

1 example.
 2 If I go into my house and smoke
 3 methamphetamine, under his theory that would be
 4 a felony burglary also. That seems a
 5 ridiculous extension of the law. I have never
 6 seen it charged that way because it wouldn't
 7 hold up to scrutiny. It would be void for
 8 vagueness. You couldn't figure out what you
 9 were doing inside your own house.
 10 So while I appreciate the difference
 11 between burglary and home invasion, I'm not
 12 mixing up the two.
 13 MR. TURNER: Well, I'm just telling you,
 14 that's the state of the law. If we could
 15 somehow prove in every case the individual went
 16 in their home with the intent to commit a
 17 felony, then we could.
 18 I know *Crawford* case where we allege
 19 burglary where he went into the house, and you
 20 can commit a burglary in your own home. Home
 21 invasion, you can't. I don't know of any case
 22 law where counsel can point to.
 23 I know the elements of the offense are you
 24 enter into a structure with the intent to
 25 commit a crime, assault, battery, petit larceny

1 or a felony. I don't know of any case law that
 2 says anything different than that.
 3 I know with home invasion, it is
 4 specifically within it, it can't be your own
 5 residence for that particular offense.
 6 MR. COFFEE: But with all due respect,
 7 Counsel, *Crawford* was my case, and I took the
 8 issue up to the Supreme Court. It wasn't
 9 Mr. Crawford's house. It was the home of his
 10 girlfriend.
 11 MR. TURNER: Okay.
 12 MR. COFFEE: I can give her name and the
 13 verse, if you'd like. What it says is you
 14 don't have to charge individual rooms in a home
 15 particularly --
 16 THE COURT: With burglary.
 17 MR. COFFEE: -- when you come in for a
 18 burglary. It's just individual rooms of the
 19 home, but it wasn't his home. He drove from
 20 Paltrump with his gun. The prelin was in front
 21 of this Court, in fact.
 22 MR. TURNER: Okay. Either way, it doesn't
 23 change the fact. I think we've proven the
 24 elements for a burglary.
 25 THE COURT: Right now, I don't know the

1 answer without doing some research, okay? So
 2 I'll be truthful on that.
 3 MR. COFFEE: Okay.
 4 THE COURT: I think it's best to let it
 5 go, I'll bind it up, and then you can argue
 6 that and have it researched in front of the
 7 District Court Judge.
 8 MR. COFFEE: I'd ask this Court to
 9 consider doing some of the research. I know
 10 you only have a couple weeks left, but I trust
 11 this Court's opinion on things, and I hate to
 12 bind something up when it may not be legally
 13 appropriate.
 14 THE COURT: I'll be glad to do it, if you
 15 want to.
 16 MS. MERCER: Your Honor, the statute
 17 specifically says --
 18 THE COURT: Let me have the statute. Let
 19 me have it.
 20 MR. COFFEE: The statute says any room
 21 residence.
 22 MS. MERCER: It's 205.060.
 23 THE COURT: 205 --
 24 MS. MERCER: 060.
 25 THE COURT: Let me get it. 205.060.

1 MR. COFFEE: The statute doesn't make a
 2 distinguishment between your home or somebody
 3 else's home.
 4 THE COURT: That's the --
 5 MR. COFFEE: I agree with that.
 6 MS. MERCER: Or would there be one that
 7 states that there's not.
 8 MR. COFFEE: You'd think there would be
 9 something. I think there probably is.
 10 *Crawford* is not it.
 11 MR. TURNER: And I'd also ask the Court to
 12 review the home invasion statute where it talks
 13 about to enter a residence or structure without
 14 permission, so that there is that added element
 15 that we have to prove.
 16 MR. COFFEE: And so the playing field
 17 is --
 18 THE COURT: Well, I think the issue is
 19 whether a person can be charged with burglary
 20 by entering a home which the person owns.
 21 MR. COFFEE: That is the issue because
 22 there are some cases that say what Mr. Turner
 23 is saying. For example, by going into a
 24 7/eleven, even though I have a public license
 25 to enter that place, that can certainly be a

1 burglary. There's some Nevada cases on point
 2 on that.
 3 I don't know that there's anything on
 4 point when it is your own home. That's really
 5 just the crux of the question, and I think it
 6 is a different property issue, by the way, than
 7 it is when I enter a 7-Eleven under some sort
 8 of false pretense. I'm entering my own home.
 9 How can I be entering under some sort of false
 10 pretense?
 11 MR. TURNER: Consent just isn't --
 12 permission isn't an element. I'd just ask the
 13 Court for a plain reading of the statute, as
 14 opposed to home invasion, which requires
 15 permission, and you have to show that it was
 16 done without permission. And in this one, that
 17 doesn't matter. It's enters --
 18 THE COURT: Well, does the person need
 19 permission to enter a person's home?
 20 MR. TURNER: Well, we have to prove -- in
 21 other words, a homeowner is always going to
 22 have permission to enter into his own home.
 23 THE COURT: Right.
 24 MR. TURNER: So in a home invasion, we
 25 have to establish that they didn't have a right

to be there.

THE COURT: Right.
 MR. TURNER: It was done without
 permission. In a burglary, that's not
 required. We just have to prove a specific
 intent. We have to prove entry and a specific
 intent to commit one of the enumerated
 offenses.
 MR. COFFEE: But, again, if it's that
 broad, if I call somebody to commit a fraud on
 the telephone, I've committed a burglary --
 MR. TURNER: Yes.
 MR. COFFEE: -- by making a call in my own
 house to say, "Please buy these vitamins that
 aren't actually good for you," or whatever it
 might be. That seems unduly expansive and
 seems unconstitutional.
 MR. TURNER: Well, now he's arguing the
 constitutionality of it.
 MR. COFFEE: I'm arguing both. I'm
 arguing either it doesn't apply, or if it does
 apply, it's unconstitutional.
 MR. TURNER: I mean we don't charge those,
 but because we elect not to charge them in the
 D.A.'s office, doesn't mean it's not a burglary

1 according to the legislature.
 2 And what we're talking about here, I know
 3 he's talking about these other potential
 4 scenarios, but what we're talking about here is
 5 the facts of this case.
 6 I believe the constitutionality of the
 7 burglary statute has been upheld multiple
 8 times. It is a clear reading. If you go into
 9 a structure with the intent to commit a felony,
 10 it's a burglary, whatever it may be.
 11 MS. MERCER: And if he's challenging the
 12 constitutionality of the statute, it has to be
 13 done by a written motion and served on the
 14 A.G.'s office. This isn't the appropriate
 15 forum to challenge that.
 16 MR. COFFEE: So I'm just explaining why my
 17 statutory interpretation is correct, because if
 18 we adopt here, it would be unconstitutional.
 19 THE COURT: Well, I can do one of two
 20 things. I've got to admit I don't know the
 21 answer to it without sufficient research of
 22 whether a person can be charged with burglary
 23 for entering his or her own home when they have
 24 a key and all that. That's the issue.
 25 MR. COFFEE: And there might be some law

that I'm not aware of.

THE COURT: I can do one of two things,
 you know, send it up, and you can address it
 and argue it in District Court. I think that
 would be the best where you have more time,
 because you are going to have briefs and
 briefs, and my time here is short, as you well
 know.
 MS. MERCER: Correct.
 THE COURT: So I think it is best. I
 don't know the answer. I'll let the record
 know, but I think it should be researched and
 it should be argued in the District Court, and
 properly briefed, and at that time, allow the
 District Court Judge to make a decision.
 MR. COFFEE: And in regards to that,
 working on that assumption, the Court is making
 a factual finding that coming into the house is
 enough to support probable cause for burglary,
 coming into the house with a weapon?
 THE COURT: Do what now?
 MR. COFFEE: There's a factual question
 and a legal question. Can you burglarize your
 own house? You got a factual question. Did
 they establish factually a burglary, to

1 establish probable cause for a burglary
2 factually?
3 MR. TURNER: I think --
4 MR. COFFEE: Can he --
5 MR. TURNER: Is there sufficient evidence
6 to support a specific intent when he entered
7 that he was going to commit assault and/or
8 battery and --
9 MS. MERCER: Or murder.
10 MR. TURNER: -- or murder. And we've
11 already submitted on that argument.
12 THE COURT: Well, that will be a question
13 of fact for the jury to determine as far as I'm
14 concerned.
15 I think the State's met the burden, as far
16 as I'm concerned, that a person who enters a
17 house with a gun and, you know, with the
18 intent.
19 MR. COFFEE: Fair enough. That was the
20 only question as to whether or not the Court
21 was finding probable cause and the intent,
22 because if we do do a writ at some point, it
23 would probably be on both issues, and it's
24 better to have a clear ruling on the record.
25 Moving forward.

1 and parcel. It is really the same activity.
2 It is shooting with children nearby.
3 Now, I think there is a question
4 factually, but it is probably a jury question,
5 is whether it is child abuse and neglect simply
6 firing a weapon inside a home, which is what
7 they've pled. This is another issue that we
8 will writ. But we'll submit on that at this
9 point.
10 But I think it's really one count child
11 abuse and neglect. It's one incident. It's
12 not two firings of the weapon. I don't think
13 there's been any facts to support two charges.
14 I think they should be combined, one count to
15 each of the children, and we'd submit that to
16 the Court.
17 MR. TURNER: And, Judge, what we've done
18 in those two counts, as the Court can see, is
19 we did allege two separate counts for each
20 child, but what we're alleging are two separate
21 things.
22 As the Court is aware, with child abuse,
23 you have a situation where you either cause
24 physical injury or place the child in a
25 situation where physical injury may result.

1 THE COURT: Okay. And I'm going to have
2 that looked up myself because before I leave I
3 want to get an answer.
4 MR. COFFEE: I will submit on Counts II
5 through IV, Count V and Count VI, and there is
6 one argument, rather than going in -- in five
7 and six.
8 MR. TURNER: Okay.
9 MR. COFFEE: I think that Counts V and VI
10 should be combined. I think Counts VI and
11 VII -- let's see, let me make sure I'm doing
12 this right. Five and six, six and seven, eight
13 and nine, and it is every other count. I think
14 there should be one count of child abuse and
15 neglect for each child, not two counts.
16 The way they pled it, if you take a look
17 at the way this is pled, and it's essentially a
18 consistent pleading for each child, right?
19 MR. TURNER: Correct.
20 MR. COFFEE: Okay. The way they've pled
21 it, it says, okay, on Count V, by discharging a
22 firearm inside the child's home, in the
23 proximity of the child.
24 If you take a look at Count VI, it says by
25 shooting the child's mother. Okay. It is part

1 We've charged that for each of those for him
2 discharging that firearm in the residence with
3 the children being present.
4 But there's also the alternative, the
5 other theory under child abuse, which is cause
6 them to suffer unjustifiable mental injury or
7 be placed in a situation where mental injury
8 may result.
9 So there may be a circumstance where the
10 jury, when we go in front of the jury, they may
11 decide that, you know what, there wasn't a risk
12 of harm to this child, physical harm, but
13 nevertheless, him murdering their mother in
14 their presence, not seeking help for her,
15 leaving the children there, that would result
16 in mental injury to that child.
17 So that is a separate act or separate
18 circumstance that we're arguing under that same
19 statute, and the statute allows two separate
20 theories.
21 MR. COFFEE: What I would suggest is
22 combining the counts into a single count and
23 making them disjunctive, or by doing this, or
24 doing that. I don't have a problem doing it
25 that way.

1 THE COURT: I think that would be the best
2 way of doing it. I think by going in, I think
3 where the endangerment took place is not when
4 he entered in at first, but when the shooting
5 took place. That's where it is, so I sort of
6 agree with counsel that you can reword that and
7 have one count with each child.
8 MR. COFFEE: And I don't mind binding
9 over -- combining the language again from both
10 counts. I'm just stating it's disjunctive,
11 that he prove either theory that they like, but
12 what they can't do is charge him separate
13 counts for that. That's the problem.
14 MR. TURNER: Well, I don't know of any
15 case law for that either. I mean while we can
16 combine the two and/or. I mean what we're
17 alleging is two separate --
18 THE COURT: I agree with counsel there. I
19 agree that the fact that coming in with the
20 child in danger with the gun and when the
21 shooting took place. That would do it.
22 In other words, he coming in, they did not
23 see the gun, and went into the room. And after
24 the shooting took place is where the child was
25 in danger. They didn't know what was going to

1 take place. He was home. He could walk in.
2 He was their dad. So I agree with counsel. I
3 agree.
4 MS. MERCER: But, Your Honor, the way that
5 we pled it is the --
6 THE COURT: Well, why don't you plead it
7 like that in one count?
8 MS. MERCER: We're not alleging that he
9 endangered the child when he came into the
10 residence. We're alleging that he endangered
11 the child when he fired a firearm in close
12 proximity of them, and then separately that he
13 continued to endanger them or --
14 THE COURT: I think it is an all
15 continuation thing. I agree with counsel. I
16 agree with counsel.
17 MR. COFFEE: Would ask that it be amended
18 again. I don't think they should have to do up
19 this hearing.
20 MR. TURNER: Then we'll just consolidate
21 it and/or, so...
22 MS. MERCER: But there still will be five
23 separate counts of child abuse.
24 THE COURT: Yes, there will still be five
25 separate charges.

1 MR. TURNER: Yes, Judge.
2 THE COURT: And/or, but not two in each
3 one.
4 MR. TURNER: Okay.
5 THE COURT: Yeah, I agree with counsel
6 that to have that amended as to and/or where
7 there's five counts of child abuse and neglect,
8 instead of ten.
9 MR. COFFEE: So, Judge, just so we're
10 clear on what the Court will be doing is
11 binding over Count V, incorporating the
12 language of Count VI in the alternative. Is
13 that appropriate, Counsel?
14 MR. TURNER: I think that's what the
15 Court's ruling is to combine those in theory as
16 to one.
17 THE COURT: Right.
18 MR. COFFEE: And the same thing with seven
19 and eight, binding over Count VII, and
20 incorporating language in Count VIII in the
21 alternative. Same thing with nine and ten, and
22 11 and 12, and 13 and 14.
23 THE COURT: That's correct. Now, what
24 we're doing is. What we'll do is -- hold it.
25 We'll bind them over like on Count V with

1 and/or in placing them in mental suffering, and
2 then dismiss Count VI.
3 MR. COFFEE: So the even numbered counts
4 would be eliminated.
5 THE COURT: Yeah, the even numbered counts
6 would be --
7 MR. COFFEE: Six, eight, ten, 12 and 14.
8 THE COURT: Right.
9 MR. TURNER: Consolidated.
10 THE COURT: Consolidated in Count --
11 Count VI would be consolidated in five. That
12 would be for Jodey.
13 And Count VIII would be consolidated in
14 seven for Jesse.
15 Count X would be consolidated in Count IX
16 for Jayce.
17 Count XII would be consolidated into
18 Count XI for Jazzy.
19 And Count XIV would be consolidated into
20 Count XIII for Jett.
21 MR. TURNER: Yes, Your Honor.
22 THE COURT: Okay. I think that is the
23 appropriate way of doing it.
24 MR. COFFEE: Very good.
25 MR. TURNER: Thank you, Your Honor.

1 THE COURT: And you've still got it there.
2 You've still got the and/or, and you still have
3 the whole thing.

4 MR. TURNER: Okay.

5 THE COURT: I think it's not a separate
6 count.

7 So, therefore, I'm not done yet, so,
8 therefore, it appearing to me from the
9 complaint on file herein that crimes have been
10 committed, and those are the crimes that are
11 set forth now in the amended criminal complaint
12 in Case 12F12500X, and those are the crimes in
13 Count I, Burglary While in Possession of a
14 Firearm; Count II, Murder With Use of a Deadly
15 Weapon; Count III, Attempt Murder With Use of a
16 Deadly Weapon; Count IV, Carrying a Concealed
17 Firearm or Other Deadly Weapon; and then
18 Count V, Child Abuse and Neglect; as well as
19 Count VII, Child Abuse and Neglect; as well as
20 Count IX, Child Abuse and Neglect; as well as
21 Count XI, Child Abuse and Neglect; and 13, as
22 to Child Abuse and Neglect, and there's
23 reasonable cause to believe that the defendant,
24 Troy Richard White, committed these crimes, I
25 hereby order said defendant to be held to

1 answer to said charges in the Eighth Judicial
2 District Court, State of Nevada, in and for the
3 County of Clark.

4 MR. TURNER: Thank you, Your Honor.

5 MS. MERCER: Thank you, Your Honor.

6 MR. COFFEE: Thank you, Your Honor.

7 THE CLERK: January 2nd, 1:30. Lower
8 level, Courtroom A.

9 MR. TURNER: May I approach briefly on an
10 unrelated matter?

11 MS. MERCER: What time was that?

12 THE CLERK: Are you setting bail on this?

13 THE COURT: I'll get with you in just a
14 minute.

15 MS. MERCER: What was the time?

16 THE CLERK: 1:30.

17 MR. COFFEE: Thanks, Judge. Good seeing
18 you again.

19 THE COURT: All right.

20 MS. MERCER: Your Honor, we've added four,
21 five, seven and nine. It should be set in
22 court.

23 THE COURT: I think what we did was we
24 have him held on no bail. So let's just hold
25 him on no bail at this time.

1
2 (Whereupon, the proceedings
3 concluded.)

4
5 ATTEST: Full, true, and
6 accurate transcript of
7 proceedings.

8 /s/ Carlita Jasper
9 Carlita Jasper, CCR #346
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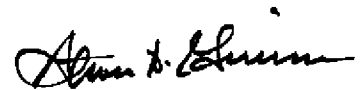
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<p>ultimately [2] 32/6 56/18</p> <p>UMC [1] 32/10</p> <p>unable [2] 46/3 53/14</p> <p>uncle [3] 58/14 58/15 58/15</p> <p>unconstitutional [3] 74/17 74/22 75/18</p> <p>under [5] 69/3 73/7 73/9 80/5 80/18</p> <p>underlying [1] 65/7</p> <p>understand [8] 5/20 5/22 6/19 8/7 10/6 46/16 47/7 47/17</p> <p>understanding [1] 53/25</p> <p>unduly [1] 74/16</p> <p>unfortunately [1] 62/5</p> <p>unjustifiable [1] 80/6</p> <p>unloaded [1] 56/20</p> <p>unrelated [2] 8/11 86/10</p> <p>until [4] 19/19 44/14 45/7 62/18</p> <p>unusual [3] 17/8 41/19 68/2</p> <p>up [31] 9/11 10/8 14/8 14/20 20/8 20/15 21/12 21/15 21/19 22/2 22/3 27/3 32/20 39/25 44/14 66/6 66/10 66/16 66/18 67/16 67/18 68/13 68/22 69/7 69/12 70/8 71/5 71/12 76/3 78/2 82/18</p> <p>upheld [1] 75/7</p> <p>upon [1] 65/9</p> <p>upset [4] 15/3 45/11 66/13 66/19</p> <p>us [1] 8/25</p> <p>Use [6] 8/15 8/16 8/21 8/22 85/14 85/15</p> <p>used [1] 43/15</p> <p>USN3PYZ [1] 56/14</p> <p>usual [1] 65/15</p>

