



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

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

Electronically Filed  
May 13 2013 10:51 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Steven D. Grierson  
Clerk of the Court

---

May 13, 2013

Tracie Lindeman  
Clerk of the Supreme Court  
201 South Carson Street, Suite 201  
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. TROY WHITE  
**S.C. CASE: 62890**  
D.C. CASE: C286357

Dear Ms. Lindeman:

Pursuant to your Order Re: Entry of Written Order, dated April 12, 2013, enclosed is a certified copy of the Order Granting Defendant's Writ of Habeas Corpus filed May 13, 2013 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,  
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, reading "Heather Ungermann", is written over a horizontal line.

Heather Ungermann, Deputy Clerk

  
CLERK OF THE COURT

ORDR  
PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
SCOTT L. COFFEE  
Deputy Public Defender  
Nevada Bar No. 005607  
309 South Third Street, Suite #226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

TROY RICHARD WHITE,  
Defendant.

Case No. C-12-286357-1  
Dept No. XI

**ORDER GRANTING DEFENDANT'S WRIT OF HABEAS CORPUS**

THIS MATTER having come for hearing before this Court on the 27<sup>th</sup> day of March, 2013, the Defendant being present, represented by SCOTT L. COFFEE, Deputy Public Defender, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through ELIZIBETH MERCER, and the Court having reviewed the preliminary hearing transcripts and pleadings, as well as having heard the arguments of counsel, hereby finds as follows:

///


///

///

///

///

///

RECEIVED  
MAY 13 2013  
CLERK OF THE COURT  


1 The defendant, Troy White, is charged by way of Information with Count I-Burglary  
2 While in the Possession of a Firearm; Count II Murder with use of a Deadly Weapon; Count  
3 III Attempt Murder with use of a Deadly Weapon; Count IV- Carrying a Concealed Weapon;  
4 Counts V- IX Child Abuse and Neglect. The State alleges that White entered the family  
5 home and then, following a brief argument, shot and killed his wife, Echo Lucas White, and  
6 then shot her lover. The child abuse and neglect counts arise from the allegation that there  
7 were children in the home at the time of the shooting. White and his wife were described as  
8 being separated, but it is undisputed that White was the owner of the home, had continuous  
9 access to the home, retained keys to the home and physically lived in the home on  
10 weekends.

11 The defense filed a Petition for a Writ of Habeas Corpus in this court challenging the  
12 charge of burglary on the theory that White cannot burgle his own home. For the reasons  
13 set forth below the Writ is granted.

#### 14 **I. UNDERLYING FACTS**

- 15 1. The defendant is alleged to have shot and killed his wife, and to have attempted to  
16 kill her new boyfriend at a residence located at 325 Altamira Street in Las Vegas,  
17 Nevada.
- 18 2. That evidence brought forth during the preliminary hearing established that the  
19 defendant was the titled owner of the Altamira home, that he maintained keys to  
20 the property, and that following his "separation" from his wife he continued to  
21 physically live at the property on weekends to care for the family children from  
22 Friday through Sunday.
- 23 3. That the shooting is alleged to have taken place on July 27<sup>th</sup>, 2012 which was a  
24 Friday. Further, it appears that White entered the home with his key, that the  
25 locks on the residence had not been changed and/or altered allowing White to  
26 enter the residence as he saw fit.
- 27 4. That, as the state conceded during oral arguments, there was no legal restriction  
28 whatsoever which would have prevented White from having the full use and

1 enjoyment of his property---No Temporary Protective Order; No Family Court  
2 Order; No Separation Agreement; No Property Settlement. In sum, on July 12<sup>th</sup>,  
3 2012 there was no legal impediment to White's use, access or ownership of the  
4 property located at 325 Altamira Street.

5 **a. Factual Conclusion**

6 Based upon the forgoing this court finds that Troy White was in truth and in fact the  
7 owner of the home he is alleged to have burgled and that on the date in question there was no  
8 legal restriction of his right to access and enjoy his property.

9 **b. Legal issue before the court**

10 Under Nevada law can a person burglarize their own home, assuming as a factual  
11 predicate there is no legal impediment to that person's access to said home?

