2013, and the District Court denied the motion on November 4, 2013.

4 On November 26, 2013, Defendant filed a "Motion for Continuance on Grounds of
5 Absences of Witnesses and Discovery Evidence, Requesting New Counsel and New Trial to
6 Submit," and a corresponding Affidavit. The District Court struck Defendant's motion as a
7 fugitive document on December 9, 2013.

8 On December 18, 2013, the District Court adjudicated Defendant guilty under the
9 small habitual criminal statute and sentenced him as follows: as to Count 9 – 60 to 215
10 months in the Nevada Department of Corrections ("NDC"), with \$12,639.83 restitution to be
11 paid to Anneesah Franklin; as to Count 10 - 60 to 215 months in the NDC, with \$3,263.73
12 restitution to be paid to Anyla Hoye, Count 10 to run consecutive to Count 9; as to Count
13 11 – 16 to 72 months in the NDC to run concurrent to Count 10; as to Count 12 – 16 to 72
14 months in the NDC to run concurrent to Count 11; as to Count 13 – 16 to 72 months in the
15 NDC to run concurrent with Count 12; as to Count 14 – 16 to 72 months in the NDC to run
16 concurrent with Count 13; as to Count 15 – 16 to 72 months in the NDC to run concurrent to
17 Count 14; as to Count 16 – 16 to 72 months in the NDC to run concurrent to Count 15; as to
18 Count 17 – 22 to 96 months in the NDC, with \$10,369.04 restitution to be paid to Antioch
19 Church of Las Vegas, Inc., Count 17 to run concurrent with Count 16. Defendant was also
20 assessed a \$25.00 administrative fee, a \$150.00 DNA fee, and given 731 days credit for time
21 served. The Judgment of Conviction was filed on January 2, 2014.

22 On January 6, 2014, Defendant filed a Notice of Appeal and the instant "Direct
23 Appeal" in District Court.^{1 2} The State responds as follows to Defendant's "Direct Appeal"
24 filed in District Court.

25
26
27 ¹ Defendant also filed his direct appeal with the Nevada Supreme Court on January 10, 2014. That appeal is currently
28 pending under case number 64776.

² Defendant also filed a "Motion for Reconsideration and Motion for a New Trial Due to Ineffective Assistance of
Counsel and Conflict of Interest" on January 22, 2014. The State's response to this motion is forthcoming.

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Based on the foregoing argument, the State respectfully requests this Honorable Court to DENY Defendant's "Direct Appeal."

Respectfully submitted,

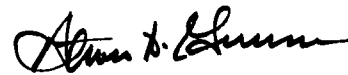
BY

CERTIFICATE OF MAILING

WILBURT HICKMAN, BAC#0905481
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

E. Goddard

HLS/AC/erg/L-1



CLERK OF THE COURT

1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 H. LEON SIMON
6 Chief Deputy District Attorney
7 Nevada Bar #000411
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

12 WILLIAM HICKMAN, aka,
13 William Hicks,
14 #0905481

Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

15 **STATE'S RESPONSE TO DEFENDANT'S NOTICE OF MOTION AND**
16 **MOTION FOR RECONSIDERATION OF MOTION FOR NEW TRIAL**

17 DATE OF HEARING: February 12, 2014
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Response to Defendant's Notice of Motion and
22 Motion for Reconsideration of Motion for New Trial.

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

26 ///

27 ///

28 ///

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On January 1, 2011, Wilburt Hickman ("Defendant") was charged by way of
4 Information with: 8 counts of Attempt Murder with Use of a Deadly Weapon (Category B
5 Felony – NRS 200.010, 200.030, 193.330, 193.165) (Counts 1-8), 1 count of Battery with Use
6 of a Deadly Weapon (Category B Felony – NRS 200.481) (Count 9), 1 count of Battery with
7 Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony – NRS
8 200.481.2e)(Count 10), 6 counts of Assault with a Deadly Weapon (Category B Felony – NRS
9 200.471) (Counts 11-16), 1 count of Burglary (Category B Felony – NRS 205.060)(Count 17),
10 and 1 count of Malicious Destruction of Property (Category C Felony – NRS 206.310,
11 193.155) (Count 18).

12 Before Defendant could proceed to trial, he filed a Pre-trial Petition for Writ of Habeas
13 Corpus on February 28, 2012. The State filed its Return to Writ of Habeas Corpus on March
14 14, 2012. On March 28, 2012, the District Court granted and denied Defendant's petition in
15 part. The District Court filed its written Order on April 9, 2012, directing the State to file an
16 Amended Information reflecting the Court's order as to Count 15. Notice of Entry filed
17 April 30, 2012.

18 The State complied with the District Court's order by filing an Amended Information
19 on April 3, 2012. On April 17, 2013, Mitchell Posin substituted in as Defendant's counsel.

20 On August 23, 2013, the State filed a Notice of Intent to Seek Punishment as a Habitual
21 Criminal. Shortly thereafter, the State filed a Second Amended Information on August 30,
22 2013, dismissing Count 18.

23 Defendant then proceeded to trial. Defendant's jury trial began on September 3, 2013.
24 On September 9, 2013, the jury found Defendant guilty of Counts 9 through 17, but hung on
25 Counts 1-8. On September 25, 2013, the State informed the Court that it would not be
26 proceeding with a second jury trial on Counts 1-8 and moved to dismiss the counts. The
27 District Court dismissed Counts 1-8 with prejudice and set the case on calendar for sentencing.

28 ///

1 Before sentencing, Defendant filed a "Motion for Ineffective Assistance of Counsel and
2 Motion for New Trial" on October 17, 2013. In the motion, Defendant requested that Mr.
3 Posin be withdrawn as counsel. The State filed its Opposition on October 30, 2013, and the
4 District Court denied the motion on November 4, 2013.¹

5 On November 26, 2013, Defendant filed a "Motion for Continuance on Grounds of
6 Absences of Witnesses and Discovery Evidence, Requesting New Counsel and New Trial to
7 Submit," and a corresponding Affidavit. The District Court struck Defendant's motion as a
8 fugitive document on December 9, 2013.

9 On December 18, 2013, the District Court adjudicated Defendant guilty under the small
10 habitual criminal statute and sentenced him as follows: as to Count 9 –to 60 to 215 months in
11 the Nevada Department of Corrections ("NDC"), with \$12,639.83 restitution to be paid to
12 Anneesah Franklin; as to Count 10 - to 60 to 215 months in the NDC, with \$3,263.73 restitution
13 to be paid to Anyla Hoyer, count 10 to run consecutive to count 9; as to Count 11 – to 16 to 72
14 months in the NDC to run concurrent to count 10; as to Count 12 – to 16 to 72 months in the
15 NDC to run concurrent to count 11; as to Count 13 – to 16 to 72 months in the NDC to run
16 concurrent with count 12; as to Count 14 – to 16 to 72 months in the NDC to run concurrent
17 with count 13; as to Count 15 – to 16 to 72 months in the NDC to run concurrent to count 14;
18 as to Count 16 – to 16 to 72 months in the NDC to run concurrent to count 15; as to Count 17
19 – to 22 to 96 months in the NDC, with \$10,369.04 restitution to be paid to Antioch Church of
20 Las Vegas, Inc., count 17 to run concurrent with count 16. Defendant was also assessed a
21 \$25.00 administrative fee, a \$150.00 DNA fee, and given 731 days credit for time served. The
22 Judgment of Conviction was filed on January 2, 2014.