<p>V</p> <p>VEGAS [3] 1/2 4/1 54/17</p> <p>vehicle [3] 56/13 56/16 56/18</p> <p>verse [1] 70/13</p> <p>versus [1] 4/9</p> <p>very [5] 34/14 35/8 52/16 68/25 84/24</p> <p>VI [7] 78/5 78/9 78/10 78/24 83/12 84/2 84/11</p> <p>vicinity [1] 51/1</p> <p>victim [8] 6/12 7/18 49/20 54/3 54/9 57/25 58/7 62/14</p> <p>Victor [1] 9/22</p> <p>VII [3] 78/11 83/19 85/19</p> <p>VIII [2] 83/20 84/13</p> <p>visit [1] 36/17</p> <p>visitation [4] 14/2 14/4 14/17 14/21</p> <p>vitamins [1] 74/14</p> <p>voice [5] 16/4 16/24 16/25 21/22 49/13</p> <p>void [2] 68/24 69/7</p>	<p>W</p> <p>W-I-N [1] 55/12</p> <p>waist [1] 26/13</p> <p>wait [2] 8/18 62/18</p> <p>waive [1] 64/12</p> <p>wake [2] 21/12 21/15</p> <p>walk [2] 25/19 82/1</p> <p>walked [3] 24/10 45/7 67/25</p> <p>wall [8] 25/23 26/23 26/23 27/2 27/3 27/5 27/7 27/10</p> <p>wandering [1] 28/25</p> <p>want [12] 7/19 7/20 17/1 20/10 39/13 57/20 60/15 62/7 63/25 64/20 71/15 78/3</p> <p>Wanted [1] 39/10</p> <p>warrant [1] 56/13</p> <p>was [168]</p> <p>wasn't [13] 19/18 23/1 24/15 25/7 29/18 38/7 39/11 66/11 66/13 68/6 70/8 70/19 80/11</p> <p>watching [2] 20/17 21/3</p> <p>wave [1] 41/2</p> <p>way [17] 6/7 14/15 24/16 36/22 39/4 51/13 63/21 69/6 70/22 73/6 78/16 78/17 78/20 80/25 81/2 82/4 84/23</p> <p>we [47] 5/16 6/13 7/12 7/14 7/15 7/21 7/23 8/5 9/2 11/19 15/14 19/25 20/16 25/16 29/12 37/19 43/5 46/15 48/15 53/8 57/4 59/13 63/3 63/5 63/7 65/13 65/21 67/24 69/14 69/17 69/18 72/15 73/20 73/24 74/5 74/6 74/23 74/24 75/18 77/22 79/7 79/19 80/10 81/15 82/5 86/23 86/23</p> <p>we'd [1] 79/15</p> <p>we'll [10] 7/10 8/2 23/3 62/5 62/19 64/12 79/8 82/20 83/24 83/25</p> <p>we're [12] 5/8 47/20 52/9 75/2 75/4 79/20 80/18 81/16 82/8 82/10 83/9 83/24</p> <p>we've [6] 67/20 70/23 77/10 79/17 80/1 86/20</p> <p>weapon [16] 8/16 8/17 8/21 8/22 8/23 33/11 33/15 42/7 45/2 45/3 76/20 79/6 79/12 85/15 85/16 85/17</p> <p>weapons [3] 43/6 43/7 43/10</p> <p>wear [1] 11/3</p> <p>WEDNESDAY [2] 1/17 4/1</p> <p>week [1] 37/5</p> <p>weekends [6] 1/4/6 14/12 14/13 36/18 40/10 65/2</p> <p>weeks [3] 38/21 66/6 71/10</p> <p>well [22] 6/11 7/1 7/19 19/18 35/22 54/11 55/18 67/15 68/12 69/13 72/18 73/18 73/20 74/18 75/19 76/7 77/12 81/14 82/6 85/18 85/19 85/20</p> <p>went [12] 22/6 22/12 23/20 24/13 24/19 30/3 55/7 55/14 55/20 69/15 69/19 81/23</p> <p>were [67] 9/1 11/24 14/1 15/16 15/20 16/15 17/2 18/12 20/11 20/14 20/17 21/3 22/17 24/1 24/23 26/14 26/16 26/17 26/21 27/20 27/23 27/25 28/17 28/17 29/5 29/6 29/7 29/11 29/25 30/24 31/24 31/25 32/3 32/6 32/9 32/11 32/22 35/19 36/2 36/4 42/10 42/19 42/24 43/2 43/14 44/6 45/23 46/3 47/12 47/16 47/19 47/22 49/15 49/18 50/8 51/3 51/8 51/16 51/19 51/20 51/24 52/10 52/10 56/21 62/13 65/9 69/9</p> <p>weren't [6] 42/2 42/7 43/6 46/4 50/12 52/13</p> <p>what [89]</p> <p>What's [1] 61/3</p> <p>whatever [4] 19/9 68/18 74/15 75/10</p> <p>when [72] 11/14 12/5 13/20 14/18 15/8 15/16 15/22 16/3 16/6 16/22 18/12 19/5 20/15 21/19 23/3 23/10 24/13 24/19 24/23 25/4 25/8 25/15 25/19 25/21 26/6 26/9 26/22 28/6 28/8 28/10 28/12 28/13 28/23 29/9 30/2 32/19 32/22 32/25 34/21 35/1 38/24 40/10 42/24 44/3 46/11 48/1 49/2 49/5 49/15 50/8 55/14 62/7 62/11 65/14 66/3 66/10 66/15 66/22 67/23 67/25 70/17 71/12 73/4 73/7 75/23 77/6 80/10 81/3 81/4 81/20 82/9 82/11</p> <p>whenever [1] 23/2</p> <p>where [40] 11/18 12/20 12/22 18/12 21/3 22/10 23/22 24/6 25/25 26/12 26/14 26/21 27/1 27/10 27/20 27/25 28/13 28/17 29/22 29/24 30/24 30/25 48/8 50/23 51/21 51/24 55/22 69/18 69/19 69/22 72/12 76/5 79/23 79/25 80/7 80/9 81/3 81/5 81/24 83/6</p> <p>Whereupon [2] 8/11 87/2</p> <p>whether [8] 12/9 21/19 49/18 50/7 72/19 75/22 77/20 79/5</p> <p>which [18] 17/11 21/5 23/23 25/16 26/23 27/2 30/21 32/9 51/16 53/9 55/8 55/15 55/17 55/21 72/20 73/14 79/6 80/5</p> <p>while [14] 4/13 6/19 8/14 8/19 21/25 32/3 42/17 42/19 48/12 54/23 67/21 69/10 81/15 85/13</p> <p>white [36] 1/9 4/9 8/13 10/23 11/12 11/15 11/25 34/17 35/22 36/11 37/25 38/11 38/15 38/24 39/2 39/7 39/18 39/21 40/3 42/3 42/6 45/2 45/19 46/8 46/11 48/4 48/6 52/11 53/13 54/4 54/21 55/3 56/11 57/11 62/14 85/24</p> <p>White's [7] 36/4 36/15 42/19 45/6 52/10 56/13 65/1</p> <p>who [11] 6/11 9/7 13/3 22/24 60/18 63/19 63/20 67/13 67/13 67/24 77/16</p> <p>who's [3] 34/22 35/1 54/16</p> <p>whole [3] 9/15 10/17 85/3</p> <p>why [13] 10/8 22/5 24/17 25/1 29/24 35/10 38/9 41/24 42/1 44/7 59/12 75/16 82/6</p> <p>wife [1] 38/2</p> <p>will [9] 4/11 7/21 62/8 77/12 78/4 79/8 82/22 82/24 83/10</p> <p>WILLIAM [1] 1/15</p> <p>willing [1] 54/1</p> <p>Win [4] 55/12 56/2 56/24 56/25</p> <p>window [8] 17/24 18/2 18/4 19/25 39/16 39/19 49/11 66/20</p> <p>within [2] 38/21 70/4</p> <p>without [5] 71/1 72/13 73/16 74/3 75/21</p> <p>witness [3] 9/4 34/2 48/17</p> <p>witnessed [1] 49/19</p> <p>witnesses [7] 5/6 5/11 5/24 6/12 7/2 53/3 57/15</p> <p>woke [5] 20/8 20/15 21/19 22/2 22/3</p> <p>women [1] 19/1</p> <p>word [2] 34/18 42/18</p> <p>words [2] 73/21 81/22</p> <p>work [5] 14/9 14/18 48/4 48/6 48/8</p> <p>working [2] 29/18 76/17</p>	<p>would [46] 5/12 6/17 6/24 8/1 8/9 13/22 13/23 14/8 14/10 14/17 14/20 14/22 15/16 29/3 36/17 36/18 37/1 41/11 42/5 53/17 54/14 55/8 55/11 57/10 57/14 67/21 69/3 69/7 72/6 72/8 75/18 76/5 77/23 80/15 80/21 81/1 81/21 82/17 84/4 84/6 84/11 84/12 84/13 84/15 84/17 84/19</p> <p>wouldn't [1] 69/6</p> <p>wound [1] 54/6</p> <p>wrist [1] 47/13</p> <p>writ [2] 77/22 79/8</p> <p>write [1] 7/24</p> <p>written [1] 75/13</p> <p>X</p> <p>XI [2] 84/18 85/21</p> <p>XII [1] 84/17</p> <p>XIII [1] 84/20</p> <p>XIV [1] 84/19</p> <p>Y</p> <p>Y-A-V-A-P-A-I [1] 56/9</p> <p>Yavapai [1] 56/8</p> <p>yeah [6] 4/15 4/16 8/2 42/22 83/5 84/5</p> <p>year [4] 12/2 13/17 13/19 54/20</p> <p>years [7] 11/16 11/17 11/21 35/13 35/17 42/16 42/24</p> <p>yes [163]</p> <p>Yesco [1] 48/9</p> <p>yet [2] 23/2 85/7</p> <p>you [353]</p> <p>you'd [3] 35/25 70/13 72/8</p> <p>you're [12] 17/16 31/4 43/10 47/6 49/5 52/25 59/23 62/8 62/23 63/1 63/8 63/9</p> <p>you've [4] 42/10 42/23 85/1 85/2</p> <p>Young [1] 48/10</p> <p>your [71] 4/12 5/16 6/24 7/8 7/16 7/20 7/21 9/4 9/5 9/13 9/18 9/19 9/23 10/3 10/7 10/13 11/7 11/24 15/1 16/1 17/19 30/8 31/21 33/6 34/2 37/15 41/22 43/7 48/4 48/18 49/23 50/13 52/5 52/21 53/4 53/24 54/13 54/25 56/5 57/9 57/25 60/20 61/3 61/20 62/3 63/16 63/17 64/12 64/19 65/5 66/1 66/3 67/5 68/15 68/17 68/20 68/24 69/5 69/20 70/4 71/16 72/2 73/4 76/23 82/4 84/21 84/25 86/4 86/5 86/6 86/20</p> <p>yourself [2] 33/18 39/23</p>
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

DEPT. NO. XI



CLERK OF THE COURT

1 WRTH
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 309 South Third Street, Suite #226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

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

10 THE STATE OF NEVADA,

11 Plaintiff,

CASE NO. C-12-286357-1

DEPT. NO. XI

12 TROY RICHARD WHITE,

13 Defendant.

14 **WRIT OF HABEAS CORPUS**

15 To: Clark County Sheriff
16 Clark County, Nevada

17 **GREETINGS:**

18 We command that you have the body of the above-captioned person, by you
19 imprisoned and detained, as it is alleged, together with the time and cause of such imprisonment and
20 detention, by whatever name said above-captioned person shall be called or charged, before the
21 Honorable Elizabeth Gonzalez, District Court Judge, at her chambers or her courtroom in the
22 Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, in the City of Las Vegas, County
23 of Clark, State of Nevada, on March 27, 2013 at the hour of 9:00 a.m., to do and receive that which
24 shall then and there be considered concerning the said above-captioned person; and have you then
25 and there this Writ.

26 DATED AND DONE this _____ of February, 2013.

27 STEVE GRIERSON, COUNTY CLERK

28 By: 

DEPUTY

LOUIE HAWKINS

FEB 28 2013

1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that service of WRIT OF HABEAS CORPUS, was made this 28th
3 day of February, 2013 to:

4
5 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
6 PDMotions@ccdadv.com

7 By: Sara D. Ruano
8 Employee of the Public Defender's Office
9

10 **CERTIFICATE OF FACSIMILE TRANSMISSION**

11 I hereby certify that service of the foregoing WRIT OF HABEAS CORPUS, was
12 made this 28 day of February, 2013, by facsimile transmission to:

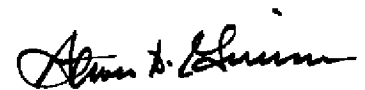
13
14 CLARK COUNTY DETENTION CENTER
15 FAX # (702) 671-3763

16 By: /s/ S. Ruano
17 Employee of the Public Defender's Office
18
19
20
21
22
23
24
25

26 Case Name: TROY RICHARD WHITE

27 Case No.: C-12-286357-1

28 Dept. No. XI



CLERK OF THE COURT

RWHC
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #010681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of Application,
of
TROY WHITE, #1383512
for a Writ of Habeas Corpus.

Case No. **C-12-286357-1**

Dept No. **XI**

RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: MARCH 27, 2012
TIME OF HEARING: 9:00 A.M.

COMES NOW, DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada,
Respondent, through his counsel, STEVEN B. WOLFSON, District Attorney, through LIZ
MERCER, Chief Deputy District Attorney, in obedience to a writ of habeas corpus issued
out of and under the seal of the above-entitled Court, and made returnable on the 27th day of
March, 2013, at the hour of 9:00 o'clock A.M., before the above-entitled Court, and states as
follows:

//

//

1. Respondent admits the allegations of Paragraph(s) 1-2 of the Petitioner's Petition for Writ of Habeas Corpus.

2. Respondent denies the allegations set forth in Paragraph 3 of the Petitioner's Petition for Writ of Habeas Corpus.

3. Paragraph(s) 4-5 do not require admission or denial.

4. The Petitioner is in the actual or constructive custody of DOUGLAS C. GILLESPIE, Clark County Sheriff, Respondent herein, pursuant to a Criminal Information or Indictment, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the Petition be dismissed.

DATED this 19th day of March, 2013.

Respectfully submitted,

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

BY /s/ LIZ MERCER

LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #010681

POINTS AND AUTHORITIES

STATEMENT OF FACTS

In June of 2012, Echo Lucas White and Defendant, Troy White, separated. Preliminary Hearing Transcripts, 11-12.¹ Once they separated, Echo developed a relationship with Joseph Averman, with whom she had an eight (8) year long friendship. PHT 11-12. Joseph moved into the home with Echo and the five children (Jodey, Jayce, Jesse, Jett, and Jazzy) who belonged to Echo and Defendant toward the end of June. PHT

¹ Preliminary Hearing Transcripts is hereinafter abbreviated, "PHT."

1 12-13, 16. Three of the children were his biological children, but the oldest two boys were
2 not. PHT, 35-36. Defendant exercised visitation with the children on the weekends. PHT,
3 13-14. Typically, Defendant showed up at the house for his visitation after he got off of
4 work on Friday afternoons at about two or three. PHT, 14. Defendant would stay at the
5 house on Altamira during the weekend and Echo and Joseph would leave the house. PHT,
6 14.

7 Defendant was upset about his separation from Echo. PHT, 15. In fact, he was so
8 upset that he would constantly harass Echo with telephone calls and text messages. PHT, 15.
9 Once Defendant learned of the relationship between Echo and Joseph, he began threatening
10 Joseph. PHT, 16. More specifically, Defendant would say things like, "If you don't stay
11 away, I'm going to fucking kill you." PHT, 16.

12 On Friday, June 27, 2012, Joseph was at the house on Altamira with Echo and the
13 five (5) children. PHT, 17. Throughout the night of the 26th and early morning hours of the
14 27th, Defendant was calling and texting Echo incessantly. PHT, 18-20. Echo couldn't
15 answer the phone because she had gel on her hands from doing her hair. PHT, 19. Then, At
16 about 2:00 a.m. on that date, Defendant showed up at the house and was banging on the
17 bedroom window. PHT, 18-19. After Echo heard the banging, she called Defendant and
18 told him he couldn't show up and do that kind of thing because the children were sleeping.
19 PHT, 19-20. After that, Joseph and Echo went to sleep. PH, 20.

20 At about seven (7) or eight (8) o'clock the morning of the July 27, 2012, Joseph and
21 Echo awoke with the children. PHT, 20. That morning, they had breakfast and watched TV.
22 PHT, 20. Echo washed and folded laundry. PHT, 20. Later in the morning, at about 10:30,
23 Echo laid down on the couch and fell asleep. PHT, 20. Echo woke up from her nap at about
24 11:45 a.m. that morning. PHT, 21. When, she awoke, she saw several missed texts and
25 phone calls from Defendant. PHT, 23.

26 Joseph told Echo to go lay down in the master bedroom and take a nap. PHT, 22.
27 When Echo got up from the couch, to go to the bedroom, Joseph followed with the baby,
28 Jazz. PHT, 22. Joseph was going to put Jazzy in her crib for a nap. PHT, 22. As he walked

1 to the master bedroom, he heard the two (2) older boys, Jodey and Jayce, saying, "Mommy,
2 Mommy, Daddy's here." PHT, 22. Once inside, Defendant asked to speak to Echo. PHT,
3 22. Echo responded by telling him that they could just talk when he came back later to visit
4 the children. PHT, 23. At that point, Defendant looked at Joseph and said, "Joe, please, just
5 give me five minutes. She hasn't returned my calls or my texts all day long. I just need to
6 talk to her." PHT, 23. At that point, Echo looked at Joseph and told him, "Alright, just give
7 me five minutes." PHT, 23. Defendant appeared irritated. PHT, 40.

8 Echo and Defendant went into the spare bedroom. PHT, 23. The spare bedroom was
9 directly across from the master bedroom, where the baby's crib was placed. PHT, 23.
10 Joseph stayed in the master bedroom with Jazzy. PHT, 24. At the time Defendant entered
11 the house, Joseph did not see anything in Defendant's hands, and he still didn't see anything
12 in his hands at the time Echo and Defendant went into the bedroom. PHT, 23-24. Joseph
13 left the master bedroom door partially opened. PHT, 24.

14 While Joseph was in the bedroom with the baby, he heard Echo cry out, "Troy, no,
15 please don't" and "Stop!" PHT, 25. Joseph was alarmed by this and opened the door. PHT,
16 24-25. When he opened the master bedroom door, Joseph saw Echo trying to come out of
17 the door to the spare bedroom. PHT, 25. Next, Joseph saw Defendant pull Echo back into
18 the room, push her into the wall, and then shoot her. PHT, 25. The wall that Defendant
19 shoved Echo into separated the room from the hallway and was directly across from the
20 baby's crib. PHT, 27. Defendant had the gun in his hand and was holding it at waist level.
21 PHT, 26. After being shot, Echo buckled over and fell to the floor. PHT, 26. At that point,
22 Defendant turned and shot Joseph in the arm and the abdomen. PHT, 27. When Joseph was
23 shot, he was standing in the doorway of the master bedroom and Defendant was standing in
24 the doorway to the spare bedroom. PH, 28. Joseph fell to the floor in the masterbedroom
25 after being shot. PHT, 27-28.

26 Once Joseph was shot, Defendant came into the master bedroom. PHT, 28. He told
27 Joseph, "I told you this would happen." PHT, 29. Jodey and Jayce then came to where
28 Joseph and Echo were laying to check on them. PHT, 29. The two became hysterical. PHT,

1 29. The children shouted at Defendant, "We need to call for help. You killed Mommy."
2 PHT, 29. Defendant responded by telling them that he tried to call but his phone wasn't
3 working. PHT, 29. Then, Defendant began trying to corral the kids into the same room.
4 PHT, 29.

5 Jayce got out of the room and went to check on Joseph. PHT, 30. Joseph asked Jayce
6 to go get his cell phone. PHT, 30. Jayce got the phone and told Defendant that he was
7 giving it to Joseph to call for help. PHT, 30. Troy then went to the master bedroom and
8 stood over Joseph with the gun to his head, took the phone, and told him, "You ain't calling
9 nobody." PHT, 30. Defendant also told him that if he was going to prison, he was going to
10 make it worth it. PHT, 31.

11 Eventually, the police and paramedics arrived and took Joseph to the hospital. PHT,
12 32. When Joseph was being loaded into the ambulance, he noticed that Echo's car (a Silver
13 Dodge Durango) was missing. PHT, 32.

14 At the time their mother was shot, the two oldest boys, Jayce and Jodey, were in the
15 hallway, Jazzy was in her crib, and the two other boys were somewhere in the house. PHT,
16 26. When Joseph was shot, he was standing immediately next to Jazzy's crib in which she
17 was situated. PHT, 51-52. After Joseph and Echo were shot, the children were crying and
18 hysterical. PHT, 51-52.

19 Det. Travis Ivie responded to the scene at 325 Altamira on July 27, 2012 to
20 investigate the homicide of Echo White and shooting of Joseph Averman. PHT, 54. Upon
21 arrival, he observed a spent bullet in the driveway. There was also a black and white
22 backpack on the driveway with an empty gun holster inside. PHT, 55. In addition, they
23 located a bullet hole on the exterior of the residence. PHT, 55. Also, when he entered the
24 residence, he located a spent shell casing for a 9 millimeter handgun in the spare bedroom
25 (craft room). PHT, 55. Inside the master bedroom, he located a bullet hole indicating that
26 the bullet went through the bedroom and exited out of the front of the house. PHT, 55. A
27 third spent shell casing in the hallway. PHT, 56.

28 //

1 Later that day, Det. Ivie traveled to the Yavapai County Sheriff's Office in Prescott,
2 Arizona and came into contact with Defendant. While at that office, a search warrant was
3 executed on the Silver Dodge Durango which Defendant took from the residence after
4 shooting Echo and Joseph. PHT, 56. During the search of the vehicle, they located a 9 mm
5 firearm bearing Serial No. TOA33791. The firearm was unloaded but next to the firearm
6 were two magazines. PHT, 56. One magazine contained 12 rounds and the other contained
7 9. PHT, 56. The headstamp on the cartridge cases matched those found at the scene. PHT,
8 56. Defendant had no concealed carry permit on the date of the offense. PHT, 53.

9 An autopsy conducted by Dr. Lisa Gavin of the Coroner's office determined that the
10 cause of Echo's death was the gunshot wound to her abdomen and the manner of death was
11 homicide. PHT, 53-54.

12 Following the preliminary hearing Defendant was held to answer the charges
13 contained in the Information. Defendant was arraigned on January 9, 2013. The instant
14 Petition for Writ of Habeas Corpus was filed on February 4, 2013. The State's Return
15 follows.

16 **ARGUMENT**

17 **I. SUFFICIENT EVIDENCE WAS PRESENTED TO ESTABLISH SLIGHT OR** 18 **MARGINAL EVIDENCE THAT DEFENDANT COMMITTED THE** **CHARGED CRIMES.**

19 In determining whether there is probable cause to hold the Defendant to answer for
20 trial in the District Court, the Court is not "concerned with the prospect that the evidence
21 presently in the record may, by itself, be insufficient to sustain a conviction." Sheriff v.
22 Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). Instead, the court's finding of
23 "[p]robable cause to support a criminal charge '[m]ay be based on slight, even 'marginal'
24 evidence . . . because it does not involve a determination of the guilt or innocence of an
25 accused.'" Sheriff v. Steward, 109 Nev. 831, 835, 858 P.2d 48, 51 (1993) (*quoting Sheriff v.*
26 *Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980)). Furthermore, "[t]o commit an
27 accused for trial, the State is...only [required] to present enough evidence to support a
28 reasonable inference that the accused committed the offense." Kinsey v. Sheriff, 87 Nev.

1 361, 363, 487 P.2d 340, 341 (1971); see also, Sheriff v. Milton, 109 Nev. 412, 851 P.2d 417
2 (1993). Additionally, as long as the State has presented sufficient legal evidence to establish
3 probable cause, a grand jury indictment will be sustained even if inadmissible evidence may
4 have been offered. Dettloff v. State, 120 Nev. 588, 595, 97 P.3d 586, 591 (2004). Likewise,
5 “The accused’s explanation for the [events], being in the nature of a defense, whether true or
6 false, is for the trier of facts to consider at trial,” and it is not appropriately considered when
7 determining the issue of probable cause. State v. Fuchs, 78 Nev. 63, 68, 368 P.2d 869,
8 871 (1962).