12 **c. Discussion**

13 The defendant argued that he cannot burglarize his own home, the State disagreed.

14 The court begins its analysis by recognizing that under common law, burglary was  
15 well and commonly understood to be the breaking and entering the dwelling house of  
16 another in the nighttime with intent to commit a felony.<sup>1</sup> The court further notes that  
17 regardless of any changes and/or expansions the legislature may have made to the crime of  
18 burglary, from the earliest common law until today it has retained its fundamental nature as  
19 the crime of entry with a criminal intent. As our high court has often times noted, burglary is  
20 complete upon entry and it is the entry itself that constitutes the crime, independent of what  
21 other activity later takes place. Because it is entry that remains the gravamen of the offense,  
22 burglary is as it always has been a crime against property.

23 In support of its position the defense claims that this is an issue of first impression  
24 under Nevada law, then cites the common law, the California case People v. Gauze, 542 P.2d  
25 1365 (1975), and points out that burglary continues to be a crime against property under our  
26 statutory scheme.

27  
28 <sup>1</sup> See for example Smith v. First Judicial District Court, 75 Nev. 526, 528 (1959).

1 The State notes that the common law elements of “breaking” and “entry at night time”  
2 are no longer necessary under Nevada law. These points are clearly true, but contrary to the  
3 State's claims it is not because our “Supreme court has refused to read common law elements  
4 into the burglary statute---rather than rejecting the common law, our high court has noted  
5 “...The disposition of courts to construe strictly their burglary statutes which deviate from  
6 the common law appears to be clearly evident.”<sup>2</sup>

7 The State cites several Nevada cases for the proposition that consent and/or  
8 permission to enter is not a defense to burglary, but this is simply a necessary corollary to the  
9 removal of the breaking requirement by the legislature.<sup>3</sup> The concepts of consent to enter  
10 and/or permission to enter are fundamentally different from a person's right to access and  
11 enjoy property which he owns.

12 As a basis for ignoring the common law, the State argues that the statute defining  
13 burglary, NRS 205.060, does not specifically preclude them from charging the defendant  
14 with burglarizing his own home. While this is true, it is also true that NRS 205.060 does not  
15 specifically allow for such charge. In the absence of clear legislative intent to abandon the  
16 common law on this point, the court will not do so.

17 This court cannot adopt the State's interpretation for three key reasons: 1) none of the  
18 cited cases involve a defendant being convicted of burglarizing his own home, hence this  
19 appears to be a matter of first impression ;<sup>4</sup> 2) all of the cited cases speaking to consent  
20

---

21 <sup>2</sup> Smith at 529.

22 <sup>3</sup> State v. Adams, 94 Nev. 503 (1979), Hernandez v. State, 118 Nev. 513 (2002); McNeely v.  
23 State, 81 Nev. 663 (1966); Barrett v. State, 105 Nev. 361 (1989); Chappell v. State, 114 Nev. 1403  
24 (1998).

25 <sup>4</sup> State's return notwithstanding, this rule of law cannot be coaxed from either Barrett or  
26 Chappell.

27 Barrett, for the purposes of establishing standing to challenge a search, claimed to live at the  
28 *apartment* of Dean Sloniger which is where the bounty of the burglary was found by police. He did  
not a claim residence at the burglarized *home* belonging to a Mrs. Bacca.

1 and/or limited public license, authority or permission can be traced back to the explicit  
2 statutory language of 1876 and its interpretation under Watkins, specifically that a breaking  
3 is no longer an element of Burglary under Nevada law. This rationale does not come into  
4 play when a defendant simply enters his own home; 3) there is no clear legislative mandate  
5 to abandon the common law rule that a person cannot burgle his own home and in the  
6 absence of such a directive the courts have been reluctant to vary from the common law.<sup>5</sup>

7 While the issue before the court has not been specifically addressed in Nevada, it has  
8 been addressed elsewhere. The court finds particularly informative, The California case of  
9 People v. Gauze, supra. California has a substantially similar statutory scheme as Nevada in  
10 regards to burglary.<sup>6</sup> Further, California and Nevada are in agreement with the several points  
11 raised by the prosecution in the instant case, to wit: neither recognizes permission or  
12 authority to enter as a defense to burglary, and both have legislatively abandoned the  
13 common law burglary elements of breaking and night time entry.