23 ///

24 ///

25 ///

26 ///

27 _____
28 ¹ At a December 4, 2013 hearing, the District Court allowed Posin to withdraw. However, the District Court's ruling was short lived. Only five days later, on December 9, 2013, the District Court reversed its order. The court ordered that Posin will not be allowed to withdraw as counsel and will remain as counsel of record until he has filed a fast track appeal on Defendant's behalf.

1 On January 6, 2014, Defendant filed a pro per Notice of Appeal as well as a "Direct
2 Appeal" with the District Court.² The State filed its Opposition to Defendant's "Direct Appeal"
3 on January 24, 2014. The District Court struck the appeal as moot on January 29, 2014.

4 Defendant then filed the instant motion for reconsideration on January 22, 2014. Defendant
5 asks this Court to reconsider his October 17, 2013 "Motion for Ineffective Assistance of
6 Counsel and Motion for New Trial," which the District Court denied on November 4, 2013, in
7 addition to listing various new complaints about his counsel. The State responds as follows.

8 ARGUMENT

9 I. DEFENDANT'S MOTION FOR RECONSIDERATION IS A FUGITIVE 10 DOCUMENT

11 Defendant complains about Mitchell Posin, his counsel of record, and asks the court for
12 new counsel. Mr. Posin substituted in as Defendant's counsel on April 17, 2013. While
13 Defendant has previously requested Mr. Posin be removed from his case, this Court recently
14 ordered that Mr. Posin *not* be allowed to withdraw as counsel. On December 9, 2013, the
15 District Court ruled that Mr. Posin must remain as counsel until he has filed a Fast Track
16 appeal on Defendant's behalf. A Fast Track Statement has not been filed yet in Defendant's
17 appeal.³ Accordingly, Mr. Posin must remain counsel of record per this Court's previous
18 ruling.

19 As such, the instant motion for reconsideration is a fugitive document per EJDRCR
20 7.40(a), which states:

21 When a party has appeared by counsel, the party cannot thereafter appear on the
22 party's own behalf in the case *without the consent of the court*. Counsel who
23 has appeared for any party must represent that party in the case and shall be
24 recognized by the court and by all parties as having control of the case. The
25 court in its discretion may hear a party in open court although the party is
26 represented by counsel.

27 ² Defendant also filed his direct appeal with the Nevada Supreme Court on January 10, 2014. That appeal is currently
28 pending under case number 64776.

³ Defendant's appeal is currently pending under case number 64776. Thus far, only a Notice of Appeal and Request for
Transcripts have been filed.

1 Appellant *did not* ask this Court for leave to file the instant motion. Accordingly, it should be
2 stricken.

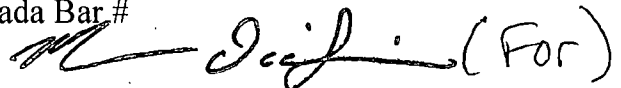
3 CONCLUSION

4 Based upon the foregoing, the State respectfully requests this Honorable Court STRIKE
5 Defendant's "Motion for Reconsideration of Motion for a New Trial Due to Ineffective
6 Assistance of Counsel and Conflict of Interest."

7 DATED this 7th day of February, 2014.

8 Respectfully submitted,

9 STEVEN B. WOLFSON
10 Clark County District Attorney
11 Nevada Bar #

 (For)

12 BY

H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411

13
14
15 CERTIFICATE OF MAILING

16 I hereby certify that service of the above and foregoing was made this 7th day of
17 February, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

18 WILBURT HICKMAN, #0905481
19 CLARK COUNTY DETENTION CENTER
20 330 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

21 BY /s/ E. Goddard

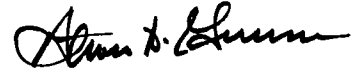
22 E. Goddard
23 Secretary for the District Attorney's Office
24
25
26
27

28 HLS/AC/erg/L-1

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DI GIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 WILBURT HICKMAN, aka,
14 William Hicks,
15 #0905481

Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

16 **ORDER DENYING DEFENDANT'S NOTICE OF MOTION AND MOTION FOR**
17 **RECONSIDERATION OF MOTION FOR NEW TRIAL**

18 DATE OF HEARING: February 12, 2014
19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 12th day of February, 2014, the Defendant not being present, in proper person, the Plaintiff
22 being represented by STEVEN B. WOLFSON, District Attorney, through MARC
23 DI GIACOMO, Chief Deputy District Attorney, and without argument, based on the
24 pleadings and good cause appearing therefor,

25 ///

26 ///

27 ///


28 ///

1 IT IS HEREBY ORDERED that the Defendant's Notice of Motion and Motion for
2 Reconsideration of Motion for New Trial, shall be, and it is DENIED. This type of motion
3 must be filed by way of a post-conviction relief writ of habeas corpus.

4 DATED this 21st day of February, 2014.

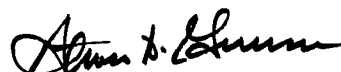
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7 DISTRICT JUDGE

8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #001565

10
11 BY 
12 MARC DI GIACOMO
13 Chief Deputy District Attorney
14 Nevada Bar #006955
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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

CASE NO.: C-12-278699-1

VS

DEPARTMENT 5

WILBURT HICKMAN

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☒ Jury Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☒ Conviction
- ☐ Other Manner of Disposition

DATED this 11th day of March, 2014.


CAROLYN ELLSWORTH
DISTRICT COURT JUDGE


CLERK OF THE COURT

1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 WILBURT HICKS
12 Aka WILLIAM HICKS,

13 Defendant.

)
) CASE#: C278699

)
) DEPT.

14
15 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

16 TUESDAY, SEPTEMBER 3, 2013

17 **RECORDER'S PARTIAL ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS**
18 **JURY TRIAL, DAY 1**

19 APPEARANCES:

20 For the State:

RICHARD H. SCOW, ESQ.
Chief Deputy District Attorney
CHRISTOPHER S. HAMNER, ESQ.
Deputy District Attorney

22 For the Defendant:

MITCHELL L. POSIN, ESQ.

23
24
25 RECORDED BY: LARA CORCORAN, COURT RECORDER

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46

1 TUESDAY, SEPTEMBER 3, 2013 AT 9:33 A.M.

2
3 [Outside the presence of the prospective jury panel]

4 THE COURT: All right. Thank you. Please be seated. This is case number
5 C278699, State of Nevada versus Wilburt Hickman. Is the State ready to proceed?