9 Defendant fails to cite any apposite, binding legal authority for his proposition that
10 one cannot burglarize his or her own home. Because the law in the Nevada does not support
11 that position, the State respectfully submits that Defendant’s Petition for Writ of Habeas
12 Corpus should be denied, as set forth more fully below.

13 **A. SUFFICIENT EVIDENCE WAS PRESENTED TO SUSTAIN THE**
14 **BURGLARY CHARGE AS CONSENT TO ENTER IS NOT A**
DEFENSE.

15 Burglary requires entry with the intent to commit a certain enumerated illegal act,
16 including any felony. NRS 205.060. The Nevada Supreme Court has determined that
17 unlawful entry is not an element of burglary. See State v. Adams, 94 Nev. 503, 505, 581
18 P.2d 868, 869 (1979) (holding that common-law breaking is not essential element of crime
19 of burglary and only an entry with intent to commit larceny or other felony is required).
20 Furthermore, the Court has also held that consent to enter is not a defense. See, Hernandez
21 v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1113 (2002)(holding that evidence was sufficient
22 to sustain the aggravator that the murder was committed in the commission of the burglary
23 of the defendant’s ex-wife’s home, regardless of whether the victim originally consented to
24 the entry); see also, Barrett v. State, 105 Nev. 361, 364, 775 P.2d 1276, 1277
25 (1989)(Defendant was properly convicted of burglary of apartment where he had been
26 staying at apartment for 10 days preceding the date of the offense and paid money toward
27 expenses because consent is not a defense to Burglary). The Nevada Supreme Court has also
28 refused to read other various common law elements into the statutory burglary definition.

1 See State v. Adams, *supra*, 94 Nev. 503, 581 P.2d 868 (1978); McNeely v. State, 81 Nev.
2 663, 409 P.2d 135 (1966)(*rejecting Defendant's argument that the common law element of*
3 *breaking still existed despite its absence in NRS 205.060 and noting that legislature rewrote*
4 *the burglary statute in a broader form*); Page v. State, 88 Nev. 188, 495 P.2d 356 (1972);
5 State v. Dan, 18 Nev. 345, 4 P. 336 (1884). More importantly, the Court has previously
6 upheld a burglary conviction where defendant claimed that he lived at the home of his
7 murdered ex-girlfriend, which he entered to murder her. See generally, Chappell v. State,
8 114 Nev. 1403, 1405, 972 P.2d 838, 839 (1998).

9 Because consent to enter, permission to enter, and ownership of property are not
10 defenses to the crime of Burglary, Defendant's Petition for Writ of Habeas Corpus should be
11 denied.

12 **B. THE BURGLARY STATUTE IS CLEAR AND UNAMBIGUOUS SO IT**
13 **WOULD BE IMPROPER FOR THIS COURT TO READ INTO IT A**
14 **REQUIREMENT THAT IS NOT PRESENT.**

15 Furthermore, to the extent that defense counsel asks this Court to read into the statute,
16 a limitation that does not exist, that would be improper. "It is well established that when the
17 language of a statute is plain and unambiguous, and its meaning clear and unmistakable,
18 there is no room for construction, and the courts are not permitted to search for its meaning
19 beyond the statute itself." *Nelson v. Heer*, 123 Nev. 26, --, 163 P.3d 420, 425 (2007).
20 However, when a statute is ambiguous, or it does not speak to the issue before the Court, it
21 may be examined through legislative history, reason, and public policy to ascertain the
22 legislature's intent. *Id.* "The meaning of the words used may be determined by examining
23 the context and the spirit of the law..." *Id.* A statute should be read as a whole, and should
24 be read to give meaning to all its parts. *Matter of Petition of Phillip A.C.*, 122 Nev. --, 149
25 P.3d 51, 57-58 (2006). Its interpretation should avoid meaningless or unreasonable results.
26 *Id.*

27 The burglary statute clearly reads,

28 A person who, by day or night, **enters any house**, room,
apartment, tenement, shop, warehouse, store, mill, barn, stable,
outhouse or other building, tent, vessel, vehicle, vehicle trailer,

1 semitrailer or house trailer, airplane, glider, boat or railroad car,
2 with the intent to commit grand or petit larceny, assault or
battery on any person or any felony, or to obtain money or
property by false pretenses, is guilty of burglary.

3 NRS 205.060. The language of the statute allows for an individual to be charged with
4 burglary of his or her own home. Conspicuously absent from the statute is any language
5 limiting its application to only residences that the offender does not have permission to enter.
6 Had the legislature intended to limit its application to only those scenarios where the
7 offender does not have permission to enter, the legislature would have worded the statute in
8 a manner similar to Home Invasion statute. More specifically, NRS 205.067, which applies
9 to Home Invasions, states, "A person who, by day or night, forcibly enters an inhabited
10 dwelling **without permission of the owner, resident or lawful occupant**, whether or not a
11 person is present at the time of the entry, is guilty of invasion of the home."

12 Given that the language of the statute is plain and unambiguous, this Court may not
13 read into the statute a requirement that does not exist. As such, the State respectfully
14 submits that Defendant's Petition for Writ of Habeas Corpus should be denied.

15 CONCLUSION

16 In light of the foregoing, the State respectfully requests that this Honorable Court
17 DENY Defendant's Writ of Habeas Corpus.

18 DATED this 19th day of March, 2013.

19 Respectfully submitted,

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

22
23 BY /s/ LIZ MERCER

24 LIZ MERCER
25 Chief Deputy District Attorney
Nevada Bar #0010681
26
27
28

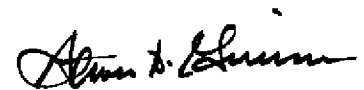
1 **CERTIFICATE OF ELECTRONIC FILING**

2 I hereby certify that service of the above and foregoing, was made this 19th day of
3 March, 2013, by Electronic Filing to:

4 SCOTT COFFEE, DPD
5 e-mail: coffeesl@ClarkCountyNV.gov

6 /s/ HOWARD CONRAD
7 Secretary for the District Attorney's Office

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28 hjc/SVU:DVU



CLERK OF THE COURT

1 NOAS
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 STEVEN S. OWENS
6 Chief Deputy District Attorney
7 Nevada Bar #004352
8 200 Lewis Street
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 Plaintiff,

11 v.

12 TROY RICHARD WHITE,

13 Defendant(s).

Case No. 12-C286357-1
Dept. No. XI

NOTICE OF APPEAL

14 TO: TROY RICHARD WHITE, Defendant; and

15 TO: SCOTT L. COFFEE, Deputy Public Defender for Defendant and

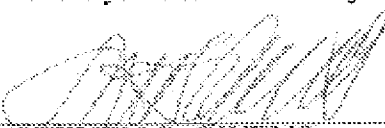
16 TO: ELIZABETH GONZALEZ, District Judge, Eighth Judicial District Court,
17 Dept. No. XI

18 NOTICE IS HEREBY GIVEN THAT THE STATE OF NEVADA, Plaintiff in the
19 above entitled matter, appeals to the Supreme Court of Nevada, pursuant to NRS
20 177.015(1)(b) from the district court's dismissal of a Count of Burglary on March 27, 2013.

21 Dated this 27th day of March, 2013.

22 STEVEN B. WOLFSON,
23 Clark County District Attorney

24 BY



25 STEVEN S. OWENS
26 Chief Deputy District Attorney
27 Nevada Bar #004352
28

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing NOTICE OF APPEAL was
3 made this 27th day of March, 2013, by depositing a copy in the U.S. Mail, postage pre-paid,
4 addressed to:

5
6 SCOTT L. COFFEE
Deputy Public Defender
309 South Third Street, Ste. 226
7 Las Vegas, Nevada 89155

8
9 ELIZABETH GONZALEZ
Eighth Judicial District Court, Dept. XI
10 Regional Justice Center
200 Lewis Avenue
11 Las Vegas, Nevada 89101

12
13
14 BY Elleen Davis
15 Employee, District Attorney's Office
16
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27
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SSO/ed


CLERK OF THE COURT

CASE APPEAL STATEMENT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Street
Las Vegas, Nevada 89155-2212
(702) 671-2750
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TROY RICHARD WHITE,

Defendant.

Case No. 12-C286357-1
Dept. No. XI

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
The State of Nevada
2. Identify the judge issuing the decision, judgment, or order appealed from:
Judge Elizabeth Gonzalez
3. Identify all parties to the proceedings in the district court:
Troy Richard White
The State of Nevada
4. Identify all parties involved in this appeal:
Same as #3

1 5. Name, law firm, address, and telephone number of all counsel on appeal
2 and party or parties whom they represent:
3

4 STEVEN S. OWENS
5 Chief Deputy District Attorney
6 Nevada Bar #004352
7 Office of the Clark County District Attorney
8 Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2750

SCOTT L. COFFEE
Deputy Public Defender
Nevada Bar No. 005607
309 South Third Street, Ste. 226
Las Vegas, Nevada 89155
(702) 455-5768

9 Counsel for Appellant
10 State of Nevada

Counsel for Respondent
Troy Richard White

11 6. Indicate whether appellant was represented by appointed or retained
12 counsel in the district court: Appointed

13 7. Indicate whether appellant is represented by appointed or retained
14 counsel on appeal: Appointed

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

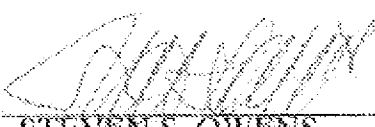
17 9. Date proceedings commenced in the district court:

18 Information filed December 27, 2012.

19 DATED this 27th day of March, 2013.

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

23 BY


24 STEVEN S. OWENS
25 Chief Deputy District Attorney
26 Nevada Bar #004352
27 Office of the Clark County District Attorney
28 Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2750

CERTIFICATE OF MAILING

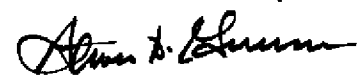
I hereby certify that service of the above and foregoing Case Appeal Statement was made March 27, 2013, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

SCOTT L. COFFEE
Deputy Public Defender
309 South Third Street, Ste. 226.
Las Vegas, Nevada 89155

ELIZABETH GONZALEZ
Eighth Judicial District Court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

Eileen Davis
Employee, District Attorney's Office

SSOed



CLERK OF THE COURT

REQUEST FOR ROUGH DRAFT TRANSCRIPT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

TROY RICHARD WHITE,

Defendant(s).

Case No. 12-C286357-1

Dept. No. XI

REQUEST FOR ROUGH DRAFT TRANSCRIPT

TO: COURT RECORDER, JILL HAWKINS

THE STATE OF NEVADA, plaintiff named above, requests preparation of a rough draft transcript of certain portions of the proceedings before the district court, as follows:

MARCH 27, 2013 – Return to Writ of Habeas Corpus

This Notice requests a transcript of only those portions of the district court proceedings which counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel and the reading of jury instructions shall not be transcribed unless specifically requested above.


I recognize that I must personally serve a copy of this form on the above named Court Reporter and opposing counsel, and that the above named Court Reporter shall have twenty (20) days from the receipt of this Notice to prepare an original plus three copies at State

1 expense and file with the district court clerk the original rough draft transcript(s) requested
2 herein.

3 Further, pursuant to NRAP 3C(d)(3)(iii), the court reporter shall also deliver copies
4 of the rough draft transcript to the Supreme Court Clerk, to appellant's counsel and
5 respondent's counsel no more than twenty (20) days after the date of the appellant's
6 request.

7 Dated this 27th day of March, 2013.

8
9
10 By


STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2750

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing REQUEST FOR ROUGH
3 DRAFT TRANSCRIPT was made this 27th day of March, 2013 by depositing a copy in the
4 U.S. Mail, postage pre-paid, addressed to:

5
6 SCOTT L. COFFEE
Deputy Public Defender
309 South Third Street, Ste. 226
7 Las Vegas, Nevada 89155
8

9 JILL HAWKINS
Court Recorder District Court XI
Regional Justice Center
10 200 Lewis Avenue
11 Las Vegas, Nevada 89155

12 JUDGE ELIZABETH GONZALEZ
13 Eighth Judicial District Court, Dept. XI
Regional Justice Center
14 200 Lewis Avenue
Las Vegas, Nevada 89101
15

16
17 BY Eileen Davis
18 Employee, District Attorney's Office
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SSO/ed

ORIGINAL

Alvin L. L...

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	CASE NO. C286357
Plaintiff,)	
vs.)	DEPT. XI
)	
TROY RICHARD WHITE,)	Transcript of Proceedings
)	
Defendant.)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

WEDNESDAY, MARCH 27, 2013

APPEARANCES:

For the State:	ELIZABETH A. MERCER, ESQ. Deputy District Attorney
----------------	---

For the Defendant:	SCOTT L. COFFEE, ESQ. DAVID LOPEZ-NEGRETE, ESQ. Deputy Public Defenders
--------------------	---

RECORDED BY: JILL HAWKINS, COURT RECORDER

CLERK OF THE COURT

APR 03 2013

RECEIVED

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1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 27, 2013, 10:34 A.M.

2 (Court was called to order)

3 THE COURT: All right. Anybody else before I go to Mr.
4 Coffee's case, which is page 13? I felt like I was in business
5 court when I was thinking about this. It's a very interesting
6 legal issue as to whether you can burgle your own house.

7 MR. COFFEE: Scott Coffee for the Clark County Public
8 Defender's office on behalf of Mr. White, along with my co-counsel,
9 David Negrete.

10 MS. MERCER: And Liz Mercer for the State, Your Honor.

11 THE COURT: Okay. And I've been hyping your case all
12 day. I was hoping people would stay for CLE credit on this very
13 interesting legal issue that both of you have briefed very well.
14 It's your motion.

15 MR. COFFEE: I agree with the Court that it's a very
16 interesting legal issue. I think it's important to note at the
17 onset that there's no Nevada case on point. I know the State cites
18 to Chappell. I'll get to that in a moment as to why it's not
19 directly on point.

20 I'm going to start with the common law, which we don't
21 hear about that much anymore because we've litigated so many things
22 in the past and we have so many directions from the Nevada Supreme
23 Court, but at common law you couldn't be guilty of burglarizing
24 your own house. And it was very simple just because it is a
25 property right. A person has an absolute right to their own

1 property. You can't be guilty of burglarizing your own house under
2 the common law, for the same reason that you can buy a new pair of
3 jeans and cut holes in them, for the same reason that you can rent
4 a frontend loader and tear down a structure on your property if you
5 have the appropriate permits. It is your property, you can do with
6 it as you see fit. And this is really a property right situation.
7 This is not -- and the State mentions some cases like Adams and
8 Hernandez that talk about consent and license. It's not a consent
9 or license situation. In fact, those cases I think argue in our
10 favor.

11 If you look at Hernandez, if you look at Adams, in these
12 cases they are situations where somebody enters into a public
13 structure with some kind of limited license. I go into Walmart,
14 Walmart allows me, they give me permission to enter into Walmart,
15 but that permission is somewhat limited. They don't allow me to
16 enter Walmart to steal things. We've seen several people charged
17 this morning with exactly that, stealing things from Walmart.
18 That's not part of the permission. I've stepped outside the
19 permission, outside the consent, and the rationale makes sense. If
20 I go beyond the consent to enter, I may have been guilty of
21 burglary, if I entered with the intent initially, at least, to do
22 some kind of illegal activity. The idea is people don't allow me
23 to enter to steal. That's not part of this license.

24 But it's different when we're talking about our own
25 property. Again, you have an absolute right to do as you see fit

1 with your own property.

2 You take a look at cases, and I think the seminal case on
3 this is a case called Gauze of out California that goes through
4 this very methodical -- and California statute, by the way, we've
5 put it in our moving papers, but California statute mirrors
6 Nevada's. Nevada has recognized that California's statute mirrors
7 Nevada's. And the Gauze court comes to the conclusion that you
8 can't be guilty of burglarizing your own property. Now, we'll say
9 that Gauze, and we don't mention this in the moving papers because
10 I don't know that it's applicable here, has been limited in certain
11 circumstances. The circumstance where Gauze has been limited have
12 been situations where, for example, a person is guilty of a battery
13 domestic violence and there's a court order that says, do not go
14 back into that house. . So they might be under a court order, or
15 there is evidence that they have completely vacated the premises,
16 they have given up their possessions, they don't hold things there,
17 they don't have a key to the premises.

18 Which brings me to Chappell that I mentioned at the top of
19 our discussion. The State points to Chappell and they say
20 Chappell's a situation, and I'm quoting directly from the State,
21 "upheld a burglary conviction where defendant claimed," and this is
22 the important part, "claimed" always sets off those little hairs on
23 the back of my neck, because I know there's something else going
24 on, "claimed that he lived at the house of his murdered ex-
25 girlfriend which he entered to murder." When you read Chappell,

1 Chappell's very interesting, because Chappell gets on the -- on the
2 witness stand and it says that, Chappell says some other things.
3 Chappell, I don't have a key to the home. Chappell admits to
4 entering the home through a window. It's clear that we don't --
5 there's no evidence in the Chappell case anyplace that I can see
6 that we have a situation like what we've got here where Chappell is
7 the owner of the trailer in question. Chappell simply says, I felt
8 like it was my home, if you read the case.

9 Now, it's interesting that he felt like it was his home.
10 It's clear that the jury disregarded what Mr. Chappell had to say
11 from the stand, because Chappell also said, once I entered what I
12 felt like was my home I had consensual sex with my ex-girlfriend
13 inside. The jury convicted Chappell of sexual assault. So they
14 weren't buying much what Mr. Chappell had to say. But there were
15 parts left out of Chappell. and there was something factually that
16 concerned me about Chappell. Luckily, I know Howard Brooks, who is
17 the defense attorney who tried the Chappell case, and I called Mr.
18 Brooks this morning. And I asked him, I said, what was really
19 going on with Chappell, because there's something factually missing
20 in Chappell that I don't see. And we talked about the facts of it,
21 and he came up with something that was very fascinating. Mr.
22 Chappell had been out of the residence for months, doing time on a
23 battery domestic violence. It doesn't show up in the printed facts
24 of the Nevada Supreme Court, but Mr. Chappell had been out of
25 custody for three months, four months, doing time on a domestic

1 violence when he showed up at the home without a key. There had
2 been contact back and forth with this woman, there had been threats
3 made from the detention center, it was pretty clear he wasn't
4 walking around the house, and that's when he went into the window.
5 There had not been contact in between those times. So you've got a
6 situation that's factually very different than what we've got here.

7 Mr. White owns this home; the title is in Mr. White's
8 name. Mr. White has never vacated the premises of this home. He
9 has items there, as best we can tell. He stays there on weekends.
10 Interestingly, in fact, the day that this happens is a Friday, and
11 it's a day that Mr. White would normally show up to stay with his
12 children on the weekend at what is his home legally by virtue of
13 title and by virtue of the fact that he has not vacated the
14 premises.

15 So the question is simple. Can you burglarize your own
16 home? If you look at the burglary statute, it is listed as a crime
17 against property. In the NRS that is the chapter that it is under,
18 because you cannot commit a crime against your own property, just
19 like you cannot trespass into your own home. I do not think that
20 it is appropriate to charge Mr. White with burglary. And,
21 interestingly, there's not a Nevada case directly on point. And
22 these statutes have been in place for over 50 years. In essence,
23 the Nevada statute has been in place for over 50 years. Why is
24 there not a case on point that says simply -- I mean, if that's
25 what the Supreme Court wants to say, you can't burglarize your own

1 home, why don't we have a case that says you can't burglarize your
2 own home? They've never wanted to address the issue. There's no
3 public -- published opinions that come to that conclusion. And I
4 think it's because of these property rights. I think most of the
5 time the State doesn't choose to charge these sorts of things;
6 because if they'd been charged, you would think we'd have a
7 decision at this point. I think the State has stretched the
8 definition of burglary beyond what it was intended to cover. And
9 for that reason I don't think that the burglary charge is well
10 taken. I think the burglary charge should be dismissed.

11 THE COURT: Thank you.

12 MS. MERCER: Your Honor, while I can certainly understand
13 Mr. Coffee's argument, the fact of the matter is he hasn't cited
14 this Court to any binding authority that would allow the Court to
15 dismiss the burglary count. He cited to a bunch of persuasive
16 authority out of California, but our Supreme Court has repeatedly
17 noted how expansive our burglary statute is.

18 THE COURT: So how can you burglarize your own house?
19 How can I steal money from myself?

20 MS. MERCER: Because burglary - well, you can't, it's
21 your money. But that's different.

22 THE COURT: But it's my house.

23 MS. MERCER: I understand, but you're not stealing --
24 like, if it's your money, you are not committing a crime. Here he
25 burglarized the house by entering with a firearm. A backpack was

1 found in the driveway with a --

2 THE COURT: He can go in his house with a firearm; right?

3 MS. MERCER: I'm just pointing to the evidence that he
4 entered the house with the intent to commit assault and/or battery
5 and/or murder. He left a backpack in the driveway with an empty
6 gun holster in it. He concealed that firearm on his person when he
7 entered the home. The children let him into the home, and then he
8 immediately confronts her and shoots her and her then boyfriend.
9 He was not residing in the home. They were separated; they had
10 been separated for two months. He only lived at the house on the
11 weekends, and he exercised his visitation after he got off work.
12 On this particular day he showed up three to four hours early. It
13 was not his time for visitation, and preceding that he'd showed up
14 at the house at approximately 2:00 in the morning, banging on the
15 windows, demanding to be let inside. So it's clear that his intent
16 when he went into the house was to murder her.