14  
15 As to Chappell, a close reading reveals that there was no legitimate claim that he was  
16 actually convicted of burglarizing his own home. The burglarized residence, a trailer, was that of  
17 Chappell's ex-girlfriend. If Chappell could legitimately call any place home it was the prison where  
18 he was doing time for domestic battery. After serving only a few months of his sentence, Chappell  
19 was mistakenly released from custody. He went unannounced to the trailer of his ex-girlfriend,  
20 whom he ultimately raped and killed. He entered the trailer through a window because he had no  
21 key. Further, "[a]t trial, the State introduced evidence that Panos wanted to end her relationship with  
22 Chappell, that Chappell had threatened and abused Panos in the past, and that Panos did not  
23 communicate with Chappell while he was in jail. Moreover, there was testimony that the trailer  
24 appeared ransacked, and that Panos' social security card and car keys were found in Chappell's  
25 possession." In short, the facts of the case reveal no independent evidence to indicate that Chappell  
26 actually lived in the trailer or owned it at the time of the burglary. Chappell did take the stand  
27 claiming that he "considered the trailer home", but he also testified that the sex was consensual---he  
28 was convicted on all counts including sexual assault. In short, Chappell was not convicted of  
burglarizing his own home.

<sup>5</sup> See, Smith at 529. The return claims Page v. State, 88 Nev. 336 (1972) as evidence that our  
Supreme Court has steadfastly refused to read common law elements into the burglary statute, but  
like progeny of Watkins, Page is the direct result of a prior specific legislative mandate to deviate  
from the common law by removing the "at night" element from the crime of burglary.

<sup>6</sup> See for example Bedard v. State, 118 Nev. 410, 413 (1992).

1 In Gauze the question asked was the question at bar: "Can a person burglarize his  
2 own home?" The facts of the case were set forth as follows:

3  
4 Gauze shared an apartment with Richard Miller and a third person and thus  
5 had the right to enter the premises at all times. While visiting a friend one  
6 afternoon, defendant and Miller engaged in a furious quarrel. Defendant  
7 directed Miller to 'Get your gun because I am going to get mine.' While  
8 Miller went to their mutual home, defendant borrowed a shotgun from a  
9 neighbor. He returned to his apartment, walked into the living room, pointed  
10 the gun at Miller and fired, hitting him in the side and arm. Gauze at 1365-6.

11  
12 Based upon the foregoing it evident that the Gauze court was presented with a set of facts, a  
13 statute and a legislative history similar to the case at bar. In reading California's burglary  
14 statute the court noted:

15  
16 Facially the statute is susceptible to two rational interpretations. On the one  
17 hand, it could be argued that the Legislature deliberately revoked the  
18 common law rule that burglary requires entry into the building of another.  
19 On the other hand, the Legislature may have impliedly incorporated the  
20 common law requirement by failing to enumerate one's own home as a  
21 possible object of burglary. Gauze at 1366.

22 Finding no cases directly on point, the California high court examined purposes  
23 underlying common law burglary and how those purposes may have been affected by the  
24 enactment of the California Penal Code. Interestingly the history and timing of California's  
25 burglary scheme appears to mirror that of Nevada. The court found while the legislature had  
26 substantially changed the common law burglary, two important aspects had remained. 1)  
27 burglary was an entry which invades a possessory right in a building; 2) it still must be  
28 committed by a person who has no right to be in the building.

Ultimately the Gauze court ruled that a person could not be guilty of burglarizing his own home because “his entry into the apartment, even for a felonious purpose, invaded no possessory right of habitation; only the entry of an intruder could have done so. More importantly defendant had an absolute right to enter the apartment.”

The Gauze court went on to point out that to hold otherwise could lead to potentially absurd results and disproportionate punishment for a person who commits a minor felony in their own home. The same is true in Nevada. For example, if a person were able to burglarize their own home, then entering said home with the intent to ingest narcotics therein would morph a simple drug possession into a burglary and convert a mandatory probation offense into a 1 to 10 year felony. It seems highly unlikely that our legislature ever intended such a result.