6 MR. HAMNER: Yes, Your Honor.

7 THE COURT: Is defense ready to proceed?

8 MR. POSIN: Thank you, Your Honor, yes we're ready.

9 THE COURT: All right.

10 Good morning. Welcome to Department. I'm Judge Carolyn Ellsworth
11 and this is my marshal, Bill Crank, my court recorder, Lara Corcoran, and my court
12 clerk Denise Trujillo, and we'll be with each other for the next several days if you're
13 on this jury.

14 What we're going through right now is called the voir dire process and
15 you are known right now are the venire panel. If you're seated on the jury then you'll
16 be the jury panel, but right now you are the venire. And as we ask you questions
17 we're going to be doing that under oath in order for us to determine whether you are
18 suitable to be a juror, and to be a juror you need to be fair and impartial and not
19 biased toward either side or against. And that's what we're looking for in a jury
20 panel.

21 [Voir Dire -- not transcribed- from 9:40 a.m. to 2:25 p.m.]

22 THE COURT: All right. If the clerk will swear in the members of the jury and
23 the alternate.

24 [The Clerk swore in the jury panel and the alternate jurors]

25 [The Court Clerk read the Information -- not transcribed]

1 [Opening Statement of the State -- not transcribed]

2 [Opening Statement of the Defense -- not transcribed]

3 THE COURT: Thank you. Will the State call its first witness.

4 MR. HAMNER: Yes, Your Honor. The State calls Kevin Madden to the stand.

5 May I approach to retrieve some exhibits?

6 THE COURT: Yes, of course.

7 MR. HAMNER: Thank you, Your Honor.

8 THE MARSHAL: Please raise your right hand and face our clerk.

9 **KEVEN MADDEN**

10 [having been called as a witness and being first duly sworn, testified as follows:]

11 THE COURT CLERK: Please be seated and please state your name and
12 spell it for the record.

13 THE WITNESS: Kevin Madden, K-E-V-I-N M-A-D-D-E-N.

14 THE COURT: Thank you. You may proceed.

15 MR. HAMNER: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 BY MR. HAMNER:

18 Q Mr. Madden, you have some sort of connection to the New Antioch
19 Christian Fellowship Church?

20 A Yes, I do.

21 Q Why don't you tell the jury a little bit about what your association is with
22 the church?

23 A My association with the church is that I've been a member there since I
24 was say July '07 and going on two years now I've been the assistant pastor for the
25 [indiscernible] fellowship and vows keeper, which is the marriage couples.

1 Q Now is this a church that's located on 3950 Las Vegas Boulevard North
2 here in Clark County?

3 A Yes, sir.

4 Q And Mr. Madden, what is your kind of official title at this point?

5 A Assistant pastor.

6 Q What do we call you? Assistant pastor, pastor, Mr. Madden; what
7 should I call you??

8 A Well the average call Pastor.

9 MR. HAMNER: Pastor. Got it. All right. At this time, I'd like to show
10 opposing counsel what's been previously marked as State's proposed Exhibits 1, 2,
11 3, 4 and 5. Permission to approach the witness.

12 THE COURT: Granted.

13 BY MR. HAMNER:

14 Q Thank you. Let the record reflect that I'm showing the witness State's
15 proposed Exhibits 1 through 5. Sir, I want you to take a look at State's proposed
16 Exhibit 1; do you recognize what is in that exhibit?

17 A Yes; that's the building where our church is housed.

18 Q Is that the church that you've been talking about at this point, the New
19 Antioch Church?

20 A Yes.

21 Q Is that a fair and accurate depiction of what it looks like?

22 A Yes, sir.

23 Q I want to show you State's proposed Exhibit 2; do you recognize that?

24 A Exhibit 2, yes.

25 Q What is that?

1 A The building where our church is house .
2 Q Is that just of a different angle?
3 A A different angle.
4 Q But that's a fair and accurate depiction of it?
5 A Yes, sir.
6 Q How about State's proposed Exhibit 3?
7 A The building where our church is housed.
8 Q Okay. So, just at a different angle?
9 A Yes.
10 Q Is it a fair and accurate depiction of your church?
11 A Yes, sir.
12 Q I'm going to show you State's proposed Exhibits 4 and 5; do you
13 recognize what's depicted in 4 and 5?
14 A Yes; the building where our church is housed.
15 Q Okay. What vantage point is that at from?
16 A This vantage point would be if you're going east on Las Vegas
17 Boulevard this would be the second driveway.
18 Q Okay.
19 A Right here which would be the front of the church 'cause the double
20 doors is right here.
21 Q Okay.
22 A That would be, you know, what we call if you go in front of -- in the
23 double doors our foyer then you got the main entrance to the church.
24 Q And is Exhibit 5 just closer up representation of that same driveway?
25 A Yes.

1 Q All right. And these are fair and accurate depictions, 4 and 5 what I just
2 described?

3 A Yes, sir.

4 MR. HAMNER: Your Honor, at this time, we'd ask that State's proposed
5 Exhibits 1 through 5 be admitted into evidence.

6 MR. POSIN: No objection.

7 THE COURT: They'll be admitted.

8 **[STATE'S EXHIBIT #'s 1 THROUGH 5 ADMITTED]**

9 MR. HAMNER: Thank you. I'd like to show you State's proposed Exhibit 1;
10 permission to publish to the jury, Your Honor.

11 THE COURT: Granted.

12 MR. HAMNER: Thank you.

13 BY MR. HAMNER:

14 Q I'm showing what's been admitted as State's 1. Now, sir, if you look on
15 here, where is your church located? If you look on that monitor, I think if you even
16 touch with your finger, make a big circle around what building is your church?

17 A The first building.

18 Q And put your finger on it and touch so the jury can see you make that.

19 A Right there.

20 Q Can you make a circle around the whole building?

21 A I'll do my best.

22 MR. HAMNER: It's not working so well.

23 THE WITNESS: It's not working so well.

24 BY MR. HAMNER:

25 Q All right. Why don't you put a big X through the building. There you go.

1 A That's the building right there.

2 = Q All right. Let the record reflect the witness has made an X on the first
3 building. Is that closest to Las Vegas Boulevard?

4 A Yes.

5 Q Okay. And which side in the front entrance to your church located?

6 A Right in there.

7 Q Where are the double doors to your church?

8 A The double doors would be about right -- well I'm trying to get it -- it
9 would be right up in there.

10 Q Okay. Now before I kind of get into any more of the details, I want to
11 turn your -- before we get to December 18, 2011, I just need to ask you another
12 question. Pastor Madden, isn't it true or is it true that in 1997 you were convicted for
13 high level drug trafficking out of Reno?

14 A Yes, sir.

15 Q Okay. Now I want to talk a little bit about December 18, 2011 about 8
16 o'clock in the morning. Where were you around 8 a.m. that day?