17 Furthermore, the Barrett case that I cited to in my brief
18 appears to be directly on point. In that case there was evidence
19 that the defendant had resided in the apartment, that he paid rent,
20 money toward the bills, and the court said, no, it doesn't matter,
21 he still committed a crime, he still committed burglary.

22 And I disagree with Mr. Coffee in his assessment that
23 Chappell is distinguishable from this case, because, as I pointed
24 out, the defendant had not resided in that house for at least two
25 months. And when he did stay there it was only on the weekends to

1 take care of the children, because there were five kids and it was
2 too difficult to shuffle them back and forth. This was again a day
3 and time that he was not supposed to be there exercising
4 visitation.

5 In addition, if the legislature had meant to limit the
6 application of the burglary statute, they certainly could have done
7 so, as they did with the home invasion statute, which specifically
8 prohibits somebody from being charged with home invasion for
9 kicking down their own front door. They chose not to limit it.
10 Therefore, it's proper to charge burglary.

11 In addition, Mr. Coffee said, well the State doesn't
12 charge burglary in these cases. That's absolutely incorrect. I
13 mean if you look at all the cases that I cited, there were
14 burglaries charged, there were burglaries as aggravators. I'm on
15 the Domestic Violence Unit; I've been there for over three years.
16 We've consistently charged burglary when it's their own home and
17 they go in with the intent to batter, such as in cases where
18 there's a heated argument, the defendant leaves, victim doesn't
19 want to open the door because she knows that it's going to
20 escalate, he comes in and batters her.

21 THE COURT: But here --

22 MS. MERCER: It's a burglary.

23 THE COURT: Let me make sure I understand the facts
24 correct. Because I looked through the transcript, and I just want
25 to make sure I understand. There is no legal restriction to his

1 access to the home. There's no TPO, there's no Family Court order,
2 there's no property settlement agreement that restricts his access
3 to the home. There's no legal impediment.

4 MS. MERCER: There's not, Your Honor.

5 THE COURT: Okay.

6 MS. MERCER: But that's not a requirement for burglary.
7 I mean, consent, permission, et cetera, those are not defenses to
8 burglary.

9 THE COURT: Okay. Anything else you want to tell me?

10 MS. MERCER: No.

11 THE COURT: All right. The writ is granted. The Court
12 does not understand how you can burgle your own house. At common
13 law you couldn't burgle your own house. While I certainly
14 understand the definition by the legislature in the current version
15 of the statute may seem to indicate you can burgle your own house,
16 I don't know how legally you can burgle your own house where there
17 is no legal impediment such as a TPO, a restraining order of some
18 sort, a court order from Family Court, a property settlement
19 agreement, a child visitation agreement, that would otherwise limit
20 the ability of an owner to access their own property.

21 MS. MERCER: And, Your Honor, if I could just ask for
22 clarification.

23 THE COURT: Count 1, only.

24 MR. COFFEE: Understood.

25 MS. MERCER: Which case was it -- or statute cited by the

1 defense upon which the Court is ruling? Because access is not --
2 legal access isn't a defense to burglary, so I'm -- I just need
3 to --

4 THE COURT: It's called the common law.

5 MS. MERCER: Okay. So you're basing it on the common
6 law. And, Your Honor, can we get a two-week status check, please,
7 because we may intend to take this up?

8 THE COURT: No, I think you might.

9 MS. MERCER: Okay.

10 THE COURT: It's an important issue. That's why I've
11 been hyping this case so everybody would stay for CLE credit.

12 The statute says, "A person who by day or night enters
13 any house," and then I'll skip ahead, --

14 MS. MERCER: Any house.

15 THE COURT: -- skip ahead for a long time, "with the
16 intent to commit grand or petit larceny, assault, battery on any
17 person or to obtain money or property for false pretenses is guilty
18 of burglary." That's the statute.

19 And, yeah, it can't be your own house. though, because
20 you can enter your own house anytime you want without restricting
21 that property right unless there's some other legal impediment. I
22 certainly understand that the State may want to challenge that
23 issue, I think it's an important one to address; but remember,
24 you've got three other counts with very serious charges in this
25 case.

1 MS. MERCER: Well, I understand that, Your Honor. I'd
2 just like time to speak with the appellate unit, if we can get a
3 status check in two weeks.

4 THE COURT: I understand. Two weeks? Okay. Why do you
5 need a status check?

6 MS. MERCER: So that I -- because I have to first come in
7 here and ask you for a stay if we're going to take it up.

8 THE COURT: So if you're going to do that, file a motion.

9 MS. MERCER: Okay.

10 THE COURT: Right?

11 MS. MERCER: If that's how the Court wishes to proceed,
12 that's fine.

13 MR. COFFEE: Understood. Or even if she just orally
14 asked for a stay --

15 THE COURT: I don't care.

16 MR. COFFEE: -- at this point, your record's protected
17 and they will take a look at it.

18 THE COURT: Do you want a stay? I'll grant you a stay
19 any day of the week.

20 MS. MERCER: Okay.

21 THE COURT: All you've got to do is ask me.

22 MS. MERCER: Okay.

23 THE COURT: I'm really good at appellate procedure.

24 MS. MERCER: I'll file a motion, then --

25 THE COURT: Okay.

1 MS. MERCER: -- once I speak to them. Thank you, Your
2 Honor.

3 THE COURT: And I want to compliment both of you. You
4 guys both did a great job on the briefing.

5 MS. MERCER: Thank you very much, Your Honor.

6 MR. COFFEE: Thank you.

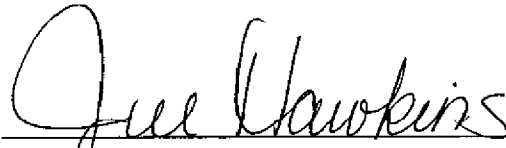
7 THE COURT: It's not often I get to say that on my
8 criminal day.

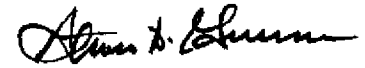
9 MR. COFFEE: Thank you.

10 THE COURT: Have a nice day.

11 THE PROCEEDINGS CONCLUDED AT 10:48 A.M.
12
13
14
15
16
17
18
19

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

23 
24 JILL HAWKINS
25 Court Recorder/Transcriber


CLERK OF THE COURT

1 ORDR
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 SCOTT L. COFFEE
5 Deputy Public Defender
6 Nevada Bar No. 005607
7 309 South Third Street, Suite #226
8 Las Vegas, Nevada 89155
9 (702) 455-4685
10 Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

12 TROY RICHARD WHITE,
13 Defendant.
14

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

ORDER GRANTING DEFENDANT'S WRIT OF HABEAS CORPUS

17 THIS MATTER having come for hearing before this Court on the 27th day of March,
18 2013, the Defendant being present, represented by SCOTT L. COFFEE, Deputy Public
19 Defender, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney,
20 through ELIZIBETH MERCER, and the Court having reviewed the preliminary hearing
21 transcripts and pleadings, as well as having heard the arguments of counsel, hereby finds as
22 follows:

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

RECEIVED
MAY 13 2013
CLERK OF THE COURT
(4)

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 27th, 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 12th,
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.¹ 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 ¹ 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."²

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.³ 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 ;⁴ 2) all of the cited cases speaking to consent
20

21 ² Smith at 529.

22 ³ 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 ⁴ 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.⁵

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.⁶ 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.

⁵ 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.

⁶ 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.

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

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

12 **II. FINDINGS & CONCLUSION**

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

20 ///

21 ///

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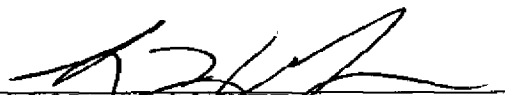
28 ///

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 9th day of May, 2013.

6
7
8 
ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

9
10 PHILIP J. KOHN
11 PUBLIC DEFENDER
Nevada Bar #0556

12
13 
14 SCOTT L. COFFEE
15 Deputy Public Defender
Nevada Bar #005607

16
17 REVIEWED BY:

18
19
20 
ELIZABETH MERCER
21 Deputy District Attorney
Nevada Bar # 010681

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 02, 2013

C-12-286357-1 State of Nevada
 vs
 Troy White

January 02, 2013 1:30 PM Initial Arraignment

HEARD BY: Martin, Eugene

COURTROOM: RJC Lower Level
 Arraignment

COURT CLERK: Ying Pan; Andrea Davis

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Mercer, Elizabeth A.	Attorney
	State of Nevada	Plaintiff
	Waters, William	Attorney
	White, Troy Richard	Defendant

JOURNAL ENTRIES

- Mr. Waters advised this is Mr. Coffee's case and requested a continuance for counsel to be present.
No objection from the State. COURT ORDERED matter CONTINUED.

CUSTODY

CONTINUED TO: 1/9/13 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 09, 2013

C-12-286357-1 State of Nevada
 vs
 Troy White

January 09, 2013 1:30 PM Arraignment Continued

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level
 Arraignment

COURT CLERK: Monique Alberto

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Coffee, Scott L.	Attorney
	Mercer, Elizabeth A.	Attorney
	State of Nevada	Plaintiff
	White, Troy Richard	Defendant

JOURNAL ENTRIES

- DEFT. WHITE ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. Upon request of counsel, COURT ORDERED, matter set for status check/trial setting.

CUSTODY

1/16/13 9:00 A.M. STATUS CHECK: TRIAL SETTING (DEPT 9)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 16, 2013

C-12-286357-1

State of Nevada

vs

Troy White

January 16, 2013

9:00 AM

Status Check: Trial Setting

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10D

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison-Britt

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Brett Keeler, Deputy District Attorney, present for the State of Nevada.
Defendant White, present in custody, without custody.

State advised this is Mr. Coffee's case and requested a continuance. COURT ORDERED, matter CONTINUED. State advised it will notify Mr. Coffee of the continuance date.

CUSTODY

CONTINUED TO: 01/28/13 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 28, 2013

C-12-286357-1 State of Nevada
 vs
 Troy White

January 28, 2013 9:00 AM Status Check: Trial Setting

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Coffee, Scott L.	Attorney
	Mercer, Elizabeth A.	Attorney
	State of Nevada	Plaintiff
	White, Troy Richard	Defendant

JOURNAL ENTRIES

- Parties announced ready to set trial date. COURT ORDERED, matter SET for Jury Trial on November 4, 2013. At Mr. Coffee's request and there being no opposition from the State, COURT ORDERED, pursuant to Statute, counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY

10-30-13 9:00 AM CALENDAR CALL

11-4-13 1:00 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 27, 2013

C-12-286357-1 State of Nevada
 vs
 Troy White

**March 27, 2013 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Billie Jo Craig

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Coffee, Scott L.	Attorney
	Mercer, Elizabeth A.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff
	White, Troy Richard	Defendant
	Wolfson, Steven B	Attorney

JOURNAL ENTRIES

- Arguments by counsel. Court stated its findings, and ORDERED, Writ is GRANTED as to CT. 1 ONLY. Colloquy regarding further proceedings.

CUSTODY

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated April 12, 2013, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the above referenced case. The record comprises one volume with pages numbered 1 through 155.

STATE OF NEVADA,

Plaintiff(s),

vs.

TROY RICHARD WHITE,

Defendant(s),

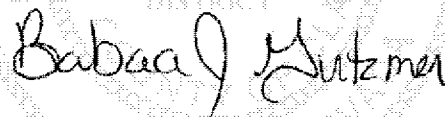
Case No: C286357

Dept No: XI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 13 day of May 2013.

Steven D. Grierson, Clerk of the Court



Barbara J. Gutzmer, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 13 2013 12:17 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

TROY RICHARD WHITE,
Appellant(s),
vs.

Case No: C286357
SC No: 62890

STATE OF NEVADA,
Respondent(s),

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
PHILIP J. KOHN,
PUBLIC DEFENDER
309 S. 3RD STREET, SUITE 226
LAS VEGAS, NV 89101

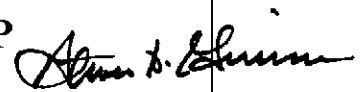
ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

**C-12-286357-1 State of Nevada
vs
Troy White**

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
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JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA


CLERK OF THE COURT

STATE OF NEVADA,
Plaintiff,

vs.

TROY RICHARD WHITE,
Defendant

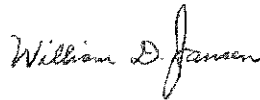
) District Court Case No.:
)
) Justice Court Case No.: 12F12500X
)

) **C-12-286357-1**
)
) **Dept. IX**
)

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the
same appear in the above case.

Dated this December 21, 2012



Justice of the Peace, Las Vegas Township

CLARK COUNTY, NEVADA

vs.

) District Court Case No.:
)
) Justice Court Case No.: 12F12500X
)
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)

An Order having been made this day by me that **TROY RICHARD WHITE** be held to answer before the Eighth Judicial District Court, upon the charge(s) of **BURGLARY WHILE IN POSSESSION OF A FIREARM; MURDER WITH USE OF A DEADLY WEAPON; ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON; CHILD ABUSE, NEGLECT, OR ENDANGERMENT (5 COUNTS)**, committed in said Township and County, on or about the 27TH day of JULY, 2012.

TOTAL BAIL: NO BAIL

William D. Jensen

-1-



ORIGINAL

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

FILED IN OPEN
COURT ON

12-12-12
[Signature]
Court Clerk

3 THE STATE OF NEVADA,
4
5 Plaintiff,
6
7 -vs-
8
9 TROY RICHARD WHITE #1383512,
10
11 Defendant.

CASE NO: 12F12500X

DEPT NO: 5

AMENDED
CRIMINAL COMPLAINT

9 The Defendant above named having committed the crimes of BURGLARY WHILE
10 IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060); MURDER WITH
11 USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165);
12 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS
13 200.010, 200.030, 193.330, 193.165), CARRYING A CONCEALED FIREARM OR
14 OTHER DEADLY WEAPON (Category C Felony - NRS 202.350(1)(d)(3)), and CHILD
15 ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1)) in the
16 manner following, to-wit: That the said Defendant, on or about the 27th day of July, 2012,
17 at and within the County of Clark, State of Nevada,

18 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM

19 did, then and there wilfully, unlawfully, and feloniously enter, while in possession of
20 a firearm, with intent to commit a felony, to-wit: murder and/or battery and/or assault, that
21 certain building occupied by ECHO LUCAS WHITE, located at 325 Altamira Road, Las
22 Vegas, Clark County, Nevada, the Defendant did possess and/or gain possession of a deadly
23 weapon consisting of a firearm during the commission of the crime and/or before leaving the
24 structure.

25 COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

26 did, then and there willfully, feloniously, without authority of law, and with malice
27 aforethought, kill ECHO LUCAS WHITE, a human being, by shooting at and into the body
28 of the said ECHO LUCAS WHITE, with a deadly weapon, to-wit: a firearm, said killing

1 having been willful, premeditated and deliberate and/or committed during the perpetration or
2 the attempted perpetration of a burglary, to-wit: by the defendant entering 325 Altamira
3 Road, Las Vegas, Clark County, Nevada with the intent to assault and/or batter and/or kill
4 the said ECHO LUCAS WHITE and/or JOSEPH AVERMAN.

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

6 did, then and there, without authority of law, and malice aforethought, willfully and
7 feloniously attempt to kill JOSEPH AVERMAN, a human being, by shooting at and into the
8 body of the said JOSEPH AVERMAN, with a deadly weapon, to-wit: a firearm.

9 COUNT 4 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

10 did, then and there, wilfully, intentionally, unlawfully and feloniously carry concealed
11 upon his person, a firearm or other deadly weapon, to-wit: a Black Taurus PT 92C 9mm
12 semi-automatic handgun bearing Ser. No. TOA33791.

13 COUNT 5 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

14 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
15 wit: JODEY WHITE, being approximately 9 year(s) of age, to suffer unjustifiable physical
16 pain or mental suffering as a result of abuse or neglect, and/or cause the said JODEY
17 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
18 or mental suffering as a result of abuse or neglect, by discharging a firearm inside the child's
19 home within close proximity to the child.

20 COUNT 6 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

21 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
22 wit: JODEY WHITE, being approximately 9 year(s) of age, to suffer unjustifiable physical
23 pain or mental suffering as a result of abuse or neglect, and/or cause the said JODEY
24 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
25 or mental suffering as a result of abuse or neglect, shooting the child's mother, Echo White,
26 failing to seek assistance for Echo White, and allowing her to die while the said JODEY
27 WHITE was coming in and out of the room and/or was in the near vicinity.

28 ///

1 COUNT 7 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT

2 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
3 wit: JESSE WHITE, being approximately 5 year(s) of age, to suffer unjustifiable physical
4 pain or mental suffering as a result of abuse or neglect, and/or cause the said JESSE WHITE
5 to be placed in a situation where he might have suffered unjustifiable physical pain or mental
6 suffering as a result of abuse or neglect, by discharging a firearm inside the child's home
7 within close proximity to the child.

8 COUNT 8 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT

9 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
10 wit: JESSE WHITE, being approximately 5 year(s) of age, to suffer unjustifiable physical
11 pain or mental suffering as a result of abuse or neglect, and/or cause the said JESSE WHITE
12 to be placed in a situation where he might have suffered unjustifiable physical pain or mental
13 suffering as a result of abuse or neglect, shooting the child's mother, Echo White, failing to
14 seek assistance for Echo White, and allowing her to die while the said JESSE WHITE was
15 coming in and out of the room and/or was in the near vicinity.

16 COUNT 9 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT

17 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
18 wit: JAYCE WHITE, being approximately 8 year(s) of age, to suffer unjustifiable physical
19 pain or mental suffering as a result of abuse or neglect, and/or cause the said JAYCE
20 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
21 or mental suffering as a result of abuse or neglect, by discharging a firearm inside the child's
22 home within close proximity to the child.

23 COUNT 10 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT

24 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
25 wit: JAYCE WHITE, being approximately 8 year(s) of age, to suffer unjustifiable physical
26 pain or mental suffering as a result of abuse or neglect, and/or cause the said JAYCE
27 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
28 or mental suffering as a result of abuse or neglect, shooting the child's mother, Echo White,

1 failing to seek assistance for Echo White, and allowing her to die while the said JAYCE
2 WHITE was coming in and out of the room and/or was in the near vicinity.

3 COUNT 11 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

4 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
5 wit: JAZZY WHITE, being approximately 6 months of age, to suffer unjustifiable physical
6 pain or mental suffering as a result of abuse or neglect, and/or cause the said JAZZY
7 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
8 or mental suffering as a result of abuse or neglect, by discharging a firearm inside the child's
9 home within close proximity to the child.

10 COUNT 12 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

11 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
12 wit: JAZZY WHITE, being approximately 6 mos of age, to suffer unjustifiable physical
13 pain or mental suffering as a result of abuse or neglect, and/or cause the said JAZZY
14 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
15 or mental suffering as a result of abuse or neglect, shooting the child's mother, Echo White,
16 failing to seek assistance for Echo White, and allowing her to die while the said JAZZY
17 WHITE was coming in and out of the room and/or was in the near vicinity.

18 COUNT 13 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

19 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
20 wit: JETT WHITE, being approximately 2 year(s) of age, to suffer unjustifiable physical
21 pain or mental suffering as a result of abuse or neglect, and/or cause the said JETT WHITE
22 to be placed in a situation where he might have suffered unjustifiable physical pain or mental
23 suffering as a result of abuse or neglect, by discharging a firearm inside the child's home
24 within close proximity to the child.

25 COUNT 14 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

26 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
27 wit: JETT WHITE, being approximately 2 year(s) of age, to suffer unjustifiable physical
28 pain or mental suffering as a result of abuse or neglect, and/or cause the said JETT WHITE

1 to be placed in a situation where he might have suffered unjustifiable physical pain or mental
2 suffering as a result of abuse or neglect, shooting the child's mother, Echo White, failing to
3 seek assistance for Echo White, and allowing her to die while the said JETT WHITE was
4 coming in and out of the room and/or was in the near vicinity.

5 All of which is contrary to the form, force and effect of Statutes in such cases made
6 and provided and against the peace and dignity of the State of Nevada. Said Complainant
7 makes this declaration subject to the penalty of perjury.