## **II. FINDINGS & CONCLUSION**

A man's home is his castle. Just as it is axiomatic that a person cannot be charged with stealing his own money---so to it appears axiomatic to this court that a person cannot burglarize his own home---it is his to enter and enjoy as he sees fit. The outcome might be different if there had been some sort of legal encumbrance upon White's right to enter or possess the home, but as the State conceded, there was none. White cannot be found guilty of invading his own possessory rights to his home for the same reason he cannot be found guilty of stealing his own money.

///

///

///

///

///

///

///


///

///

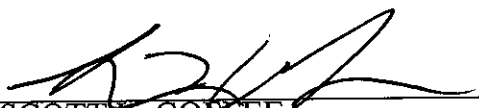


1 The defendant's Petition for Writ of Habeas Corpus is granted and it is hereby  
2 ORDERED that Count I charging Burglary While in Possession of a Firearm be dismissed  
3 from the Information.


4  
5 DATED this 9<sup>th</sup> day of May, 2013.

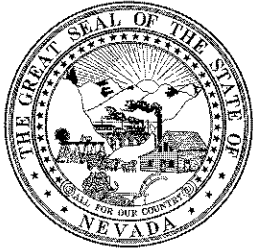
6  
7  
8   
9 ELIZABETH GONZALEZ  
DISTRICT COURT JUDGE

10 PHILIP J. KOHN  
11 PUBLIC DEFENDER  
12 Nevada Bar #0556

13   
14 SCOTT L. COFFEE  
15 Deputy Public Defender  
16 Nevada Bar #005607

17 REVIEWED BY:

18  
19  
20   
21 ELIZABETH MERCER  
22 Deputy District Attorney  
23 Nevada Bar # 010681  
24  
25  
26  
27  
28



*Clerk of the Courts*  
*Steven D. Grierson*

200 Lewis Avenue  
Las Vegas, NV 89155-1160  
(702) 671-4554

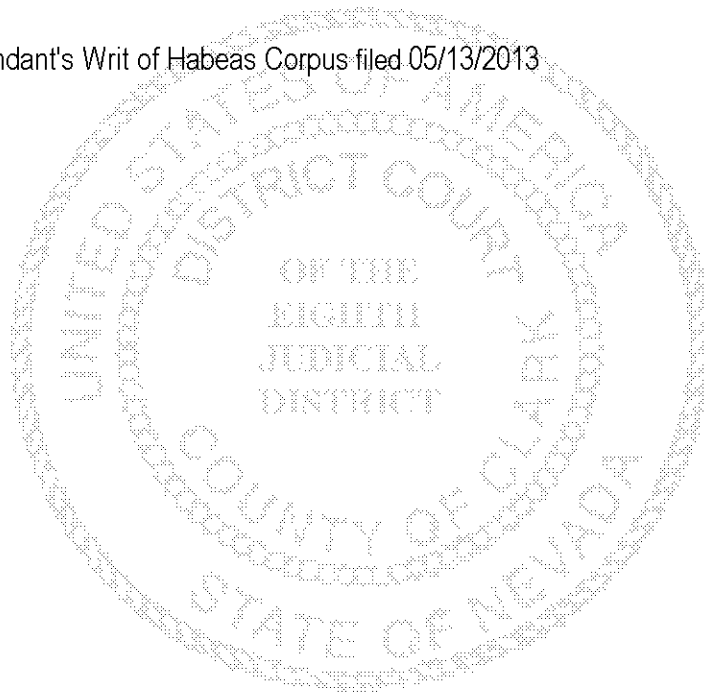
May 13, 2013

Case No.: C286357

### **CERTIFICATION OF COPY**

**Steven D. Grierson**, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full, and correct copy of the hereinafter stated original document(s):

Order Granting Defendant's Writ of Habeas Corpus filed 05/13/2013



now on file and of

**In witness whereof**, I have hereunto set my hand and affixed the seal of the Eighth Judicial District Court at my office, Las Vegas, Nevada, at 10:04 AM on May 13, 2013.

  
STEVEN D. GRIERSON, CLERK OF THE COURT