17 A Eight a.m. is our first service.

18 Q Okay. And that's on a Sunday?

19 A That's on a Sunday.

20 Q All right. So, where were you during the 8 a.m. service?

21 A At that time I sits in the pool pit.

22 Q Okay. So, you sit in there. How did service kind of run at least in the
23 beginning?

24 A As usual. You know, our prayers and worship team get up, you know,
25 they sing and we call it ushering in the spirit, you know, just to get connected with

1 the congregation, and after the worship song our pastor get up and speak and bring
2 the message and, you know, after the message, you know, we have what they call a
3 altar call.

4 Q Okay. Why don't you explain to the jury for a minute what exactly is an
5 altar call?

6 A Altar call is when, you know, you believe that end of your message was
7 moved to what we believe, you know, what we call salvation or want to come to
8 repentance; you know, the message might have struck home. They might be
9 dealing with a situation that's pertaining to the message and they just want and
10 come and just pray and we lay hands on 'em; we pray and we talk to 'em or we
11 might ask 'em what you here for, is there any specific we can pray with you about.
12 And they'll make a request and we'll pray with 'em doing the alter call, and
13 everybody would come to the pool pit.

14 Q Okay.

15 A At the altar call.

16 Q It is also kind of one of the ways that you bring new members into the
17 church; you start with kind of like an altar call?

18 A Yes, sir.

19 Q All right. Now do you see any person in this courtroom today that may
20 have been there during that 8 a.m., service, Pastor Madden?

21 A Yes.

22 Q Could you please point that person out and point out an article of
23 clothing that they're wearing?

24 A I believe that's a beige colored shirt.

25 Q Okay. And where is that individual sitting? If you could just point at one

1 part of the courtroom.

2 A On my left side sitting to the gentleman right here with a blue and white
3 suit on.

4 MR. HAMNER: All right. Let the record reflect the witness has identified the
5 Defendant, Your Honor.

6 THE COURT: It will.

7 BY MR. HAMNER:

8 Q So, this individual was at that 8 a.m. service; is that right?

9 A He was at the -- he came in towards the end of the 8 a.m. service.

10 Q Now what did you notice about him when he came in, Pastor?

11 A Well it was late, you know. The service was going to the end, you
12 know. We were about to have altar call right before the altar call and he come in.
13 And what stood out is that we have what we call sanctuary attendance that would sit
14 you.

15 Q So, those are like ushers?

16 A Yeah, ushers. And they would seat you, but you this particular
17 gentleman didn't want to be seated where they was trying to seat him.

18 Q Okay.

19 A And he walked to the front.

20 Q All right. So, that's the thing that stood to you?

21 A Yeah.

22 Q He walked to the front. Tell me about what you noticed when he
23 walked up the front? Did he have a lot of difficulties making it up to the front?

24 A No, no, he didn't have no difficulties at all.

25 Q How about any stumbling?

1 A No stumbling at all.

2 Q Falling down?

3 A None of that at all.

4 Q You even ushered to help him get to that front row?

5 A No.

6 Q Okay. So, that's what stands out. He sits up in the front row?

7 A Yes.

8 Q What did he do at that point?

9 A Well he had a seat. There was a few seats open. He had a seat and it
10 was strange to me because he had shades on. He was well dressed. I mean, it
11 was like he was coming to church. He was well dressed; sat down right now. So,
12 now, you know, my antenna go up because I'm like why at the end of the service
13 he'd wanted to be seated in the front. You know, anybody would think, anything that
14 stepped in at that time know we at the end of the service.

15 Q Okay. So, when you had the altar call, did the Defendant participate in
16 the altar call?

17 A Yes; yeah. He got up and came to the altar.

18 Q Do you remember hearing him coming up to the altar?

19 A Well you don't hear him, you see him.

20 Q You saw him. Any difficulty getting up to the altar?

21 A No.

22 Q All right. Did he speak at that time? I don't want to get into any
23 specific statements. Did he speak at that time?

24 Q I don't remember him speaking. I know we prayed for him because the
25 men -- it would be me and another brother named Dwayne, which works the altar --

1 would be praying for the men.

2 Q All right. Does ultimately does he express an interest in wanting to
3 become a member of the church?

4 A Yes; he said he wanted to join.

5 Q And when someone wants to be a member, does the staff help or kind
6 of after the service then?

7 A Well what you do is right after the altar call, you know, the altar clears
8 out and we do what we call the offering. Then the Pastor would get back up and ask
9 do anybody want to join the church.

10 Q And did he respond --

11 A And he jumped up.

12 Q Okay. When he spoke out, did he sound incoherent?

13 A No.

14 Q Did he sound like he was mumbling?

15 A No.

16 Q Did he sound like he didn't understand?

17 A No.

18 Q Okay. So, he joins the church at that point or expresses interest?

19 A Yeah. They asked you his name and he voiced his name, which I
20 couldn't recall what his name was. I couldn't tell you what his name is today. But
21 we always ask if the people that's asked to join, the pastor would ask them what
22 their name are, they have to state their name and she'll say well let's welcome home
23 and we'll all say welcome home. And we have a lady what take them to another
24 room in the foyer which is the pastor's office and they would sign some papers.

25 Q Okay.

1 A You know, get information so they can contact them later, send them a
2 letter or something.

3 Q Do you recall whether he walked back with someone from your building
4 or not? I don't know if you remember or not.

5 A Now that I don't know.

6 Q Okay. Now I want to turn your attention to about the end of the 8 a.m.
7 service. It's kind of concluded. Do you know an individual by the name of Samira
8 Grove [phonetic]?

9 A Yes.

10 Q Do you run into an individual by the name of Samira Grove at that time?

11 A After the 8 o'clock service, yes.

12 Q Now before you get into anything that she said, I want you to describe
13 to the jury what Samira Grove's demeanor is like when you see her after the 8 a.m.
14 services is concluded?

15 A Scared to death, scared to death. She -- after the 8 o'clock service I
16 goes to the back to talk to security just to put them aware of what I'm paying
17 attention to and seeing, you know. I don't know what's going on at the place, but I
18 talked to security. I come back in on my way back into the sanctuary because we
19 got -- when you leave the sanctuary we got a multipurpose room what we call a
20 kitchen. So, I was in the multipurpose room on my way back into the sanctuary, I
21 run into Samira Grove . I guess she was looking for me. She said, Kevin, Kevin,
22 get this -- get him out of here. You got to get him outta here.

23 Q Now do you know who she was referring to?

24 A She was talking about him.

25 Q Okay. Did she tell you how they knew each other during this --

1 A She didn't go into the detail of how they knew each other. She was
2 telling me I got to get this man outta here, get him outta here.

3 MR. POSIN: I think up to this point I see that this is to get context, but I think
4 they're getting into some hearsay and I don't want there to be any commentary
5 about statements that she may have made about my client.

6 THE COURT: All right. Well I don't think we've gotten to the point where it
7 would be for the truth of the matter asserted at this point. So, it's overruled but, you
8 know, when that time comes.