8
9 12/11/2012 

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JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. WHITE, TROY RICHARD

CASE NO. 12F12500X

PAGE: 1

DATE, JUDGE
OFFICERS OF COURT
PRESENT

APPEARANCES - HEARING

CONTINUED TO:

JULY 30, 2012	CRIMINAL COMPLAINT FILED: COUNT 1 – BURGLARY WHILE IN POSSESSION OF A FIREARM COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	DMC
JULY 30, 2012 M. SARAGOSA FOR W. JANSEN J. ADAIR, CLK	DEFENDANT NOT PRESENT IN COURT ARREST WARRANT ISSUED – BAIL SET: SIC – ALL COUNTS	DMC
AUGUST 13, 2012	MEDIA REQUEST AND ORDER ALLOWING CAMERA ACCESS TO COURT PROCEEDINGS FILED (KVVU FOX 5)	SLS
AUGUST 14, 2012	MEDIA REQUEST AND ORDER ALLOWING CAMERA ACCESS TO COURT PROCEEDINGS FILED (8 NEWS NOW)	SLS
AUGUST 14, 2012 W. JANSEN LIZ MERCER, DA C. JASPER, CR L. FOY, CLK	INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT IN CUSTODY DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT PASSED BY COURT FOR STATUS CHECK TO SEE IF PUBLIC DEFENDER HAS REPRESENTED THE VICTIMS AND IF PUBLIC DEFENDER MURDER TEAM WILL BE HANDLING THIS CASE DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	8/16/12 7:30 #5 DMC
AUGUST 16, 2012 W. JANSEN M. THOMSON, DA S. COFFEE, PD C. JASPER, CR L. FOY, CLK	DEFENDANT PRESENT IN COURT *IN CUSTODY* PRELIMINARY HEARING DATE SET DEFENDANT WAIVES THE 15 DAY RULE DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	12/12/12 8:30 AM #5 EM
AUGUST 15, 2012	MEDIA REQUEST AND ORDER ALLOWING CAMERA ACCESS TO COURT PROCEEDINGS FILED (KSNV LAS VEGAS CHANNEL 3 NBC)	SLS
AUGUST 20, 2012	MEDIA REQUEST AND ORDER ALLOWING CAMERA ACCESS TO COURT PROCEEDINGS FILED (KTNV)	SLS

**Justice Court, Las Vegas Township
Clark County, Nevada**

Court Minutes



12F12500X State of Nevada vs White, Troy Richard

12/12/2012 8:30:00 AM Preliminary Hearing

Result: Bound Over

PARTIES PRESENT: Attorney Coffee, Scott L.
Defendant White, Troy Richard

Judge: Jansen, William D.
Prosecutor: Mercer, Elizabeth
Court Reporter: Jasper, Carlila
Court Clerk: Foy, Linda
DA Clerk: Miller, Tina

PROCEEDINGS

Exhibits: **Document, Photograph, Etc. (ID: 1)** Admitted
Document, Photograph, Etc. (ID: 2) Offered

Events: **Amended Criminal Complaint**
filed in open court

Custody Status Slip (No Custody Change)

Motion to Exclude Witnesses - Defense
Motion granted

State Calls Witnesses
Joseph Averman - Witness ID deft.

State Rests

Defendant Advised of Rights
to Make a Statement, to Waive Making a Statement and/or of the Right to Call Witnesses

Defendant Waives the Right to Make a Statement

Defense Rests

Defendant Bound Over to District Court as Charged
Probable Cause Found. Defendant bound over to District Court as Charged. Defendant to appear in Lower Level Arraignment Courtroom A.

District Court Appearance Date Set
to appear: JANUARY 2, 2013 @ 1:30 PM DCA IN CUSTODY

Bail Stands
Remand Counts 4-5-6-7-8-9-10-11-12-13-14

Case Closed - Bound Over

Charges: **4: CARRYING A CONCEALED WEAPON**

5: Child abuse or neglect, first offense - with intent to promote or assist a criminal gang

6: Child abuse or neglect, first offense - with intent to promote or assist a criminal gang

7: Child abuse or neglect, first offense - with intent to promote or

Las Vegas Justice Court: Department 05

LVJC_Criminal_MinuteOrder

12/12/2012 2:42 PM

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

AFFIDAVIT
(N.R.S. 171.106)

FILED

JUL 30 12 07 PM '12

STATE OF NEVADA)

) ss: TROY RICHARD WHITE ID#1383512,

COUNTY OF CLARK)

JUSTICE COURT
LAS VEGAS NEVADA

BY _____
DEPUTY

I, JOEL KISNER P#4656, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas, Nevada Metropolitan Police Department, being so employed for a period of 18 years, assigned to investigate the crimes of BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (B Felony - NRS 205.060, 193.165), MURDER WITH USE OF A DEADLY WEAPON (A Felony - NRS 200.010, 200.020, 200.030, 193.195) and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (B Felony - NRS 200.010, 193.330), committed on or about July 27, 2012, which investigation has developed TROY RICHARD WHITE ID#1383512 as the perpetrator thereof.

That affiant developed the following facts in the course of the investigation of said crime, to-wit:

On July 27th 2012 at about 1150 hours Las Vegas Metropolitan Police Department (LVMPD) received a 911 phone call from Robert Wilson reporting a shooting that just occurred at 325 Altamira Road in Las Vegas, Nevada.

Patrol officers and medical units were dispatched to the scene. Officer Torseillo was one of the first officers to arrive. He found a female, later identified as Echo Lucas White (Echo), lying on the floor in a bedroom of the residence. She was unconscious and had an apparent gunshot wound to her chest.

A male, later identified as Joseph Averman, was lying on the floor just outside the doorway to the bedroom. He also had apparent gunshot wounds. Five (5) children were also present in the house.

Medical units transported Averman and Echo to University Medical Center (UMC) Trauma.

Echo arrived at UMC and, after attempts to revive her, she was pronounced dead by Doctor E. Kwon at 1310 hours. Averman was treated and underwent surgery to treat his injuries.

On November 27th 2012 at about 1616 hours, Detective Kisner interviewed Averman at UMC and, in summary, learned the following:

Echo is married to Troy White for about eight (8) years. They have three (3) children in common. Echo has two (2) additional children with another male. Averman has known Echo and White for several years. They have a troubled marriage. Echo has been trying to divorce White but he would not agree to the divorce.

12F12500X
1329158



The 325 Altamira address was the residence of both White and Echo. She currently lived at the residence with all five (5) children. White still has access to the residence as he sometimes takes care of his children.

Averman has been dating and living with Echo for a short while. White has threatened Averman's life in the past but he did not believe White's threat. Echo has told Averman about White beating her up numerous times, raping her and police have been called on White several times.

On July 27, 2012 White came into the residence and said he needed to speak with Echo in a back room. Echo agreed to go talk with White. Echo and White went into a back room and closed the door. Averman was taking care of an infant in the room next to the room Echo and White were in. In about five (5) minutes, Averman heard Echo yelling at White to stop and he thought she was in trouble.

Averman opened the door and saw White shove Echo and shoot her once in the chest or stomach. White then turned and shot Averman. Averman fell to the ground.

Averman was unable to move after being shot. White stood over Averman and showed him the gun. White told Averman that he was going to jail and he was going to kill him. He also asked Averman, "how does it feel now?"

Averman laid on the floor while White kept coming into the residence and threatening him. White finally left and Averman heard a car leave.

While Averman was being taken out of the house by medical units he noticed that Echo's Dodge Durango that was in the driveway earlier was now missing. He assumed that White now had the Durango.

Averman described the pistol as a dark colored semi-automatic pistol. White was wearing dark colored pants and a reddish colored short sleeve shirt with striping under the arms.

Detective Ivie, along with crime scene analysts, processed the scene at 325 Altamira pursuant to a search warrant. Three (3) 9mm casings and a single, apparent, 9mm projectile were located at the area of the shootings.

At UMC, Detective Kisner noted a gunshot wound on the body of Echo. The gunshot wound was to the right upper torso, below her right breast. Averman had a gunshot wound to his right arm and right side.

He was wanted in Las Vegas for shooting someone. Deputy Bentley read White his Miranda rights and White said he understood his rights. White continued to say that he fled Las Vegas in a Dodge Durango that was now parked on the Sheriff's Department's lot. The gun he used to shoot the people in Las Vegas was in the Dodge Durango in the spare tire compartment area.

Wherefore, affiant prays that a Warrant of Arrest/Summons be issued for suspect on a charges of BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (B Felony - NRS 205.060, 193.165), MURDER WITH USE OF A DEADLY WEAPON (A Felony - NRS 200.010, 200.020, 200.030, 193.195) and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (B Felony - NRS 200.010, 193.330).

AFFIANT

2-4-1966

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

ARREST WARRANT



JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA)
)
 PLAINTIFF)
VS.)
)
 WHITE, TROY RICHARD)
 ID# 01383512)
)
)
 DEFENDANT)
_____)

CASE NO: 12F12500X
DEPT. NO: 5
AGENCY: METRO-HOMICIDE

ARREST WARRANT

SHERIFF'S RETURN

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT
ON THE _____ DAY OF _____, _____, AND SERVED THE SAME BY
ARRESTING AND BRINGING DEFENDANT, _____, INTO COU
THIS _____ DAY OF _____, _____.

DOUGLAS C. GILLESPIE, SHERIFF, CLARK COUNTY, NEV

BY: _____, DEPUTY

DEFENDANT WHITE, TROY RICHARD

CASE NO: 12F12500X

JUDGE MELISSA SARAGOSA

ORI VRI
DOB 06051968 SOC 552940829
RAC W SEX M HGT 510

NAME WHITE, TROY RICHARD
SID
WGT 165 HAI BLK EYE GRN

-----WARRANT-----

HOI COI WNM WHITE, TROY RICHARD
NOC 00301 AOC OFC F FTF TRF JUV DSO DOW 07302012
OCA 1207271826 CCN 12F12500X BAIL NO BAIL
TRA MIS

-----SUPPLEMENTAL-----

SUBMITTING OFFICER ID#: NAME:

COUNTS	CHARGE
1	BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON
1	MURDER WITH A DEADLY WEAPON
1	ATT. MURDER WITH A DEADLY WEAPON

***** C O N F I D E N T I A L *****



STATE OF ARIZONA vs.

WHITE

MISDEMEANOR

RELEASE CONDITIONS

AND

RELEASE ORDER

Address: ☐ Same as Citation

325 Altamira Rd

mail:

W. Tropicana
Las Vegas, NV

Las Vegas, NV 89145

☒ VIDEO WAIVER☐ Interpreter

Time: 938 Case/Booking No.: 13F12500X

☐ VERDE VALLEY JUSTICE COURT- 928-639-5820
10 South 6th Street - Cottonwood, AZ 86326☐ COTTONWOOD MUNICIPAL COURT- 928-634-7537
665 E. Mingus Avenue - Cottonwood, AZ 86326☐ SEDONA MUNICIPAL COURT- 928-282-1189
102 Roadrunner Drive - Sedona, AZ 86336☐ CLARKDALE MAGISTRATE COURT- 928-649-7730
49 North 9th Street - Clarkdale, AZ 86324☐ JEROME MUNICIPAL COURT- 928-649-3250
600 Clark Street - Jerome, AZ 86331☐ CAMP VERDE MUNICIPAL COURT- 928-567-6635
473 S. Main Street - Suite 107 - Camp Verde, AZ 86322☐ MAYER JUSTICE COURT- 928-632-7342
12840 Central Avenue - Mayer, AZ 86333☐ DEWEY-HUMBOLDT MAGISTRATE COURT- 928-632-0008
2735 S. Highway 69 - Humboldt, AZ 86329☐ PRESCOTT JUSTICE / CITY COURTS - 928-771-3300
Yavapai County Courthouse, 120 S. Cortez, Prescott, AZ 86303☐ PRESCOTT VALLEY MAGISTRATE COURT- 928-772-8277
7501 East Civic Circle - Prescott Valley, AZ 86314☐ CHINO VALLEY MUNICIPAL COURT- 928-636-4534
1988 North Road One West - Chino Valley, AZ 86323☐ BAGDAD JUSTICE COURT- 928-633-2141
100 Main Street - Bagdad, AZ 86321☐ YARNELL JUSTICE COURT- 928-427-3318
22591 Looka Way - Yarnell, AZ 85362☐ SELIGMAN JUSTICE COURT- 928-422-3281
54150 Floyd Street - Seligman, AZ 86337☒ OTHER: CLARK COUNTY NEVADA Justice Court, Las Vegas TownshipCHARGES: ☐ Same as Citation

Warrant: Burglary while in possession of deadly weapon; Murder use of deadly weapon; Attempted Murder use of deadly weapon

☒ Defendant has been advised of the charges and the right to silence, counsel, trial.☐ Public Defender ☐ Appointed ☐ Denied ☐ Financial Statement needed ☐ Declined ☐ UndecidedFinancial Statement taken under oath. Defendant shall pay a \$25.00 Public Defender Fee and may be required to pay additional fees.
Yavapai County Public Defender: Prescott: 928-771-3588 Verde: 928-567-7758.

THE DEFENDANT IS ORDERED TO COMPLY WITH THE FOLLOWING CONDITIONS OF RELEASE:

☒ Appear at the Court marked above on: (Date & Time) Monday July 30, 2012 @ 8:30 @ Superior Court
For: ☒ Arraignment ☐ Pretrial ☐ Trial ☐ Sentencing Warrant ☒ Other: FOJ Hearing☒ Obey all orders of the Court; Do not commit any crimes; Notify the Court immediately if your address changes; Do not leave the State of Arizona without permission of the Court; If applicable, diligently prosecute appeal following judgment and sentence.☐ Do not contact the alleged victim(s) in any manner.☐ Do not go near the location of the alleged offense. You may return one time with a police officer as civil standby to obtain belongings.☐ Remain in contact with your attorney (Public Defender or privately-retained attorney).☒ Do not possess or consume any alcohol or drugs without a valid prescription.☐ Do not possess any firearm.☐ DNA Test per A.R.S. §§13-3967, 13-610. Report within 5 days to Yavapai County Sheriff's Office to submit sample for DNA testing.☐ Fingerprint Order per A.R.S. §41-1750 (C),(U). Report within 20 days to Yavapai County Sheriff's Office for Ten-Print fingerprinting.☐ Other:

RELEASE TYPE:

☒ No Bond Hold Pending Court Appearance in Superior Court 7/30/12 @ 8:30 a.m.☐ Own Recognizance (O.R.) - Defendant is released on his or her promise to appear in Court as required.☐ Appearance Bond - Defendant shall post bond in the amount of \$ ☐ Secured Appearance Bond ☐ Cash Only☐ Third Party Release - Defendant shall be placed in the custody of: _____
(Address and phone: _____)

who agrees: (a) to supervise Defendant according to the conditions of this Order; (b) to use every effort to assure that Defendant appears at all hearings before the Court; and (c) to notify the Court immediately if Defendant violates any condition of release or if Defendant disappears. Custodian Signature: _____

If the County Attorney notifies the Jail that no misdemeanor charges are being filed, then Defendant may be released on this case only.

DEFENDANT TO READ AND SIGN: I promise to comply with my release conditions. I understand I have the right to be present at my trial and other proceedings in my case, and if I fail to appear the trial or proceedings will be held without me and any bond posted may be forfeited. If I violate any condition of this Order, I understand my release can be revoked and a warrant may be issued for my arrest.

July 28, 2012

Date

Defendant

Mary E. Hamm, Judge

CC: ☐ Det/Atty ☐ C/A ☐ Vic/Wit Office ☐ Victim ☐ Jail ☐ Local Police Date: _____ By: _____

Release Order MISDEMEANOR 2-23-12 Yavapai County

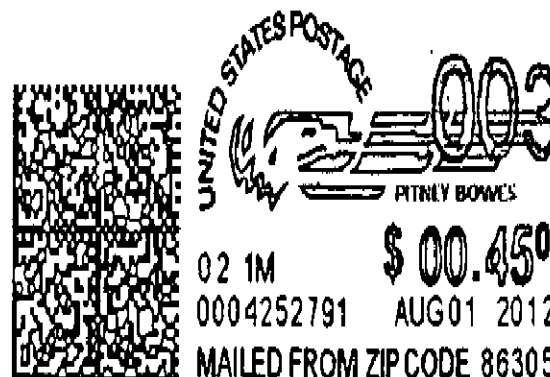


Scott Mascher
Sheriff

Yavapai County Sheriff's Office

255 East Gurley Street

Prescott, Arizona 86301



Clark County Justice Court
Las Vegas Township
200 Lewis Ave
Las Vegas, NV 89101

0910186300



1 JUSTICE COURT LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 JUL 30 12 07 PM '12

4 THE STATE OF NEVADA,

5 Plaintiff,

6 BY

JUSTICE COURT
LAS VEGAS NEVADA

CASE NO: 12F12500X

7 -VS-

DEPT NO: 5

8 TROY RICHARD WHITE #1383512,

9 Defendant.

FILED UNDER SEAL

10 All materials, except the Criminal Complaint, are being filed under seal in obedience
11 to Section 239B.030 of the Nevada Revised Statutes and pursuant to the Order issued by the
12 Honorable Douglas E. Smith, signed December 28, 2006.
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12F12500X
1329157



RECEIVED
AUG 13 2012
COURT ADMIN

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

PLAINTIFF

-VS-

Troy White

DEFENDANT

CASE NO:

12F12500X

DEPT. NO:

5

MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS

* Please fax to (702) 671-4548 to ensure that the
request will be processed as quickly as possible.)

Nicole Poretto (name), of KVVU FOX 5 (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. 5, the Honorable Judge Jansen Presiding, on the 14 day of
August, 2012

I hereby certify that I am familiar with, and will comply with Supreme Court Rules 229-249, inclusive. If this request is
being submitted less than seventy-two (72) hours before the above-described proceedings commence, the following facts
provide good cause for the Court to grant the request on such short notice:

It is further understood that any media camera pooling arrangements shall be the sole responsibility of the media and must
be arranged prior to coverage, without asking for the Court to mediate disputes.

Dated this 10 day of August, 2012

SIGNATURE:

N. Poretto

PHONE:

436 8256

IT IS HEREBY ORDERED THAT:

- [] The media request is denied because it was submitted less than 72 hours before the scheduled proceeding was to
commence, and no "good cause" has been shown to justify granting the request on shorter notice.
- [] The media request is denied for the following reasons: _____
- [] The media request is granted. The requested media access remains in effect for each and every hearing in the above-
entitled case, at the discretion of the Court, and unless otherwise notified. This Order is made in accordance with
Supreme Court Rules 229-249, inclusive, at the discretion of the judge, and is subject to reconsideration upon
motion of any party to the action. Media access may be revoked if it is shown that access is distracting the
participants, impairing the dignity of the Court, or otherwise materially interfering with the administration of
justice.
- [] OTHER: _____

IT IS FURTHER ORDERED that this document shall be made a part of the record of the proceedings in this case.

Dated this 13th day of August, 2012

William Jansen
JUSTICE OF THE PEACE

Any written objection to the Court's order should be filed at least 24 hours prior to the s

12F12500X
1343590



JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

State of Nevada

PLAINTIFF

-VS-

Troy White

DEFENDANT

CASE NO: 12F12500X

DEPT. NO: 5

**NOTIFICATION OF
MEDIA REQUEST**

TO: COUNSEL OF RECORD IN THE ABOVE-CAPTIONED CASE:

You are hereby notified pursuant to Supreme Court Rules 229-246, inclusive, that media representatives from KVVU have requested to obtain permission to broadcast, televise, record or take photographs of all hearings in this case. Any objection should be filed at least 24 hours prior to the subject hearing.

DATED this 13 day of August, 20

12


Las Vegas Township Justice Court

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION

I hereby certify that on the 13 day of August, 2012, service of the foregoing was made by facsimile transmission only, pursuant to Nevada Supreme Court Rules 229-246, inclusive, this date by faxing a true and correct copy of the same to each Attorney of Record addressed as follows:

Plaintiff

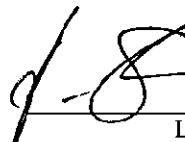
District Attorney

(702) 455-2294

Defendant

Public Defender

(702) 455-5112


Las Vegas Township Justice Court

AUG-13-2012 MON 07:55 PM KLAS TV
RECEIVED
AUG 14 2012
ADMIN

FAX NO. 7027922977

P. 01

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

State of Nevada

PLAINTIFF

-VS-

Troy White

DEFENDANT

CASE NO: 12F12500X

DEPT. NO: 5

**MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS**

* Please fax to (702) 671-4548 to ensure that
the request will be processed as quickly as possible.

Guy DeMarco (name), of 8 News NOW (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. 5, the Honorable Judge William Jansen Presiding, on the 14 day of
August, 2012.

I hereby certify that I am familiar with, and will comply with Supreme Court Rules 229-246, inclusive. If this request is being submitted less than twenty-four (24) hours before the above-described proceedings commence, the following facts provide good cause for the Court to grant the request on such short notice:

It is further understood that any media camera pooling arrangements shall be the sole responsibility of the media and must be arranged prior to coverage, without asking for the Court to mediate disputes.

Dated this 13 day of August, 2012.

SIGNATURE:

Guy DeMarco

PHONE: 702-792-8882

IT IS HEREBY ORDERED THAT:

[] The media request is denied because it was submitted less than 24 hours before the scheduled proceeding was to commence, and no "good cause" has been shown to justify granting the request on shorter notice.

[] The media request is denied for the following reasons: _____

[] The media request is granted. The requested media access remains in effect for each and every hearing in the above-entitled case, at the discretion of the Court, and unless otherwise notified. This order is made in accordance with Supreme Court Rules 229-246, inclusive, at the discretion of the judge, and is subject to reconsideration upon motion of any party to the action. Media access may be revoked if it is shown that access is distracting the participants, impairing the dignity of the Court, or otherwise materially interfering with the administration of justice.

[] **OTHER:** _____

IT IS FURTHER ORDERED that this document shall be made a part of the record of the proceedings in this case.

Dated this 14 day of August, 2012.

William Jansen
JUSTICE OF THE PEACE

12F12500X
1343861



State of Nevada

PLAINTIFF

-VS-

Troy White

DEFENDANT

CASE NO: 12F12500X

DEPT. NO: 5

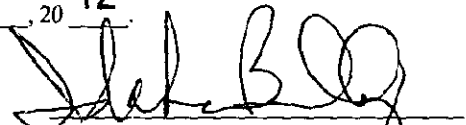
NOTIFICATION OF
MEDIA REQUEST

TO: COUNSEL OF RECORD IN THE ABOVE-CAPTIONED CASE:

You are hereby notified pursuant to Supreme Court Rules 229-246, inclusive, that media representatives from KLAS have requested to obtain permission to broadcast, televise, record or take photographs of all hearings in this case. Any objection should be filed at least 24 hours prior to the subject hearing.

