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### Andersen v. Eighth Judicial Dist. Court, 135 Nev. Adv. Op. 42 (Sept. 12, 2019) (en banc)

Erika Smolyar

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## RIGHT TO A JURY TRIAL: MISDEMEANOR DOMESTIC BATTERY

### **Summary**

In light of recent statutes limiting the right to bear arms for people convicted of misdemeanor battery constituting domestic violence, the Court determined that because the Legislature reclassified misdemeanor battery in that context to constitute a serious offense, those convicted of it are entitled to a jury trial.

### **Background**

Christopher Anderson was arrested and charged with first-offense domestic battery, a misdemeanor under NRS § 200.485(1)(a).<sup>2</sup> At the municipal court, Andersen argued that domestic battery constitutes a serious offense and therefore requires a jury trial. After the municipal court denied his demand for a jury trial and convicted Andersen of domestic battery, Anderson appealed to the district court, which also disagreed with his demand and affirmed the conviction. Andersen then petitioned for a writ of mandamus.<sup>3</sup>

### **Discussion**

Although the Court generally does not consider writ petitions seeking district court appellate review, consideration of Andersen's petition for a writ of mandamus is appropriate in this case, because Andersen presented a legal issue that needed to be clarified by the state.<sup>4</sup>

The Sixth Amendment of the U.S. Constitution and Article 1, Section 3 of the Nevada Constitution establish that the right to a jury trial only attaches to offenses deemed to be "serious."<sup>5</sup> To determine whether an offense is petty or serious, the Court looks to society's views, symbolized by the maximum penalties and period of incarceration for a given offense.<sup>6</sup> While an offense with a maximum incarceration period of six months or less is presumptively petty, a defendant can tack on additional severe penalties that would reflect a legislative intent to deem an offense "serious."<sup>7</sup>

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<sup>1</sup> By Erika Smolyar.

<sup>2</sup> NEV. REV. STAT. § 200.485(1)(a) (2019).

<sup>3</sup> The Court denied Andersen's petition for a writ of habeas corpus given the ruling in the opinion.

<sup>4</sup> NEV. REV. STAT. § 34.170 (2017) (noting that the Court does not issue a writ when there is a "plain, speedy and adequate remedy in the ordinary course of law."); *Amezcuca v. Eighth Judicial District Court*, 130 Nev. 47, 319 P.3d 602, 604 (2014); *see also Redeker v. Eighth Judicial Dist. Court*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006).

<sup>5</sup> *See Blanton v. City of N. Las Vegas*, 489 U.S. 538, 541 (1989); *Duncan v. Louisiana*, 391 U.S. 145, 159 (1968); *see also Blanton v. N. Las Vegas Mun. Court*, 103 Nev. 623, 628-29, 748 P.2d 494, 497 (1987) ("[I]he right to a trial by jury under the Nevada Constitution is coextensive with that guaranteed by the federal constitution.").

<sup>6</sup> *See United States v. Nachtigal*, 507 U.S. 1, 3 (1993); *see also Blanton*, 489 U.S. at 542.

<sup>7</sup> *Id.* (internal quotation marks omitted); *Blanton*, 489 U.S. at 543.

Using the framework above, the Court first notes that the maximum incarceration period of six months for domestic battery makes it a petty misdemeanor crime.<sup>8</sup> Furthermore, in *Amezcu*, the Court already considered additional penalties imposed by first-offense domestic battery and held that the penalties did not indicate a legislative determination that the offense was a serious one, because “a federal regulation restricting a convicted domestic batterer's possession of a firearm was not a direct consequence of a Nevada conviction for misdemeanor domestic battery.”<sup>9</sup>

Over one year later, however, the Nevada Legislature amended the penalties associated with domestic battery and criminalized possession or control of a firearm by persons convicted of misdemeanor crimes of domestic violence under NRS § 200.484(1)(a).<sup>10</sup> Because of this “limitation on the possession of a firearm in Nevada that automatically and directly flows from a conviction for misdemeanor domestic battery,” the Court sees the legislative determination that is necessary to deem the offense “serious.” Moreover, acknowledging that the individual right affected by the Nevada amendment is the U.S. Constitution’s Second Amendment right to keep and bear arms, the Court is convinced that “the additional penalty is so severe as to categorize the offense as serious.”

## **Conclusion**

The Legislature’s determination to categorize a first-offense misdemeanor battery as a serious offense establishes that a person convicted of that offense is entitled to the right of a jury trial. The Court granted Andersen’s petition and issued a writ of mandamus instructing the district court to vacate its order and proceed in light of the Court’s ruling.

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<sup>8</sup> NEV. REV. STAT. § 200.485(1)(a)(1) (2019).

<sup>9</sup> 130 Nev. at 50, 319 P.3d at 605.

<sup>10</sup> NEV. REV. STAT. § 202.360(1)(a).