9 MR. POSIN: Well I'm just concerned, Your Honor --

10 THE COURT: Yeah.

11 MR. POSIN: -- because the witness is kind of expanding upon the answers.
12 And so it's not that the question is improper; it's just that, you know, he's starting to
13 tell the whole story.

14 THE COURT: All right. Mr. Hamner.

15 MR. HAMNER: I understand, Your Honor.

16 THE COURT: Be careful. And if you'll just be careful to, sir -- Pastor, if you'll
17 make sure you pay close attention to the questions that he's asking.

18 THE WITNESS: Okay.

19 BY MR. HAMNER:

20 Q Fair to say she -- you said she was scared to death; is that right? I
21 don't want you to get into specifics, but you felt like she was scared to death at this
22 point?

23 A Yeah.

24 Q Hysterical?

25 A Yeah.

1 Q Had you ever seen Samira behave like that in church before?

2 A No, never.

3 Q When you saw one of the members of your congregation that panicked,
4 how did that affect you as a pastor? Were you concerned at that point?

5 A Well I'm concerned and now I'm scared.

6 Q Okay. So, what do you decide to do?

7 A I decide to go back outside and I get what we call our safety team and
8 speak with a guy named Crag Hutton.

9 Q Okay.

10 A And I say, Craig, the guy that we was aware of -- but I pointed him out
11 and told him who he was -- we need to get him away from here.

12 Q Okay. Are there any other members of your safety team that you could
13 explain to the jury?

14 A We would have Brother Burse and Washington Thomas -- Thompson at
15 the time --

16 Q Washington Thompson and Brother Burse. Is that Allen Burse?

17 A Allen Burse, yeah.

18 Q Okay. So, you tell Craig you're concerned about him?

19 A Yes.

20 Q And was Craig doing anything at that point in relation to the Defendant?

21 A Well at this time I had to walk out the door which would be what we call
22 our back door at the church, and Craig was out there. I said, Craig, I need you to get
23 this guy away from here. Samira just expressed to me that she, you know, you
24 need to get this man away here. You gotta go, you gotta go. Craig say we got him
25 away from here. He's leaving now.

1 Q I'm showing you what's been admitted as State's 3. And I'll probably
2 zoom in a little bit to make this a little bit easier.

3 ALTERNATE JUROR #2: Your Honor, may I be dismissed for the restroom?
4 I feel I may be sick if I could be permitted?

5 THE COURT: Oh, yes. We're going to take a brief recess.

6 And during this recess, it is your duty not to converse among yourselves or
7 with anyone on any subject connected with the trial or to read, watch or listen to any
8 report of or commentary on the trial by any person connected with the trial or by any
9 medium of information, including without limitation, newspaper, television, radio or
10 internet and you're not to form or express an opinion on any subject connected with
11 this case until it's finally submitted to you. We're in recess.

12 [Recess taken at 3:51 p.m.]

13 [Outside the presence of the jury]

14 THE COURT: All right. The record shall reflect we're outside the presence of
15 the jury. If you could keep tabs if he's able to return.

16 THE MARSHAL: Yes, Your Honor.

17 [Proceedings resumed at 4:09 p.m.]

18 [Inside the presence of the jury]

19 THE COURT: All right. Please be seated. The record will reflect we are back
20 within the presence of the jury and the two alternates. Defendant is present with his
21 counsel, the Deputy District Attorneys prosecuting the case and all officers of the
22 Court are present as well; will counsel so stipulate?

23 MR. POSIN: Yes, Your Honor.

24 THE COURT: And so we'll try and get through this witness and then we'll call
25 it an afternoon so we don't have any further issues. Okay.

1 ALTERNATE JUROR #2: Understood, Your Honor.

2 THE COURT: All right. Thank you. Proceed.

3 BY MR. HAMNER:

4 Q So, Mr. Madden, I want to turn your attention to State's 3. This is kind
5 of a zoomed up version. Now you mentioned that you spoke to Craig and that they
6 were -- what were they doing with the Defendant at that point when you went to go
7 talk to him about your concerns?

8 A Well when I was talking to him, we was at the back door. I come out
9 the back door and Craig was sitting there -- standing there and I asked him, I say,
10 you need to get this guy away from here, and Craig say he's leaving.

11 Q Okay. And when you say you're at the back door, could you put an X or
12 a slash as to where the back door of your church is?

13 A I'm trying to get it as close as possible; right there where -- right up in
14 that area.

15 Q So, this area here is kind of where the back door is here?

16 A Yeah, yeah, yeah.

17 Q And where is the front entrance because it notes it's a reverse angle.
18 Could you put like a mark kind of where the front entrance of the church is?

19 A The front entrance.

20 Q Yeah.

21 A It would be on the other side of the building then. You talking about the
22 front door?

23 Q Yes.

24 A Okay. That be on the other side of the building over here.

25 Q So, somewhere over on this side?

1 A Yeah.

2 Q All right. Now Pastor Madden, if you could also just explain to us briefly

3 using that building there, where is kind of the foyer of the church? Where's the

4 sanctuary of the church? Kind of what's the layout in there that we're talking about?

5 A Okay. This being the front over here where we marked off that, that

6 being the front double doors, this would be the foyer, this would be the sanctuary, up

7 in this area; this would be the multipurpose room right here, and then we got a

8 kitchen in the back.

9 Q Okay.

10 A We call the kitchen.

11 Q How about this area up here kind of near the front; what's over there?

12 A You go through the kitchen. That's the kids camp.

13 Q Kids camp?

14 A Yeah.

15 Q Okay. So, you're talking with -- you're talking with Craig near the back?

16 A Yes.

17 Q And you're saying he's leaving at that point?

18 A Yes; Craig said he's leaving. We took care of it. He's leaving.

19 Q Is he outside at this point? Where's the Defendant at this point?

20 A At the time I don't know where the Defendant is. I see Craig and Craig

21 say he's leaving. We got him. He's leaving.

22 Q Okay. All right. Did he give you any direction as to where the guy was

23 going?

24 A No; he didn't give him no direction of where he was going.

25 Q All right. Based on that -- were you left with the impression at that point

1 that the Defendant wasn't going to be inside your church anymore?

2 A At that point I'm thinking the Defendant may be on his way to this car
3 and Craig asked him to leave and he leaves.

4 Q Okay. So, crisis averted. The guy's out of the church. What do you do
5 next, Pastor?

6 A We get ready for the 10 o'clock service.

7 Q All right. So, what do you to get ready for the 10 o'clock service?

8 A So, I go back in to the sanctuary attendants -- I'm walking back through
9 the multipurpose room on my way into the sanctuary.