DATED this 14 day of August

, 20 12


Las Vegas Township Justice Court

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION

I hereby certify that on the 14 day of August, 20 12, service of the foregoing was made by facsimile transmission only, pursuant to Nevada Supreme Court Rules 229-246, inclusive, this date by faxing a true and correct copy of the same to each Attorney of Record addressed as follows:

Plaintiff

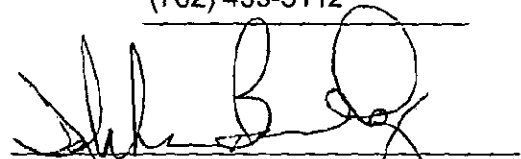
District Attorney

(702) 455-2294

Defendant

Public Defender

(702) 455-5112


Las Vegas Township Justice Court

CONFIDENTIAL

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE #
12F12500X

DEPT # JC5

REQUESTED BY:

NAME:
Troy White

ID #
1383512

CHARGES:

BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON, MURDER WITH A DEADLY
WEAPON, ATT. MURDER WITH A DEADLY WEAPON
CURRENT BAIL: SIC

VERIFIED: ADDRESS: NOT INTERVIEWED
WITH WHOM/HOW LONG: /

VERIFIED: EMPLOYMENT STATUS: /
LENGTH:

VERIFIED: RELATIVES - LOCAL : NOT LOCAL:

FELONY/GROSS MISDEMEANOR CONVICTIONS: 0

MISDEMEANOR CONVICTIONS: 0

FAIL TO APPEAR: 1

COMMENTS:

RECOMMENDATION:

DATE: 8/13/2012

PRETRIAL SERVICES: Cheryl Allen

CONFIDENTIAL

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE #
12F12500X

DEPT # JC5

REQUESTED BY:

NAME:
Troy White

ID #
1383512

CHARGES:

BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON, MURDER WITH A DEADLY WEAPON, ATT. MURDER WITH A DEADLY WEAPON
CURRENT BAIL: SIC

VERIFIED: ADDRESS: UNABLE TO VERIFY NO CONTACT INFORMATION
WITH WHOM/HOW LONG: /

VERIFIED: EMPLOYMENT STATUS: /
LENGTH:

VERIFIED: RELATIVES - LOCAL : NOT LOCAL:

FELONY/GROSS MISDEMEANOR CONVICTIONS: 0

MISDEMEANOR CONVICTIONS: 0

FAIL TO APPEAR: 1

COMMENTS:

RECOMMENDATION:

DATE: 8/15/2012

PRETRIAL SERVICES: Cheryl Allen

CONFIDENTIAL

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE #
12F12500X

DEPT # JC5

REQUESTED BY:

NAME:
Troy White

ID #
1383512

CHARGES:

BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON, MURDER WITH A DEADLY WEAPON, ATT. MURDER WITH A DEADLY WEAPON

CURRENT BAIL:

0

VERIFIED: ADDRESS: UNABLE TO VERIFY NO CONTACT INFORMATION
WITH WHOM/HOW LONG: /

VERIFIED: EMPLOYMENT STATUS: /
LENGTH:

VERIFIED: RELATIVES - LOCAL: NOT LOCAL:

FELONY/GROSS MISDEMEANOR CONVICTIONS: 0

MISDEMEANOR CONVICTIONS: 0

FAIL TO APPEAR: 1

COMMENTS:

RECOMMENDATION:

DATE: 12/6/2012

PRETRIAL SERVICES: AGAVNI MARTIROSYAN

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

TROY RICHARD WHITE,
1383512

Defendant.

CASE NO: 12F12500X
DEPT NO: 4

WARRANT OF ARREST

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An affidavit upon oath has been this day laid before me by JOEL KISNER P#4656, that the crimes of BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (B Felony – NRS 205.060, 193.165), MURDER WITH USE OF A DEADLY WEAPON (A Felony – NRS 200.010, 200.020, 200.030, 193.195) and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (B Felony – NRS 200.010, 193.330), has been committed, and accusing TROY RICHARD WHITE thereof;

YOU ARE THEREFORE COMMANDED forthwith to arrest the above named TROY RICHARD WHITE and bring him before me at my office in Las Vegas Township, County of Clark, State of Nevada, or in case of my absence or inability to act, before the nearest and most accessible Magistrate in this County.

WITNESS my hand this 27th day of July, A.D. 2012.

And I direct that this Warrant may be served at any hour of the day or night.

Melissa A. Sarg

Justice of the Peace in and for Said Township

I find probable cause to issue the above Warrant of arrest and bail should be set in Court and remain at no bail until such time as bail is set in Court.

Melissa A. Sarg

12F12500X
1329156



EXTRADITED 10 LV

Page _____ of _____		LAS VEGAS METROPOLITAN POLICE DEPARTMENT		I.D. #: 138 3512		Event #: _____	
DATE OF ARREST: 8/10/12		TIME OF ARREST: 1925		I.D. ESTAB. BY: _____			
INTAKE NAME (AKA, ALIAS, ETC.)		Last		First		Middle	
WHITE		TROY		RICHARD			
TRUE NAME		Last		First		Middle	
WHITE		TROY		RICHARD			
ADDRESS		NUMBER & STREET		BLDG./APT. #		CITY	
2251		MISSION NEWPORT LN				LV	
STATE		ZIP					
NV		89107					
DATE OF BIRTH		RACE		SEX		HEIGHT	
6-5-1968		W		M		5'10"	
WEIGHT		HAIR		EYES		SOCIAL SECURITY #	
165		BLK		GRN		552-94-0829	
Speak English?		PLACE OF BIRTH					
Yes No		SAN DIEGO, CA					
LOCATION OF CRIME (# - Street - City - State - Zip)		CC		Citizen Arrest		LOCATION OF ARREST	
WARRANTS		Y (N)		Y (N)		CCM	
Sector/Beat		PCN #					
BKG. CODE		CHARGE ORD / NRS #		M GM F		ARR TYPE	
9989		BURGLARY WHITE INUSE OF DW 225-060 NB		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		AW	
5045		MURDER W/ A DW 200.030 NB		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		AW	
5045A		ATT MURDER W/ A DW 200.030 NB		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		AW	
				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		JC5	
				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
		FORM VI DET BRAND CACHED P6347 NEG 8/10/12		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
ARREST TYPE:		PC - PROBABLE CAUSE		BS - BONDSMAN SURRENDER		BW - BENCH WARRANT	
WA - WARRANT		RM - REMAND		GJI - GRAND JURY IND.		OTHER COURT:	
Arresting Officer's Signature		(Print Name)		P #		Agency	
Transporting Officer's Signature		(Print Name)		P #		Agency	
Time Stamp at BOOKING		08-10-12 21:11 DSD REC'D					
<input type="checkbox"/> FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.				FIRST APPEARANCE: DATE: _____ TIME: _____			
<input type="checkbox"/> BENCH WARRANT SERVED ON _____				COURT		<input type="checkbox"/> STANDARD BAIL	
<input type="checkbox"/> WARRANT SERVED ON 85:9 V 11 544 2107				<input type="checkbox"/> JUSTICE		<input type="checkbox"/> O.R. RELEASE	
<input type="checkbox"/> GRAND JURY INDICTMENT SERVED ON _____				<input type="checkbox"/> MUNICIPAL		<input type="checkbox"/> PROBABLE CAUSE	
TYPE OF I.D. FOR VERIFICATION				<input type="checkbox"/> JUVENILE		<input type="checkbox"/> IAD	
CONFIDENTIAL		8-10-15 JASE DSD REC'D		JUDGE: _____			

PID
RT
LT
1:1
8819

CLARK COUNTY DETENTION CENTER
ARREST WARRANT ABSTRACT

08/10/2012
20:04

WARRANT NAME: WHITE, TROY RICHARD
DOB: 06/05/1968 SSN: 552-94-0829
RAC: W SEX: M HGT: 5'10" WGT: 165 HAI: BLK EYE: GRN

WARRANT #: 12F12500X

EVENT #:

CLARK COUNTY ONLY:

CNT	CHRG NRS CODE CODE	CHARGE LITERAL	CASH BAIL	ASSUR BAIL
01	9989 205.060 F	BURGLARY WHILE IN POSSESSION O	NO BAIL	
	PCN#0028713295-003			
02	5045 200.030 F	MURDER WITH A DEADLY WEAPON	NO BAIL	
	PCN#0028713295-001			
03	5045A 200.030 F	ATT. MURDER WITH A DEADLY WEAP	NO BAIL	
	PCN#0028713295-002			

ISSUED BY JUDGE: MELISSA SARAGOSA
COURT: LAS VEGAS JUSTICE COURT

DOW: 07/30/2012
DEPT: JCRT5

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT
ON THE 10th DAY OF AUGUST, 2012, AND SERVED THE
SAME BY ARRESTING THE WITHIN DEFENDANT,
AND BRINGING HIM INTO COURT THIS 10th DAY OF AUGUST,
2012.

DOUGLAS C. GILLESPIE, SHERIFF, CLARK COUNTY, NEVADA

BY: [Signature] 8084, DEPUTY

***** C O N F I D E N T I A L *****

JUL 30 2012

WAIVER OF EXTRADITION

SANDRA K MARKHAM, Clerk
Stephanie Kling

I, THE UNDERSIGNED, TROY RICHARD WHITE, DO HEREBY FREELY AND VOLUNTARILY STATE I AM THE IDENTICAL PERSON AGAINST WHOM CHARGES OR CRIMINAL PROCEEDINGS CHARGING ME WITH COMMISSION OF A FELONY, HAVE BEEN INSTITUTED IN THE CITY OF LAS VEGAS, COUNTY OF CLARK STATE OF NEVADA, WITHOUT REQUISITION PAPERS, WARRANTS OF RENDITION, OR OTHER LEGAL FORMS OR PROCESS, HAVING FOR THEIR OBJECT MY RETURN TO THE AFORE SAID CITY AND STATE.

THIS AGREEMENT AND WAIVER IS MADE BY ME WITHOUT REFERENCE TO MY GUILT OR INNOCENCE AND SHALL NOT BE CONSIDERED IN ANY MANNER AS PREJUDICING MY CASE AND IS NOT IN ANY SENSE AN ADMISSION OF GUILT. I FURTHER EXONERATE AND HOLD BLAMELESS IN THIS MANNER, THE SHERIFF OF YAVAPAI COUNTY, STATE OF ARIZONA, AND ALL PERSONA ACTING UNDER HIM, AND AGREE TO ACCOMPANY TO THE STATE OF NEVADA. ANY PEACE OFFICER WHO MAY BE SENT TO TAKE ME TO SAID STATE FOR TRIAL. THIS STATEMENT AND WAIVER, EXECUTED AT CITY OF Prescott, COUNTY OF YAVAPAI, STATE OF ARIZONA, THIS 30 DAY OF July, 2012

I HAVE BEEN ADVISED BY JUDGE Campbell THAT I HAVE A RIGHT TO THE ISSUANCE OR SERVICE OF A WARRANT OF EXTRADITION, THE RIGHT TO CONTEST EXTRADITION BY HABEAS CORPUS AND THE RIGHT TO BE ADMITTED BY THE COURT TO BAIL OR BOND, SUCH BAIL OR BOND TO BE CONDITIONED FOR MY APPEARANCE BEFORE THE COURT UPON THE EXTRADITION PROCEEDING. I WAIVE THOSE RIGHTS.

SIGNED *[Signature]*

EXECUTED BEFORE ME IN OPEN COURT this 30th day of July, 2012

[Signature]
Judge of the Superior Court
Yavapai County, Arizona

DEPT = JCRT5

S E R V E D

```
*****
*****
*
*      ***** NCJIS WANTED PERSON SYSTEM *****
*
*      PIN-0209  NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED
*
* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER
* WARRANT RECORD NUMBER/2677858
* NIN/W805496113
* SEQ/003          REASON/SERVED
* WARRANT NAME     /WHITE, TROYRICHARD
* BASE RECORD NAME/WHITE, TROYRICHARD
* COURT CASE #/12F12500X
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT
*****
*****
```

DATE:08/10/12

TIME:21:25:43

DEPT = JCRT5

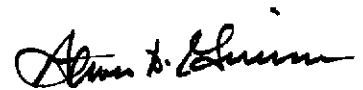
S E R V E D

```
*****
*****
*
*      ***** NCJIS WANTED PERSON SYSTEM *****
*
*      PIN-0209  NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED
*
* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER
* WARRANT RECORD NUMBER/2677856
* NIN/W805496113                                DATE:08/10/12
* SEQ/001          REASON/SERVED                TIME:21:25:43
* WARRANT NAME     /WHITE, TROYRICHARD
* BASE RECORD NAME/WHITE, TROYRICHARD
* COURT CASE #/12F12500X
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT
*****
*****
```