10 Q This is the multipurpose room back here.

11 A That's the multipurpose room coming to the back door.

12 Q And you through that to the sanctuary here?

13 A Yeah; I'm on way to the sanctuary.

14 Q Okay. And what do you notice when you walk back in to the sanctuary
15 for the 10 a.m. service?

16 A I see him coming back in there.

17 Q The Defendant back in your sanctuary?

18 A Yea.

19 Q After he got 86'd?

20 A Yeah.

21 Q Okay. Pastor, what is he doing at that point when you see inside the
22 sanctuary?

23 A Well he's coming through the double doors. So, we got the double
24 doors coming from the foyer. He's coming through the double doors and what I see
25 him, I approach him.

1 Q All right.

2 A I walk straight to him.

3 Q Now I want to ask you, is she stumbling around at this point?

4 A No.

5 Q Leaning on anything?

6 A Uh-huh.

7 Q Just totally actually the fool inside the sanctuary at that point?

8 A No.

9 Q Nothing?

10 A No.

11 Q Okay. So, you approach him. Are you concerned at that point?

12 A Yeah.

13 Q Why?

14 A Because, you know, his daughter, Samira Grove. And Samira Grove

15 came to me and say get this man away me. She was all hysterical.

16 Q Okay. So, Mr. Madden you approached the Defendant. Do you notice

17 anything specific that you didn't notice before when you approach him this time?

18 A Do I know anything different?

19 Q Did you notice anything about him at that point?

20 A Well he looked like he was upset.

21 Q He looks pretty upset at that point?

22 A Yeah.

23 Q Did you smell anything at that point?

24 A Well when I got closer to him, you know, I smelled liquor.

25 Q Okay. You smelled liquor. You've been around people who drink

1 before?

2 A Yeah, I drank.

3 Q Okay. You've seen somebody who is a pretty sloppy drunk before?

4 A Yeah.

5 Q Is this one of those situations?

6 A No, it's not one of those situations.

7 Q So, he's not sloppy drunk at this point?

8 A No, no.

9 Q He just what? I mean --

10 A He just looked mad, and I'm concerned -- I'm really a little intimidated at
11 the time.

12 Q Okay. Why is that?

13 A Because he come back in to the church.

14 Q So, what do you say to him?

15 A So I walked up to him and I asked him, how can I help you; and he said,
16 I'm looking for my daughter.

17 Q Is that exactly how he says it?

18 A That's what he said.

19 Q All right. What's his demeanor when he says I'm looking for my
20 daughter?

21 A It was kind of hard.

22 Q By hard to you mean angry?

23 A Yes.

24 Q Now when you asked him that question, did he sound incoherent when
25 he responded?

1 A No.

2 Q Was he mumbling?

3 A No.

4 Q Did he not understand your question at least based on his reaction to
5 your question?

6 A Well he answered the question when I asked him how can I help you;
7 he said I'm looking for my daughter.

8 Q So, you didn't think he had any trouble understanding if he actually
9 answered your question.

10 A Yes; right after.

11 Q Okay. So, what do you say?

12 A I said who is your daughter and he say Samira.

13 Q And then what happened?

14 A So, I asked him, I said, sir, you're going to have to leave because this
15 was right after Samira, she's all -- the little incident, she's hysterical and everything
16 like that. So, I said, sir, I'm going to have to ask you to leave. He said, I'm looking
17 for my mother fuckin' daughter.

18 Q Okay. Now you described him being angry when you first walked up to
19 him. When he said that to you, was his anger level the same, lower, higher?

20 A Well he stepped it up a notch then. And mind you, we got another
21 service taking place. We have people coming in, we got people leaving; we got kids
22 in the sanctuary. So, I'm already kind of timid because he was asked to leave, the
23 safety team told me he was leaving, and all of a sudden I see him back in to the
24 building, then he's now cussing. So, my thing now is to figure out how to get him out
25 of the building.

1 Q I got to ask you, Pastor, were you yelling at him?

2 A No, sir.

3 Q So, you were speaking to him, what, the same way you're talking to me

4 now?

5 A Yes, sir.

6 Q And you said he was loud. Was he yelling when he was saying these

7 things to you?

8 A It was loud. You know, you got the difference between yelling -- yelling

9 is when you just -- to me, I'm thinking you're yelling like aye aye aye la la la. But

10 when he asked the question he said, I'm looking for my mother fuckin' daughter.

11 Q Understood. Pastor, how many times did he ask for his daughter during

12 that conversation with you?

13 A It would be twice.

14 Q So now you say you're concerned because you've got people and kids

15 and things and you're trying to figure out how to get 'em out of there. So, what do

16 you decide to do at that point?

17 A At that time I grabbed him by the -- what is it -- the bicep --

18 Q Uh-huh.

19 A -- and the forearm. He was standing -- so it had to be his right arm. So,

20 I grabbed his bicep and his forearm on the wrist and I grabbed him, grabbing kind of

21 firm and walked him through our double doors through the foyer out the front door

22 and I seen Craig and Burse -- at the time I said, man, get this cat away from here.

23 Q Okay. And on this map here you pointed this out as being -- you

24 walked into the sanctuary through the foyer --

25 A Yeah.

1 Q -- and out the double doors --

2 A Yes.

3 Q -- and then you saw Craig?

4 A I seen Craig.

5 Q Who else was there?

6 A Burse.

7 Q Allen, Allen Burse.

8 A Yeah; and another guy named -- by the name of Dwayne McCoy which,

9 you know, he sits in the pool pit with me.

10 Q All right. That's kind of another pastor maybe?

11 A Yes. Well a minister. He's not a pastor; he's a minister.

12 Q So, you pass him off to Craig and Allen, and at that point are you guys

13 outside?

14 A Well we outside and I don't give the man to Craig or Burse. I just kind

15 of --

16 Q Let him go.

17 A -- let him go and turn around and tell Craig, get him away from here.

18 Q Okay. How many people are kind of in the foyer and outside kind of

19 milling around the church at this point?

20 A Well give or take it could 15 to 20 people, you know, and just -- and

21 you're talking about the people coming in and the people leaving at the time, we're

22 in transition of services so we're trying to get the 10 o'clock service started.

23 Q Okay. So, Pastor, at this point, you think it's a wrap once you kind of

24 passed this guy off?

25 A Yeah, I think it's done.

1 Q All right. So, then happens? Where do you go?

2 A So, I walked back into the building through the foyer into our sanctuary
3 with the double doors --

4 Q Uh-hm.

5 A -- and I'm just getting ready for service, you know, saying hi to a few
6 people, you know. We don't want to get no indication like its some big radical thing
7 going on. We're keeping it calm. So, I'm greeting a few people. And then all the
8 sudden I hear something like a gunshot.

9 Q How loud are we talking about? Tell the jury. How loud are we talking
10 about here?

11 A Boom boom boom.

12 Q That's pretty loud.

13 A That's what I hear. And at the time when I heard that, I turn around and
14 I see another young lady running towards me through the double doors with a girl --
15 with a girl in her hand talking about she'd been hit, she'd been hit, and she curled
16 her. I run through the double doors and I'm looking and I see a Cadillac in our foyer.

17 Q Aside from this woman, describe the scene. What are other people
18 doing at this point?

19 A Man, everybody is hysterical. I mean, it's a mess. People hollering,
20 folks panicking; nervous. I'm nervous.

21 Q Are people standing still at this point or what they are doing?

22 A They're moving. You know, we trying to move kids out of the way;
23 we're looking under the car to see if there's anybody else under the car. We don't
24 know if there's anybody under the car. We don't know. So, we try to assess what's
25 going on, you know, 'cause I'm assuming that I didn't see him hit the girl, but the one

1 girl came in and brought the little girl, wrapped her up and trying to protect her.
2 She'd been hit, she'd been hit, so now we're looking out of the corner to see if
3 anybody else is under the car.

4 MR. HAMNER: I want to show opposing counsel what's been previously
5 marked as State's proposed Exhibit 10, 11 and 12. Permission to approach the
6 witness.

7 THE COURT: Yes.

8 MR. HAMNER:

9 BY MR. HAMNER:

10 Q Let the record reflect I'm showing the witness State's proposed Exhibit
11 10, 11 and 12. I want you to take a look at State's proposed Exhibit 10; do you
12 recognize what's that?

13 A Yes.

14 Q What is that?

15 A That's the car that was in the foyer.

16 Q Is that a fair and accurate depiction of what it looked like?

17 A Yes.

18 Q On that day?

19 A Yes.

20 Q I'm going to show you State's proposed 11; what's that?

21 A That's car in our foyer.

22 Q A fair and accurate depiction of it?

23 A Yes.

24 Q State's proposed Exhibit 12?

25 A That's the car in our foyer.

1 Q Thank you. Is this a fair and accurate depiction of State's proposed
2 Exhibit 12?

3 A Yes.

4 MR. HAMNER: Your Honor, at this time, I'd ask that State's proposed
5 Exhibits 10, 11 and 12 be admitted into evidence.

6 MR. POSIN: No objection, Your Honor.

7 THE COURT: They'll be admitted.

8 **[STATE'S EXHIBIT #s 10, 11 AND 12 ADMITTED]**

9 MR. HAMNER: I'm showing you State's 10.

10 THE COURT: Permission to publish.

11 MR. HAMNER: Permission to publish. I apologize, Your Honor. Permission
12 to publish State's 10, 11 and 12.

13 THE COURT: It's granted.

14 MR. HAMNER: Thank you.

15 BY MR. HAMNER:

16 Q So, that's what you ran into and what's you saw?

17 A Yes.

18 Q Has anything like this ever happened at your church before?

19 A Never.

20 Q Have you ever seen anything like this before, Pastor?

21 A Well a long time ago when I had a friend -- a girlfriend run into a house.

22 MR. HAMNER: Withdrawn.

23 MR. POSIN: Objection; relevance, Your Honor.

24 THE COURT: All right. Sustained.

25 BY MR. HAMNER:

1 Q What is that thing laying on top of the car, Pastor?

2 A That's the door.

3 Q Is that -- you kept talking about double doors. So, is that just one of the

4 doors?

5 A That's one of the doors.

6 Q State's 12. So, now you're running around looking around for maybe

7 someone under the car; it's getting kind of crazy in there. Do you remember

8 anything else about the Defendant at this point in time?

9 A The Defendant is still in the car and then you got the -- I don't know --

10 the door right here. I don't know if I can --

11 Q You can touch it. It'll make a mark.

12 A Okay. The door right there.

13 Q I can't see what you're talking about.

14 A Okay. So, you got the double doors and then if you go -- it's -- I'm

15 going to my left, there's another door right there.

16 Q Okay.

17 A At that time, that door is open.

18 Q So, one door is open and one door is obviously laying on the vehicle?

19 A Yeah, yeah, yeah, yeah.

20 Q Now you said the Defendant was still in the car?

21 A The Defendant's still in the car.

22 Q Pastor Madden, do you recall whether -- when that car immediately

23 came through, the engine just cut out and stopped?

24 A I'm not sure if the engine was still running or stopped. I'm not sure.

25 Q Okay. Well do you remember anything that the Defendant was doing

1 inside the car?

2 A Well by that time when I get out, I'm looking out of the car. People are
3 running through. I go through this other door and go out and Burse is in the vehicle.

4 Q So, you see Allen Burse inside the vehicle?

5 A Yes.

6 Q What is he doing inside the vehicle? What did you see him doing?

7 A He trying to detain the man. He trying to hold him down 'cause the man
8 in there, scrabbling around, fussing and cussing; he's mad, he's frustrated.
9 Everybody's scared and nervous. Burse goes in there -- I believe that's the
10 passenger side -- to go in there to detain the man because now we don't know
11 what's going on next.

12 Q Pastor Madden, could you hear anything that the Defendant is saying
13 when he's inside of that car after he has come through your church?

14 A Yeah. I go around, I go around because I see Burse in there scuffling
15 with the man that they're detaining. The man in there talking about I'm going to kill
16 you mother fuckers.

17 Q How loudly did he say it?

18 A Well he said it loud enough. I think Burse had him to a point where he
19 couldn't say it too loud but it was clear enough for me to hear him 'cause I'm
20 standing right inside the passenger door.

21 Q And what's your feelings at this point?

22 A Well my feelings at this point is Burse can do whatever --

23 MR. POSIN: Objection; relevance.

24 THE COURT: All right. Just a minute. Sustained.

25 BY MR. HAMNER:

1 Q Do you issue any commands to Mr. Burse?

2 A I just tried to hold him, keep him detained. At the time, I believe Burse
3 grabbed the keys out of the ignition.

4 Q Okay. Pastor, I want you to explain to the jury what the Defendant's
5 demeanor's like after he's now come through your church in this Cadillac or in this
6 vehicle?

7 A Well his demeanor is that he's made, he's upset, he's in a tussle with
8 Burse and his demeanor would be like he was trying to get Burse -- if he could have
9 had enough strength to get Burse up off of him or to get loose, he would get him
10 loose and ain't no telling what he would do either pull out the car, pull back.

11 MR. POSIN: Objection; speculation.

12 THE COURT: Wait. Sustained.

13 MR. HAMNER: Pastor Madden, if you could just focus on just your
14 observations at this point; just kind of what you saw.

15 THE WITNESS: Well I'm seeing him tussling back with Burse.

16 BY MR. HAMNER:

17 Q Okay. When he's saying these things -- I think you said he threatened
18 to kill you people, something along those lines, how many times did you hear him
19 say that?

20 A At that time, it had to be about three times 'cause now, you know, it's
21 taking a while for the police to get there.

22 Q Now when he said these things to you guys, is he shouting or is he
23 speaking in hushed tones? How is he verbalizing?

24 A Well Burse got him pinned down and they tussling and he was just like
25 I'm going to kill you, I'm going to kill you mother fuckers. I'm going to kill you. You

1 don't know who you -- you know, and I really don't like that. I'm just giving you what
2 he said. I really don't like that coming out of my mouth.