DEPT = JCRT5

S E R V E D

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*****
*****
*
*          ***** NCJIS WANTED PERSON SYSTEM *****
*
*          PIN-0209  NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED
*
* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER
* WARRANT RECORD NUMBER/2677857
* NIN/W805496113                      DATE:08/10/12
* SEQ/002          REASON/SERVED      TIME:21:25:43
* WARRANT NAME     /WHITE, TROYRICHARD
* BASE RECORD NAME/WHITE, TROYRICHARD
* COURT CASE #/12F12500X
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT
*****
*****
```



CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #10681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 01/02/2013
1:30 PM
PD

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TROY RICHARD WHITE,
#1383512

Defendant.

CASE NO: C-12-286357-1

DEPT NO: IX

I N F O R M A T I O N

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, Clark County 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 TROY RICHARD WHITE, the Defendant(s) above named, having committed the crimes of **BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165), CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350(1)(d)(3)), and CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1))**, on or about the 27th day of

1 July, 2012, within the County of Clark, State of Nevada, contrary to the form, force and
2 effect of statutes in such cases made and provided, and against the peace and dignity of the
3 State of Nevada,

4 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM

5 did, then and there wilfully, unlawfully, and feloniously enter, while in possession of
6 a firearm, with intent to commit a felony, to-wit: murder and/or battery and/or assault, that
7 certain building occupied by ECHO LUCAS WHITE, located at 325 Altamira Road, Las
8 Vegas, Clark County, Nevada, the Defendant did possess and/or gain possession of a deadly
9 weapon consisting of a firearm during the commission of the crime and/or before leaving the
10 structure.

11 COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

12 did, then and there willfully, feloniously, without authority of law, and with malice
13 aforethought, kill ECHO LUCAS WHITE, a human being, by shooting at and into the body
14 of the said ECHO LUCAS WHITE, with a deadly weapon, to-wit: a firearm, said killing
15 having been willful, premeditated and deliberate and/or committed during the perpetration or
16 the attempted perpetration of a burglary, to-wit: by the defendant entering 325 Altamira
17 Road, Las Vegas, Clark County, Nevada with the intent to assault and/or batter and/or kill
18 the said ECHO LUCAS WHITE and/or JOSEPH AVERMAN.

19 COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

20 did, then and there, without authority of law, and malice aforethought, willfully and
21 feloniously attempt to kill JOSEPH AVERMAN, a human being, by shooting at and into the
22 body of the said JOSEPH AVERMAN, with a deadly weapon, to-wit: a firearm.

23 COUNT 4 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

24 did, then and there, wilfully, intentionally, unlawfully and feloniously carry concealed
25 upon his person, a firearm or other deadly weapon, to-wit: a Black Taurus PT 92C 9mm
26 semi-automatic handgun bearing Ser. No. TOA33791.

27 COUNT 5- CHILD ABUSE, NEGLECT, OR ENDANGERMENT

28 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-

1 wit: JODEY WHITE, being approximately 9 (nine) year(s) of age, to suffer unjustifiable
2 physical pain or mental suffering as a result of abuse or neglect, and/or cause the said
3 JODEY WHITE to be placed in a situation where he might have suffered unjustifiable
4 physical pain or mental suffering as a result of abuse or neglect, by discharging a firearm
5 inside the child's home within close proximity to the child and/or shooting the child's mother,
6 Echo White, failing to seek assistance for Echo White, and allowing her to die while the said
7 JODEY WHITE was coming in and out of the room and/or was in the near vicinity.

8 COUNT 6- CHILD ABUSE, NEGLECT, OR ENDANGERMENT

9 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
10 wit: JESSE WHITE, being approximately 5 (five) year(s) of age, to suffer unjustifiable
11 physical pain or mental suffering as a result of abuse or neglect, and/or cause the said JESSE
12 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
13 or mental suffering as a result of abuse or neglect, by discharging a firearm inside the child's
14 home within close proximity to the child and/or shooting the child's mother, Echo White,
15 failing to seek assistance for Echo White, and allowing her to die while the said JESSE
16 WHITE was coming in and out of the room and/or was in the near vicinity.

17 COUNT 7- CHILD ABUSE, NEGLECT, OR ENDANGERMENT

18 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
19 wit: JAYCE WHITE, being approximately 8 (eight) year(s) of age, to suffer unjustifiable
20 physical pain or mental suffering as a result of abuse or neglect, and/or cause the said JESSE
21 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
22 or mental suffering as a result of abuse or neglect, by discharging a firearm inside the child's
23 home within close proximity to the child and/or shooting the child's mother, Echo White,
24 failing to seek assistance for Echo White, and allowing her to die while the said JODEY
25 WHITE was coming in and out of the room and/or was in the near vicinity.

26 COUNT 8- CHILD ABUSE, NEGLECT, OR ENDANGERMENT

27 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
28 wit: JAZZY WHITE, being approximately 6 months year(s) of age, to suffer unjustifiable

1 physical pain or mental suffering as a result of abuse or neglect, and/or cause the said
2 JAZZY WHITE to be placed in a situation where he might have suffered unjustifiable
3 physical pain or mental suffering as a result of abuse or neglect, by discharging a firearm
4 inside the child's home within close proximity to the child and/or shooting the child's mother,
5 Echo White, failing to seek assistance for Echo White, and allowing her to die while the said
6 JODEY WHITE was coming in and out of the room and/or was in the near vicinity.

7 COUNT 9- CHILD ABUSE, NEGLECT, OR ENDANGERMENT

8 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
9 wit: JETT WHITE, being approximately 2 (two) year(s) of age, to suffer unjustifiable
10 physical pain or mental suffering as a result of abuse or neglect, and/or cause the said JETT
11 WHITE to be placed in a situation where he might have suffered unjustifiable physical pain
12 or mental suffering as a result of abuse or neglect, by discharging a firearm inside the child's
13 home within close proximity to the child and/or shooting the child's mother, Echo White,
14 failing to seek assistance for Echo White, and allowing her to die while the said JODEY
15 WHITE was coming in and out of the room and/or was in the near vicinity.

16
17
18 STEVEN B. WOLFSON
19 Clark County District Attorney
20 Nevada Bar #001565

21 BY /s/ LIZ MERCER
22 LIZ MERCER
23 Chief Deputy District Attorney
24 Nevada Bar #10681
25
26

27 DA#12F12500X/da
28 LVMPD EV#1207271826
(TK4)

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>
AVERMAN, JOSEPH	1678 SHERWIN LN LV NV
CUSTODIAN OF RECORDS	CCDC
CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
CUSTODIAN OF RECORDS	LVMPD RECORDS
CUSTODIAN OF RECORDS	GUN REGISTRATION
GAINES, AMBER	3601 E. WYOMING AVE #504 LV NV
KNEPP, ELAINE/OR DESIGNEE	D.A. INVESTIGATOR
LUCAS, DONALD	5129 MEADOW ROCK AVE LV NV
SANBORN, TATE	LVMPD #5450

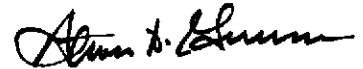
1 C-12-286357-1
 2 IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP
 3 IN AND FOR THE COUNTY OF CLARK
 4
 5
 6 THE STATE OF NEVADA,) CASE NO. 12F12500X
 7 Plaintiff,) DEPT. NO. 5
 8 TROY WHITE,)
 9 Defendant,)
 10 _____)
 11
 12
 13
 14
 15 BEFORE THE HONORABLE WILLIAM D. JANSEN
 16 JUSTICE OF THE PEACE
 17 REPORTER'S TRANSCRIPT OF
 18 PRELIMINARY HEARING
 19 TAKEN ON WEDNESDAY, DECEMBER 12, 2012
 20 AT 8:30 O'CLOCK A.M.
 21
 22 APPEARANCES:
 23 For the State: J. MERCER, ESQ.
 24 B. TURNER, ESQ.
 25 Deputy District Attorneys
 For the Defendant: S. COFFEE, ESQ.
 D. NEGRETE-LOPEZ, ESQ.
 Special Deputy Public Defenders

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1 LAS VEGAS JUSTICE COURT, WEDNESDAY, DECEMBER 12, 2012
 2 *** PROCEEDINGS ***
 3

4 THE COURT: All right. Then, Mr. Coffee,
 5 are you ready to proceed?

6 MR. COFFEE: Yes.

7 THE COURT: All right. This is now the
 8 time and place for the preliminary hearing in
 9 the State of Nevada versus Troy Richard White.
 10 Let the record reflect that the -- the
 11 exclusionary rule will be invoked.

12 MS. MERCER: Liz Mercer, Your Honor.

13 THE COURT: It's been a while since I've
 14 seen you.

15 MS. MERCER: Yeah. I've been in DV court.

16 THE COURT: Yeah.

17 I know you, Brad.

18 MR. TURNER: Yes, sir.

19 THE COURT: Okay. Let the record reflect
 20 the defendant is present, along with his
 21 attorney, Mr. Coffee. And I don't know the
 22 individual --

23 MR. LOPEZ-NEGRETE: David Lopez-Negrete
 24 for the record.

25 THE COURT: David Lopez?

1 MR. LOPEZ-NEGRETTE: Yes.
 2 THE COURT: Okay. And then for the State
 3 there's Brad Turner and Liz Mercer.
 4 MS. MERCER: Yes.
 5 THE COURT: So, let me ask you this, how
 6 many witnesses do you anticipate?
 7 MR. TURNER: Judge, it looks like at this
 8 point we're only going to need one to put this
 9 on.
 10 THE COURT: All right. Now, are there any
 11 other potential witnesses in the courtroom that
 12 would be subject to be called. Because if so,
 13 I am going to have to ask them to be excluded
 14 from the courtroom just in case if something
 15 comes down the line.
 16 MS. MERCER: Your Honor, we don't believe
 17 so at this time.
 18 THE COURT: Now, if they are in the
 19 courtroom, I can't allow them to testify.
 20 You understand that?
 21 MS. MERCER: Yes.
 22 THE COURT: You all understand that?
 23 Now, Mr. Coffee, do you have any
 24 witnesses, other than possibly the defendant
 25 himself to testify?

1 THE COURT: Well, my policy is if they're
 2 subpoenaed witnesses to be here, those are the
 3 only ones to be excluded.
 4 MS. MERCER: They have not been
 5 subpoenaed.
 6 THE COURT: And they've not been
 7 subpoenaed, and I can only do it for this
 8 hearing. So, therefore, your motion to exclude
 9 them for this hearing, I'm not going to grant,
 10 so we'll proceed.
 11 MR. COFFEE: That's fine, Judge. Pursuant
 12 to any possible motions, I request we get the
 13 names of the people that are in the courtroom
 14 and sitting through the proceedings, so that we
 15 have it in the record if we need it later.
 16 MS. MERCER: And, Your Honor, this entire
 17 side of the courtroom is full of people related
 18 to the victim, so...
 19 THE COURT: Well, if you want to stand and
 20 give your names, each one want to stand and
 21 give your name for the record, we will go for
 22 it.
 23 THE COURT REPORTER: Can we please take a
 24 paper and pass it around so they can write
 25 their names and spell them?

1 MR. COFFEE: I don't, Judge.
 2 Can I speak to the District Attorney,
 3 please?
 4 THE COURT: Sure.
 5 MR. COFFEE: Judge, after a conversation
 6 with the District Attorney, I don't know if
 7 this is going to be a capital case one way or
 8 the other. It's too early in the process to
 9 know that. They have more review to do.
 10 The concern that I have is there are a
 11 number of people in the courtroom who may well
 12 be victim impact witnesses at a penalty phase,
 13 if we get to that point, if this is a capital
 14 case.
 15 I talked to the District Attorney, and
 16 they agree with that proposition. I think
 17 they're probably going to say that it would be
 18 a penalty phase issue, not a trial issue.
 19 While I understand the difference, the
 20 Supreme Court said penalty phase, trial, all
 21 the same thing for evidentiary purposes, so I
 22 have some concerns about leaving those people
 23 in the courtroom during this testimony.
 24 And I would object and submit it to your
 25 discretion.

1 THE COURT: Maybe that would be better,
 2 yeah. Take a legal pad and then we'll read it
 3 off for the record. That might be a better
 4 idea.
 5 MR. COFFEE: We have to notice all of them
 6 anyway.
 7 MR. TURNER: I understand.
 8 MR. COFFEE: But if you didn't notice
 9 them, there would be a breach you didn't notice
 10 them.
 11 (Whereupon, an unrelated matter was
 12 heard.)
 13 THE COURT: Now, in the Troy Richard White
 14 case, the charges are Burglary While in
 15 Possession of Firearm, Murder With Use of a
 16 Deadly Weapon, and Attempt Murder With Use of a
 17 Deadly Weapon.
 18 Oh, wait a minute, I've got the amended
 19 criminal complaint. Burglary While in
 20 Possession of a Firearm -- I just got that.
 21 Murder With Use of a Deadly Weapon, Attempt
 22 Murder With Use of a Deadly Weapon, Carrying a
 23 Concealed Firearm or Other Deadly Weapon, and
 24 Child Abuse and Neglect or Endangerment.
 25 MR. COFFEE: And they notified us

1 beforehand that they were going to be filing an
2 amended. We have no objection.
3 THE COURT: All right. So, then, you can
4 go ahead and call your first witness, State.
5 MS. MERCER: Your Honor, the State calls
6 Joseph Averman.
7 THE COURT: Joseph who?
8 MS. MERCER: Averman.
9 THE COURT: I thought you said Immerman,
10 and I was going to say.
11 THE MARSHAL: Step up here, sir. Remain
12 standing, face the clerk over there, and raise
13 your right hand.
14 THE CLERK: Do you solemnly swear to tell
15 the truth, the whole truth, and nothing but the
16 truth, so help you God?
17 THE WITNESS: I do.
18 THE CLERK: Please be seated. State your
19 full name and spell your name, please.
20 THE WITNESS: Joseph Douglas Averman.
21 J-O-S-E-P-H, Douglas, D-O-U-G-L-A-S, Averman,
22 A-V, as in Victor, E-R-M-A-N.
23 MS. MERCER: May I proceed, Your Honor?
24 THE COURT: Now, Mr. Averman, if the
25 question is asked of you by either one of these

1 attorneys calls for a "yes" or "no" answer,
2 please state "yes" or "no." Do not just shake
3 your head or say "uh-huh," because down below
4 you is a court reporter, and she cannot record
5 those types of responses.
6 Do you understand that?
7 THE WITNESS: Yes, Your Honor.
8 THE COURT: So why don't you scoot up
9 close to the mic so everyone can hear you.
10 Okay?
11 THE WITNESS: Yes, sir.
12 THE COURT: All right. You may proceed.
13 MS. MERCER: Thank you, Your Honor.

JOSEPH AVERMAN,

Having been first duly sworn to tell
the truth, the whole truth and nothing but
the truth testified as follows:

DIRECT EXAMINATION

21 BY MS. MERCER:
22 Q Sir, do you know an individual by the name
23 of Troy White?
24 A Yes, I do.
25 Q And do you see him in the courtroom today?

1 A Yes, I do.
2 Q Could you please point to him for me and
3 identify an article of clothing that he is wearing
4 today?
5 A He is sitting right there with a blue
6 sleeveless shirt.
7 MS. MERCER: Your Honor, may the record
8 reflect that he's identified the defendant?
9 THE COURT: So reflect.
10 BY MS. MERCER:
11 Q And, sir, did you also know an individual
12 by the name of Echo Lucas White?
13 A Yes, I did.
14 Q And when did you first meet Echo Lucas
15 White?
16 A About eight years ago.
17 Q About eight years ago.
18 Where did the two of you meet?
19 A We originally met at church.
20 Q And did the two of you have a close
21 friendship in that eight years or just see each
22 other infrequently?
23 A Close friendship.
24 Q To your knowledge, were the defendant and
25 Echo Lucas White married?

1 A Yes.
2 Q Earlier this year, did you become aware
3 that the two had separated?
4 A Yes.
5 Q Do you recall when that was?
6 A About in June.
7 Q June of 2012?
8 A Yes.
9 Q Do you recall whether it was early in June
10 or late in June?
11 A Early in June.
12 Q And after the two had separated, did you
13 and Echo develop a relationship?
14 A Yes.
15 Q And that relationship was a romantic
16 relationship?
17 A Yes.
18 Q At some point, did you move in with Echo?
19 A Yes.
20 Q Where did you move into?
21 A To her house.
22 Q Do you recall where that house was?
23 A On Altamira.
24 Q Okay. And that's here in Clark County?
25 A Yes.

1 Q What are the closest cross streets?
 2 A Buffalo and Alta.
 3 Q Okay. Who else resided in the house with
 4 you and Echo?
 5 A Her kids.
 6 Q And what are the children's names for the
 7 record?
 8 A Jodey, Jayce, Jesse, Jett, and Jazzy.
 9 Q And could you do me a favor and spell
 10 those names for the court reporter?
 11 A Jodey is J-O-D-E-Y. Jayce, J-A-Y-C-E.
 12 Jesse, J-E-S-S-E. Jett, J-E-T-T. Jazzy, J-A-Z-Z-Y.
 13 Q Okay. And do you know the children's
 14 ages?
 15 A I believe Jodey was ten, Jayce was nine,
 16 Jesse is six, Jett is two, and Jazzy is almost a
 17 year.
 18 Q What did you say about Jazzy, I'm sorry?
 19 A Almost a year.
 20 Q Okay. When is Jazzy's birthday?
 21 A January 16th.
 22 Q So back in June she would have been -- or
 23 July she would have been about six months?
 24 A Six months.
 25 Q During the time that you resided with Echo

1 and her children, were you familiar with or did you
 2 know the defendant had visitation with the children?
 3 A Yes.
 4 Q And do you know how that visitation took
 5 place?
 6 A On the weekends.
 7 Q And what was the arrangement?
 8 A He would come and pick them up on Fridays
 9 after he got off work, and then Sunday nights he
 10 would have the kids back.
 11 Q Did he stay in the home at some point on
 12 the weekends?
 13 A On the weekends.
 14 Q And was that because of the number of
 15 children it was just easier to do it that way?
 16 A Yes.
 17 Q You indicated that his visitation would
 18 begin when he got off work on Fridays?
 19 A Yes.
 20 Q About what time would he typically show up
 21 for visitation?
 22 A It would be somewhere between two and
 23 three.
 24 Q In the afternoon?
 25 A Yes.

1 Q Okay. During the time period of your
 2 relationship with Echo, did you learn that the
 3 defendant was upset about the separation?
 4 A Yes.
 5 Q And how did you become aware of that?
 6 A Between Echo and harassing phone calls and
 7 text messages.
 8 Q When you say harassing phone calls and
 9 text messages, was the defendant calling her and
 10 texting her continuously?
 11 A Yes.
 12 Q And is it something that occurred every
 13 day throughout the day, or every other day? You
 14 know, what kind of frequency are we talking about?
 15 A Every day.
 16 Q And you were with her when she would
 17 receive those text messages and phone calls?
 18 A Yes.
 19 Q Did he ever make -- did he know that the
 20 two of you were dating?
 21 A Yes.
 22 Q And when I say "the two of you," I mean
 23 you and Echo?
 24 A Yes.
 25 Q Did he ever make any threats to you

1 because of your relationship with Echo?
 2 A Yes, he did.
 3 Q And when did he make those threats?
 4 A A few different times over texts and voice
 5 mails.
 6 Q And when did those threats begin?
 7 A About in June.
 8 Q June of 2012?
 9 A Yes.
 10 Q I apologize if I already asked you this,
 11 but what point in June did you move into the
 12 residence?
 13 A Later on in June towards the end of the
 14 month.
 15 Q And was the defendant aware that you were
 16 living there?
 17 A Yes.
 18 Q What kind of specific threats was he
 19 making to you?
 20 A He said that "If you don't stay away, I'm
 21 going to fucking kill you."
 22 Q And when he made those threats to you, was
 23 it over the phone or in person?
 24 A Voice mails.
 25 Q Voice mails.

1 Okay. I want to fast-forward to
 2 July 27th of 2012. On that date, were you at the
 3 residence with Echo and the children?
 4 A Yes, I was.
 5 Q And what day of the week was that for the
 6 record?
 7 A A Friday.
 8 Q Did something unusual happen about
 9 2:00 a.m. that morning?
 10 A About 2:00 in the morning, there was a big
 11 bang, which I thought was on the front door.
 12 THE COURT: Excuse me, what date did you
 13 say? July what?
 14 MS. MERCER: July 27th.
 15 THE COURT: July 27th, okay. I thought
 16 you said -- that is a Friday. You're correct,
 17 that is a Friday.
 18 Go ahead.
 19 MS. MERCER: Thank you, Your Honor.
 20 BY MS. MERCER:
 21 Q I'm sorry, you heard a big bang and you
 22 thought what?
 23 A I thought there was a bang on the front
 24 door, and I guess it was on the bedroom window from
 25 what Echo had told me.

1 Q What was the loud bang?
 2 A He was pounding on the door or the window.
 3 Q I'm sorry, it was what?
 4 A He was pounding on the door or the window.
 5 Q And by "he," you mean the defendant?
 6 A Troy.
 7 Q The defendant?
 8 A Yes.
 9 Q Did he come into the residence at that
 10 point?
 11 A No.
 12 Q Where were you when that occurred?
 13 A In the living room.
 14 Q The living room of the residence?
 15 A Yes.
 16 Q And that's the house on Altamira?
 17 A Yes.
 18 Q After the banging, what happened? Did the
 19 two of you just go to sleep?
 20 A Echo had called Troy after the banging
 21 because he had texted her and called her numerous
 22 times, and she didn't respond. She was doing her
 23 hair. All you guys know how Echo loved to do her
 24 hair.
 25 Q Okay.

1 THE COURT: All women like to do their
 2 hair, not just Echo, all of them. I have one
 3 that does it all the time.
 4 BY MS. MERCER:
 5 Q When you said that she was doing her hair,
 6 what did you mean?
 7 A She was putting her hair in braids.
 8 Q And did she have something on her hands?
 9 A She had some gel or whatever to help her
 10 do her hair. I'm not really for sure exactly what
 11 it was.
 12 Q Okay. But she couldn't answer the phone
 13 with that substance on her hands?
 14 A Yes.
 15 Q Okay. And she called him because he was
 16 constantly calling and texting throughout that
 17 period?
 18 A Well, at that time, she wasn't responding
 19 until after the banging on the door.
 20 Q Okay. And then she called him?
 21 A And then she called him.
 22 Q And then what happened?
 23 A She had asked him basically "What are you
 24 doing? You can't be coming over here banging on the
 25 door or window. We have our kids over here.

1 They're trying to sleep." And the other part of the
 2 conversation I don't know.
 3 Q Did he eventually leave the area?
 4 A He eventually left.
 5 Q And then did the two of you go to sleep
 6 after that, shortly after that?
 7 A Yes.
 8 Q Do you recall about what time you woke up
 9 later that morning?
 10 A I want to say around seven or eight.
 11 Q And were the children all still with you
 12 at this point?
 13 A Yes.
 14 Q What were you all doing that day, that
 15 morning when you woke up?
 16 A Had some breakfast, cleaning, and then we
 17 were watching "I Shouldn't Be Alive."
 18 Q Is that a TV show?
 19 A Yes.
 20 Q And what was Echo doing?
 21 A She was doing some laundry, folding
 22 laundry, and then she fell asleep on the couch from
 23 being awake all night.
 24 Q Okay. So she took a nap on the sofa?
 25 A She took a nap.

1 Q And that was in the living room?
 2 A Yes.
 3 Q Where you and the children were watching
 4 TV?
 5 A Yes, which was around 10:30 in the
 6 morning.
 7 Q 10:30 in the morning?
 8 A Yes.
 9 Q Was she still receiving communications
 10 from the defendant during this period?
 11 A At that time, I'm not for sure.
 12 Q At some point, did she wake up from her
 13 nap on the sofa?
 14 A Yes.
 15 Q And what time did she wake up?
 16 A About ten to 12.
 17 Q Ten to 12?
 18 A Quarter to 12.
 19 Q And when she woke up, do you know whether
 20 she received any communication?
 21 A She told me that there was numerous texts
 22 and phone calls and voice mails.
 23 Q That she missed --
 24 A Yes.
 25 Q -- while she was napping?

1 first she told him that he wasn't supposed to be
 2 there yet. You know, "Come back whenever or later
 3 when you are supposed to get the kids, and we'll
 4 talk then."
 5 And he looked at me and he said,
 6 "Joe, please, just give me five minutes. She hasn't
 7 returned my calls or my texts all day long. I just
 8 need to talk to her."
 9 Q Okay. Let me stop you for a minute.
 10 When he came into the house, did you
 11 see him carrying anything?
 12 A No.
 13 Q Did you see a gun in his hand?
 14 A No.
 15 Q Okay. So after he asked you to let him
 16 speak with Echo for five minutes, what happens next?
 17 A Echo looked at me and she said, "All
 18 right, just give me five minutes."
 19 Q And then did they have a discussion?
 20 A They went into the back bedroom, the spare
 21 bedroom.
 22 Q Where is the spare bedroom in relation to
 23 the master bedroom in which the crib was in?
 24 A Directly across the hall.
 25 Q Okay. And that spare bedroom, what kinds

1 A Yes.
 2 Q What happened after she woke up?
 3 A She woke up. She apologized for falling
 4 asleep and having me sit there with the kids, and I
 5 told her it was fine. And I told her why didn't she
 6 go lay down in bed. So she went to go lay down in
 7 bed, and I had -- I was holding Jazzy, and I put her
 8 to sleep, so as Echo was going to lay down in the
 9 bed, they have the crib in the bedroom.
 10 Q In the master bedroom where Echo sleeps?
 11 A Yes.
 12 And I went to put Jazzy in bed to lay