3 Q So, Pastor Madden, when he was saying these things, was he
4 mumbling?

5 A No, he wasn't mumbling.

6 Q Was he incoherent?

7 A No, he wasn't incoherent.

8 Q How many times did the Defendant apologize for what he did?

9 A Did you say apology?

10 Q I did.

11 A No apology.

12 Q You didn't hear him say something how he lost control of the car; I'm
13 sorry?

14 A No.

15 Q In what county did all this take place in?

16 A Clark County, I believe.

17 MR. HAMNER: Court's indulgence. A couple more questions.

18 BY MR. HAMNER:

19 Q Pastor Madden, did you ever see this vehicle from the outside?

20 A When you said outside.

21 Q Did you ever take a step outside of the church to see this vehicle?

22 A Yes.

23 Q At this time, I'm going to show opposing counsel what's been previously
24 marked as State's proposed Exhibit 6, 7, 8, 9, 13, 14. Permission to approach the
25 witness.

1 THE COURT: Granted.

2 MR. HAMNER: Let the record reflect -- permission to approach?

3 THE COURT: Yes.

4 MR. HAMNER: Thank you.

5 BY MR. HAMNER:

6 Q Let the record reflect I'm showing the witness what's been previously
7 marked as State's proposed Exhibit 5, 7, 8 and 9 first. Take a look at these, sir, and
8 tell me if you recognize what's in these exhibits

9 A That's the rear of the Cadillac.

10 Q And that's fair and accurate depiction of it in State's proposed Exhibit
11 6?

12 A Yes.

13 Q How about 7?

14 A That's the rear of the Cadillac.

15 Q That's a fair and accurate depiction of it?

16 A Yes, sir.

17 Q How about proposed 8?

18 A That's the passenger side back door of the Cadillac, passenger side.

19 Q A fair and accurate depiction of it?

20 A Yes.

21 Q How about 9, proposed 9?

22 A That's the passenger side door slightly open of the Cadillac.

23 Q Okay. I'm showing you State's proposed Exhibits 13 and 14; do you
24 recognize this?

25 A Yeah. It's the rear of the Cadillac.

1 Q And that's fair and accurate depiction of State's proposed 13?

2 A Yes.

3 Q And how about 14?

4 A Fourteen would be the -- you see the bumper on the Cadillac, the rear,
5 the back bumper of the Cadillac.

6 Q Fair and accurate depiction?

7 A Yes, sir.

8 MR. HAMNER: At this time, the State requests proposed Exhibit 6, 7, 8 9, 13
9 and 14 be admitted into evidence.

10 MR. POSIN: No objection.

11 THE COURT: They'll be admitted.

12 **[STATE'S EXHIBIT #'s 6, 7, 8, 9, 13 AND 14 ADMITTED]**

13 BY MR. HAMNER:

14 Q So, this is what it looked like from behind?

15 A Yes.

16 Q What's that to the left of the Cadillac?

17 A Are you saying my left or my right?

18 Q What is that? I'm sorry. If you're looking at the Cadillac, to the left of
19 the Cadillac, what is that thing off to the left of that? Is that a railing of some sort?

20 A So, that's my left; right? You talking about this right here.

21 Q Your left. That's correct.

22 A This right here. Okay. That's like some stairs -- I mean, like a ladder
23 that go to the roof.

24 Q Let me show you State's 7y. What is this?

25 A Oh, right there, yeah, that's a railing for the handicapped; you know, it's

1 like a handicapped where they can do their wheelchair if they was parked on the
2 other side over there.

3 Q Do you recall if that was damaged at all during this incident?

4 A I don't recall that at all, sir.

5 Q You don't recall it having to be replaced or anything like that?

6 A No, I don't believe it did. I don't believe we had to have that replaced.

7 Q Okay. So, it didn't appear to be touched?

8 A I don't believe it was, sir.

9 Q We're going to show you State's 8. Do you remember how Allen Burse
10 got into that car; if you remember seeing it? I don't know if you remember seeing it
11 or not, but do your remember how Allen Burse got inside the vehicle?

12 A Yeah.

13 Q Did you see him to into the vehicle?

14 A I didn't see him go into the vehicle. I seen him in the vehicle when I
15 came through the other door.

16 Q Okay. So, you didn't see him go in?

17 A I didn't see him go in the vehicle.

18 Q Understood. Permission to -- this is State's proposed Exhibit 9. I
19 apologize. Did you notice any markings on the street when you got out there,
20 Pastor, behind the car?

21 A Not at that time, sir.

22 Q Not at that time.

23 A Yeah. At the time I didn't know the markings on the street.

24 Q After the whole thing kind of got cleaned up, did you notice markings
25 out on the street?

1 A Yeah. After it got cleaned up, I noticed the markings.

2 Q What did you notice out there?

3 A The skirt right there.

4 Q When you say skirt, what are you referring to?

5 A Well the black mark right here, right there, we noticed that right there.

6 Q Okay. Thirteen. Were there other marks out there maybe more faint?

7 A Yeah. It was other marks more faint that was out there and, you know,

8 more within the foyer, you know.

9 Q Okay. I want to show you what's been admitted as State's 5. I think

10 that before you told me this was the road. Could you a mark on where the front

11 entrance of your church is, the double doors that he went through?

12 A Right there. I'm pointing right there, right there.

13 Q So, he went in through those double doors?

14 A Yes.

15 Q How many cars -- you've been out there before; right?

16 A Uh-huh.

17 Q How many cars could you kind of stack end to end across?

18 A In the parking slots?

19 Q Yeah.

20 A I'd say about 50.

21 Q I'm sorry?

22 A Probably about 50.

23 Q Okay. Just from one end to the other.

24 A Oh. From one end.

25 Q Yeah. From the parking wall over to the church.

1 A Oh, just from the parking wall. Okay.

2 Q Yes. I mean, how many car lengths is that, ball park?

3 A About ten, about 20. You know, if you line them up straight this way.

4 Q So, your estimation --

5 A I'm just -- I'm really not sure.

6 Q You're not really sure.

7 A We never park them straight.

8 Q I'll ask you another question. Pastor Madden, is that a narrow road?

9 A That's a narrow road.

10 Q It is a narrow road?

11 A Yeah.

12 Q Or it is a wide road?

13 A Now listen. I'm confused on what you're asking.

14 Q Let me ask you another question. Have you ever seen cars going back
15 and forth on that road before?

16 A This here? Yeah.

17 Q How many -- usually how many cars can fit going on that road?

18 A Side by side.

19 Q Sure.

20 A You get two --

21 Q Passing opposite traffic.

22 A Yeah, you can get of 'em easy.

23 Q You get two of them easy.

24 A Yeah, two of 'em easy. I mean, if it was a two way street it'd
25 comfortable.

**PLEADING
CONTINUES
IN NEXT
VOLUME**