 13 her down in her crib, and shortly after, Troy comes
 14 to the house.
 15 Q And how did you know that he was there?
 16 A 'Cause the two older boys, Jodey and
 17 Jayce, were saying, "Mommy, Mommy, Daddy's here."
 18 Q Do you know how he entered the residence?
 19 A He still had a key for that so he came in
 20 with the key.
 21 Q Okay. Once the defendant was inside, what
 22 happened?
 23 A He had asked to speak to her.
 24 Q Asked who?
 25 A Troy had asked Echo to talk to her, and

1 of things were kept in it?
 2 A Just a bunch of crafting stuff.
 3 Q Okay. So the defendant and Echo go into
 4 the spare bedroom?
 5 A Yes.
 6 Q Where are you at this point?
 7 A I'm in the master bedroom.
 8 Q With Jazzy?
 9 A Yes.
 10 Q At the time that he walked into the
 11 bedroom, did you see anything in his hand?
 12 A No.
 13 Q When you went into the master bedroom, did
 14 you have the door open or shut?
 15 A I shut -- it wasn't completely shut, but I
 16 closed it some way.
 17 Q And why did you close it?
 18 A Just, I'm not sure. I just closed it.
 19 Q Okay. When Echo and the defendant went
 20 into the spare bedroom, did they have the door open
 21 or shut?
 22 A Shut.
 23 Q At some point when you were in the master
 24 bedroom with Jazzy, did you become alarmed?
 25 A Yes.

1 Q And why?
 2 A Because I heard Echo say, "Troy, no,
 3 please don't, and stop."
 4 Q When you heard that, what did you do?
 5 A I opened the door to go make sure she was
 6 okay. From prior abuse that he's done to her, I was
 7 making sure that he wasn't hurting her.
 8 Q When you opened the door, was the door to
 9 the craft room open at this point?
 10 A It was -- she was trying to come out of
 11 the bedroom.
 12 Q And what did you see?
 13 A He grabbed her arm and he pulled her back
 14 into the room.
 15 Q When you say that "he pulled her back in
 16 the room," which room are we talking about?
 17 A The spare room.
 18 Q So he pulled her back into the craft room
 19 when she was trying to walk away?
 20 A Yes.
 21 Q And when you saw him grab her, what
 22 happened after that?
 23 A He pushed her to the wall and then he shot
 24 her.
 25 Q Could you tell where she was shot?

1 A It looked like she was shot in the
 2 stomach, but I'm not for sure.
 3 Q What led you to believe that she was shot
 4 in the stomach?
 5 A Just how she -- how she buckled over.
 6 Q When he shot her, did you see the gun in
 7 his hand?
 8 A Can you repeat that?
 9 Q When he shot her, did you actually see the
 10 gun in his hand?
 11 A Yes.
 12 Q And where was he holding the firearm?
 13 A About waist high.
 14 Q At the point that he shot her, where were
 15 all of the children in the house?
 16 A They were -- I believe the two oldest boys
 17 were in the hallway.
 18 Q And the two oldest boys are?
 19 A Jodey and Jayce.
 20 Jesse and Jett, I'm not for sure
 21 where they were. And Jazzy was in her crib.
 22 Q And when you say that he pushed her
 23 against the wall, which wall to the bedroom was it
 24 that he pushed her?
 25 A I'm -- it's --

1 Q In relation to where the door to enter the
 2 room is, which wall was it?
 3 A It was the wall that the door is right up
 4 against.
 5 Q On the same wall as the door?
 6 A Yes.
 7 Q And is that the wall that is against the
 8 hallway that divides that room from the hallway?
 9 A Yes.
 10 Q So that wall is directly across from where
 11 the baby was situated?
 12 A Yes.
 13 Q Then after you saw Echo buckle over, what
 14 happened?
 15 A He turned and he shot me.
 16 THE COURT: I didn't hear you. What did
 17 you say?
 18 THE WITNESS: Troy shot me.
 19 BY MS. MERCER:
 20 Q Where were you shot?
 21 A I was shot once in the right arm and twice
 22 in the abdomen.
 23 Q After you were shot, what did you do?
 24 A I fell over.
 25 Q And where were you at the time that he

1 shot you?
 2 A In the master bedroom.
 3 Q Okay. So had he come into the master
 4 bedroom or was he still standing in the hallway?
 5 A He was basically in the doorway of the
 6 spare bedroom. When I was shot, I was in the
 7 doorway of the master bedroom.
 8 Q And did he look at you when he shot you?
 9 A Yes.
 10 Q Did he say anything to you when he shot
 11 you?
 12 A When he first shot me, no.
 13 Q Where was the defendant standing when he
 14 shot Echo?
 15 A Directly in front of her, about arm's
 16 length away.
 17 Q At the time that you were shot, where were
 18 the children?
 19 A I'm not for sure.
 20 Q After you fell to the floor, what
 21 happened?
 22 A Troy comes to the bedroom.
 23 Q When you say that he came to the bedroom,
 24 what was he doing in the bedroom? Was he talking to
 25 you? Was he just wandering around? What was he

1 doing?
 2 A He came in the bedroom and he said, "I
 3 told you this would happen." And then I believe it
 4 was Jodey and Jayce that come into the bedroom, but
 5 they were right there in the hallway in between the
 6 doors, and they were checking on Echo and me.
 7 Q And how were they behaving at the time?
 8 A Hysterical.
 9 Q When you say hysterical --
 10 A Crying.
 11 Q -- were they saying anything?
 12 A They said, "We need to call for help. You
 13 killed Mommy."
 14 Q They told the defendant that?
 15 A Troy.
 16 Q What happened at that point?
 17 A He said that -- Troy had said that he was
 18 trying to call but his phone wasn't working.
 19 Q And then what happened?
 20 A Then I guess he tried to corral the kids
 21 all into one room, and Jayce managed to get by.
 22 Jayce had come back into the room where I was at, to
 23 the master bedroom.
 24 Q Why did he go back to the room where you
 25 were at?

1 push the kids back into the other room.
 2 Q And then what happened?
 3 A And Troy come back into the room, and he
 4 told me, you know, "You're a coward. I told you
 5 this was going to happen. I told you to stay away."
 6 And...
 7 Q Did he make any comments to you about him
 8 going to prison?
 9 A He said if he -- he mentioned if I'm going
 10 to go to prison, that he was going to kill me.
 11 Q Did you ever ask the defendant to call for
 12 help?
 13 A No. Oh, yes, I did. I'm sorry. Yes, I
 14 did.
 15 Q What specifically did you tell him?
 16 A I told him, "I forget me. Let me die. I
 17 don't care. Just call for help and get her help."
 18 Echo.
 19 Q And what did he say to you?
 20 A I can't recall.
 21 Q Did he call for help, to your knowledge?
 22 A Not that I'm aware of.
 23 Q At some point, did you become aware the
 24 police were called?
 25 A I didn't know that they were called.

1 A I guess to check on me.
 2 Q Okay. Did he have anything with him when
 3 he went back there?
 4 A No.
 5 Q And what happened at that point?
 6 A I told Jayce to go get my phone that was
 7 on the nightstand so I could call.
 8 Q Did he get your phone?
 9 A Yes, he did.
 10 Q And what happened once he had the phone?
 11 A He had told Troy he got my phone so I
 12 could call for help.
 13 Q So the child told Troy that he was getting
 14 you the phone to call for help?
 15 A Yes.
 16 Q And how did the defendant respond to that?
 17 A He came back into the room and stood over
 18 me with the gun to my head, and he took my phone and
 19 said, "You ain't calling nobody."
 20 Q What happened at that point?
 21 A I'm not sure which children it was, a few
 22 of them, they had come back into the room to the
 23 master bedroom.
 24 Q Where you were?
 25 A Where I was and distracted Troy to try to

1 Q Did they come into the house?
 2 A Yes, they did.
 3 Q While you were still lying on the master
 4 bedroom floor?
 5 A Yes.
 6 Q And were you ultimately removed from the
 7 house in an ambulance?
 8 A Yes.
 9 Q Which hospital were you taken to?
 10 A I believe it was UMC.
 11 Q And how long were you in the hospital?
 12 A Three days.
 13 Q Three days?
 14 A Three days.
 15 Q Do you know what kind of car Echo had?
 16 A She had a Durango. It was silver or gray.
 17 Q A Dodge Durango?
 18 A Dodge Durango.
 19 Q And was that car there in the morning when
 20 you got up on July 27th of 2012?
 21 A Yes, it was.
 22 Q When you were taken to the hospital, was
 23 the car still there?
 24 A No.
 25 Q When the police arrived to the house, was

1 the defendant still there?
 2 A No.
 3 Q Did you have any firearms on you on that
 4 day?
 5 A No.
 6 Q To your knowledge, did Echo have any
 7 firearms?
 8 A No.
 9 Q During the time period that the defendant
 10 was at the house, did either one of you ever have a
 11 weapon?
 12 A Repeat that.
 13 Q During the time the defendant was at the
 14 house on July 27th of 2012, did either you or Echo
 15 ever have a weapon?
 16 A No.
 17 Q Did you see the firearm that the defendant
 18 shot Echo and yourself with?
 19 A Yes.
 20 Q And what did it look like?
 21 A A pistol.
 22 Q Okay. Was it a revolver or --
 23 A Semiautomatic.
 24 Q Okay. Do you recall what color it was?
 25 A Black.

1 when he was coming back and forth, "Who's a coward
 2 now?"
 3 A Yes.
 4 Q He had made some threats in the past to
 5 you?
 6 A Yes.
 7 Q You didn't necessarily take those threats
 8 very seriously, though, did you?
 9 A No, I didn't.
 10 Q Why not?
 11 A I guess just, I don't know, didn't seem
 12 like that kind of a person.
 13 Q You had known him for a number of years,
 14 right?
 15 A Yes.
 16 Q You said you had met Echo about eight
 17 years before. You met Troy around the same time?
 18 A Yes.
 19 Q You were a family friend; is that a fair
 20 characterization?
 21 A Yes.
 22 Q Friends with Mr. White, as well as with
 23 Echo?
 24 A Yes.
 25 Q You'd seen him around his children?

1 MS. MERCER: Court's indulgence?
 2 I'll pass the witness, Your Honor.
 3 THE COURT: All right. Mr. Coffee?
 4

CROSS-EXAMINATION

6 BY MR. COFFEE:
 7 Q Good morning, Mr. Averman.
 8 A Good morning.
 9 Q I'm going to ask you some questions, and
 10 if anything I ask you is confusing, please stop me
 11 and I'll try to do more to make sure it is clear.
 12 All right?
 13 A Yes, sir.
 14 Q Okay. Very good. It's Scott or
 15 Mr. Coffee. You don't need to call me sir.
 16 You talked a moment ago about
 17 Mr. White coming back and forth in the room saying
 18 something about a coward or mentioning the word
 19 coward. Do you remember that?
 20 A Yes.
 21 Q When you talked to the police, do you
 22 remember saying what he said is "Who's a coward
 23 now?"
 24 A Yes.
 25 Q Does that sound like what he actually said

1 A Yes.
 2 Q There were five children in the household?
 3 A Yes.
 4 Q Three were Mr. White's?
 5 A Yes.
 6 Q The house -- there was a Dodge Durango
 7 that eventually left the home that night, right?
 8 A Yes.
 9 Q Echo drove that car?
 10 A Yes.
 11 Q It was registered to Mr. White; is that
 12 true?
 13 A Yes.
 14 Q Same thing with the home, the home was
 15 actually in Mr. White's name, correct?
 16 A Yes.
 17 Q And you said that he would come to visit,
 18 he would stay there on the weekends to take care of
 19 the children; is that a fair characterization?
 20 A Yes.
 21 Q He took good care of the children, yes?
 22 Let me put it this way. You cared
 23 about the children?
 24 A Yes.
 25 Q If you thought he was abusing the

1 children, you would have reported it to somebody?
 2 A Yes.
 3 Q You never made any of those reports?
 4 A No.
 5 Q You never had information that he was
 6 abusing those children, correct?
 7 A No.
 8 Q In fact, he moved out of the home that was
 9 in his name, left the car that was in his name with
 10 Echo, so she could help provide for those children;
 11 is that fair?
 12 A Yes.
 13 Q You said that you moved in in June?
 14 A Yes.
 15 Q And you said your relationship started in
 16 June?
 17 A Yes.
 18 Q Had there been a relationship before that?
 19 A It -- there was not a serious -- we had
 20 started talking a little bit before that, but it
 21 became --
 22 Q How much before?
 23 A Around April.
 24 Q April.
 25 Is it fair to say that Mr. White was

1 A Yes.
 2 Q Did Mr. White eventually give his blessing
 3 to that, at least temporarily? I mean, I know it
 4 didn't turn out that way.
 5 A Yes. Not to me, but to Echo.
 6 Q Okay. From living there, though, it was
 7 clear that Mr. White was having problems getting
 8 over the relationship; is that fair?
 9 A Yes.
 10 Q Wanted desperately to have the
 11 relationship back, wasn't he?
 12 A Yes.
 13 Q I want to move forward to the day of the
 14 shooting, if I might.
 15 You said there was a knock at the
 16 door or a knock on the window at two in the morning?
 17 A Yes.
 18 Q Did you actually see Mr. White knock on
 19 the window?
 20 A No.
 21 Q Do you know for certain it was Mr. White?
 22 A From what Echo said, yes.
 23 Q But you didn't actually see it yourself?
 24 A No.
 25 Q And I suppose that brings up another

1 aware these sorts of conversations or suspected
 2 there was something going on with you and his wife,
 3 Echo?
 4 A Yes.
 5 Q And he confronted you about that?
 6 A Yes.
 7 Q He wasn't happy about it?
 8 A No.
 9 Q That's why he made the threats to you?
 10 A Yes.
 11 Q Mr. White leaves the house in June?
 12 A Yes.
 13 Q And you move in in June?
 14 A Yes.
 15 Q How soon after Mr. White left the house
 16 did you move in, if I might ask?
 17 A He moved out towards the beginning of
 18 June, and I started staying there towards the end of
 19 June.
 20 Q Fairly quickly. Not immediately, but
 21 within a few weeks?
 22 A Yes.
 23 Q Had you had a discussion with Echo and
 24 Mr. White about the relationship when the three of
 25 you talked about you moving into the house?

1 point. You talked about there being perhaps other
 2 abuse in the past.
 3 Did you ever actually see Mr. White
 4 abuse Echo?
 5 A No.
 6 Q Now, the day in question, he comes into
 7 the house. He still has a key?
 8 A Yes.
 9 Q Does he still have some things there for
 10 when he stays on the weekends?
 11 A I'm not for sure.
 12 Q Okay. He has a key, he comes into the
 13 house, and he tells you "I need to talk to Echo,"
 14 something along those lines?
 15 A Yes.
 16 Q At that point, can you describe his
 17 demeanor for me?
 18 A He seemed a little irate or irritated.
 19 Q Said that his calls hadn't been returned
 20 all night by Echo?
 21 A Yes.
 22 Q Not openly angered?
 23 A Correct.
 24 Q Did not make any particular threats
 25 towards you at that point?

1 A No.
 2 Q Did not pull out a handgun and wave it
 3 towards you at that point?
 4 A No.
 5 Q Okay. You didn't see the gun at that
 6 point?
 7 A No.
 8 Q Didn't make any threats towards Echo?
 9 A No.
 10 Q If you had thought anything was out of the
 11 ordinary, I would imagine -- how old are you, sir,
 12 if I might ask?
 13 A Twenty-eight.
 14 Q Twenty-eight.
 15 You are old enough to know how to
 16 dial 9-1-1 obviously?
 17 A Yes.
 18 Q If there had been anything out of the
 19 ordinary, unusual, if you thought the situation was
 20 going to explode, you know enough to call 9-1-1?
 21 A Yes.
 22 Q Okay. Or to perhaps intervene on your
 23 own?
 24 A Yes. That's why I stayed right there by
 25 the back door.

1 Q That's why you stayed back there.
 2 You weren't necessarily frightened of
 3 Mr. White; is that fair?
 4 A Yes.
 5 Q Now you obviously would be frightened of
 6 Mr. White, you know what he might be capable of with
 7 a weapon, but at the time, you weren't necessarily
 8 frightened of him; true?
 9 A Yes.
 10 Q You've actually got -- you were in the
 11 military?
 12 A Yes.
 13 Q What branch?
 14 A Army National Guard.
 15 Q For how long?
 16 A Almost three years.
 17 Q Was that while you had the relationship,
 18 or relationship is an inappropriate word. Is that
 19 while you were a family friend of Mr. White's and
 20 Echo?
 21 A Can you repeat that?
 22 Q Yeah.
 23 You've known him for about eight
 24 years, so that means you met him when you were
 25 around 20; is that true?

1 A Yes.
 2 Q Were you in the military during the time
 3 that you knew them?
 4 A I eventually joined the military, yes.
 5 Q Okay. There we go.
 6 You said there weren't any weapons
 7 around the house; true? No weapons around your
 8 house?
 9 A My house, no.
 10 Q But you're familiar with weapons. In the
 11 military, you learned how to shoot them. I know
 12 that?
 13 A Yes.
 14 Q And were able to identify the gun that was
 15 used, for example, in this case, as a semiautomatic.
 16 You know the difference between that and a revolver
 17 and pistol?
 18 A Yes.
 19 Q They go into a room and the door is
 20 closed?
 21 A Yes.
 22 Q And at first, you don't hear much; is that
 23 fair?
 24 A Correct.
 25 Q But the conversation escalates at some

1 point; is that right?
 2 A Yes.
 3 Q When the conversation escalates, you
 4 become concerned?
 5 A Yes.
 6 Q Were you able to hear what led to the
 7 escalation of the conversation or why the
 8 conversation escalated? Did you hear any of those
 9 things?
 10 A No.
 11 Q You don't know what was said back and
 12 forth?
 13 A No.
 14 Q Don't know what happened up until the
 15 point you hear Echo say something along the lines of
 16 "Troy, don't" or "Troy, stop"?
 17 A That's correct.
 18 Q And that's the first time that you become
 19 concerned?
 20 A Yes.
 21 Q Become concerned enough to enter into the
 22 room; yes?
 23 A I didn't enter the room.
 24 Q Opened the door. I'm sorry.
 25 A Open the door.

1 Q Okay. You open the door, and you see
 2 Mr. White with a weapon; yes? Or did you notice the
 3 weapon then?
 4 A Not at that point.
 5 Q Okay. Did the fight -- is it fair to say
 6 Mr. White's demeanor had changed from the time he
 7 walked in until the time you opened that door?
 8 A Yes.
 9 Q How had it changed?
 10 A More angry and aggressive.
 11 Q Angry, aggressive, upset?
 12 A Yes.
 13 Q Irrational to some extent?
 14 A Yes.
 15 Q You open the door and there is a shot
 16 fired. That happens pretty quickly I imagine?
 17 A Yes.
 18 Q Okay. And before you can either run in or
 19 run out to call 9-1-1, Mr. White turns and shoots
 20 you?
 21 A Correct.
 22 Q How quickly did that happen between the
 23 time Echo is shot and the time you were shot? Is it
 24 a matter of seconds?
 25 A Yes.

1 A After he heard the sirens coming, yes.
 2 Q Okay. How long did that go on in the
 3 house? How long was he going in and out of the room
 4 making threats?
 5 A I'm not for sure.
 6 Q And, obviously, you're injured, you don't
 7 have a stopwatch, I understand.
 8 Fair to say everything does move
 9 pretty quickly in that situation? It's a tense
 10 situation?
 11 A Yes.
 12 Q You were hit three times, twice in the
 13 stomach, once in the wrist; is that right?
 14 A Once in the arm.
 15 Q Once in the arm.
 16 Do you know how many shots were
 17 fired? And I understand it is a tense situation,
 18 but I thought there was going to be a stipulation at
 19 some point that there were three shell casings found
 20 in the house. We're going to be stipulating to
 21 that.
 22 Do you know if there were actually
 23 four shots fired or three? And it's not critical if
 24 you don't. I'm just curious.
 25 A I don't know.

1 Q Now, afterward, the police do arrive?
 2 A Yes.
 3 Q You were unable to call 9-1-1? You just
 4 weren't physically able to do it, right?
 5 A He took the phone.
 6 Q He took the phone.
 7 You told the police at one point that
 8 you thought that Mr. White may have called 9-1-1,
 9 you just don't know; is that true?
 10 A Correct.
 11 Q Mr. White mentioned threats when he was
 12 standing over you?
 13 A Yes.
 14 Q Had a gun, said "If I'm going" -- and I
 15 think we paraphrased it before. Tell me if I'm
 16 pretty close to what he says. You understand what
 17 the question is going to be, right?
 18 A Yes.
 19 Q He says something along the lines of "If I
 20 am going to go to prison anyway, I should just kill
 21 you, too," or "I can just kill you, too," something
 22 along those lines?
 23 A Yes.
 24 Q Okay. But he just leaves eventually,
 25 correct?

1 Q Okay. When all of this was going on, did
 2 you hear any threats to the children at all?
 3 A No.
 4 Q Did Mr. White work, to your knowledge?
 5 A I'm sorry?
 6 Q Did Mr. White work?
 7 A Yes.
 8 Q Where did he work?
 9 A Yesco.
 10 Q Young Electric Sign Company?
 11 A Yes.
 12 Q Had he been there for a while?
 13 A Yes.
 14 MR. COFFEE: Court's indulgence?
 15 Thank you for answering my questions. We
 16 appreciate it.
 17 Pass the witness.
 18 MS. MERCER: Briefly, Your Honor.
 19 THE COURT: Sure.

REDIRECT EXAMINATION

22 BY MS. MERCER:
 23 Q Sir, the gun that you saw the defendant
 24 with that night, had you seen that gun on any prior
 25 occasions?

1 A Yes.
 2 Q And when?
 3 A I can't recall the date, but he brought it
 4 out and showed it to me.
 5 Q And when you say "he," you're --
 6 A Troy.
 7 Q -- referring to the defendant?
 8 A Yes.
 9 Q Okay. Now, defense counsel asked you
 10 about how you knew that it was the defendant
 11 knocking on the window at 2:00 in the morning. You
 12 indicated that you didn't personally see him or hear
 13 his voice?
 14 A Correct.
 15 Q Were you present when Echo called him and
 16 told him to knock it off?
 17 A Yes.
 18 Q You were also asked about whether or not
 19 you witnessed any incidents of prior abuse by the
 20 defendant against the victim. Do you recall that
 21 question?
 22 A Yes.
 23 Q And I believe your response was no?
 24 A Correct.
 25 Q Did you ever have the opportunity to

1 observe any injuries on Echo's person that she
 2 claimed was from the defendant?
 3 A She had had some bruises and scratches on
 4 her back.
 5 Q And she showed you those?
 6 A Yes.
 7 Q Defense counsel also asked you whether or
 8 not you were frightened of the defendant when he
 9 came to the house around noon on July 27th of 2012.
 10 Do you recall that question?
 11 A Yes.
 12 Q You indicated that you weren't personally
 13 afraid for your safety?
 14 A Correct.
 15 Q What was it that made you stay so close to
 16 the defendant and Echo?
 17 A For Echo's sake and the kids.
 18 Q Okay, so you believed that he might harm
 19 Echo?
 20 A Yes.
 21 Q After the defendant shot you and Echo, did
 22 you see the children going in and out of the room
 23 where Echo was lying?
 24 A I could not see.
 25 Q Okay. Could you hear them in the

1 vicinity?
 2 A Yes.
 3 Q And from the time that you were shot and
 4 the time that the police arrived on scene, did the
 5 demeanor of the children change at all, or did they
 6 remain hysterical the entire time?
 7 A Hysterical.
 8 Q Were they crying?
 9 A Yes.
 10 Q You indicated that the defendant was not
 11 screaming at the children or being angry towards
 12 them. Did you hear him trying to console them in
 13 any way?
 14 A No.
 15 Q How many times did the defendant come in
 16 and out of the room which you were in before the
 17 police arrived on scene after he shot you?
 18 A I believe at least three times.
 19 Q At the time that you were shot by the
 20 defendant, you indicated that you were standing in
 21 the doorway of the master bedroom where the crib was
 22 situated, correct?
 23 A Correct.
 24 Q Where were you standing in relation to the
 25 crib in that room?

1 A Right next to it. It was off to my right
 2 side.
 3 Q And Jazzy was still in it?
 4 A Yes.
 5 MS. MERCER: No further questions, Your
 6 Honor.

RECROSS-EXAMINATION

8 BY MR. COFFEE:
 9 Q The children, just so we're clear, three
 10 were Mr. White's and two were not. Echo had had
 11 them before she met Mr. White?
 12 A Correct.
 13 Q Was he abusive to the two that weren't his
 14 biological children or did he treat the children, by
 15 and large, the same?
 16 A Very much the same.
 17 Q Pretty much the same.
 18 MR. COFFEE: Okay. Thank you,
 19 Mr. Averman.
 20 THE COURT: Anything else?
 21 MS. MERCER: No, Your Honor.
 22 THE COURT: How did you meet Echo? If you
 23 did say that, I didn't hear you.
 24 THE WITNESS: I met her at church.
 25 THE COURT: Okay. Okay. I guess you're

1 excused then. Thank you for coming and
 2 testifying.
 3 Any other witnesses?
 4 MR. TURNER: Your Honor, at this time, I
 5 believe that the parties just have to put on
 6 the stipulations.
 7 THE COURT: Okay.
 8 MR. TURNER: I think we do have a State's
 9 Proposed Exhibit 1, which is an affidavit from
 10 Sergeant L.T. Brown, with the concealed
 11 firearms detail, that indicates in the exhibit
 12 that he did a thorough search for subject, Troy
 13 White, with the defendant's ID number, 1383512.
 14 After that diligent search, he was unable
 15 to locate any concealed firearm permit for that
 16 particular individual.
 17 And I would move to admit that proposed
 18 exhibit.
 19 MR. COFFEE: No objection.
 20 THE COURT: So admitted.
 21 (State's Proposed Exhibit No. 1
 22 was marked for identification
 23 and admitted into evidence.)
 24 MS. MURCLER: And then just, Your Honor,
 25 it's my understanding that defense counsel at

1 this time is willing to stipulate that Dr. Lisa
 2 Gavin, with the Clark County Coroner's office,
 3 performed an autopsy on the victim in this
 4 case, Echo Lucas White, and that she
 5 determined, pursuant to that autopsy, that the
 6 cause of death was a gunshot wound to the
 7 abdomen, and that the manner of death was
 8 homicide, and that he's stipulating to the
 9 identity of the victim for purposes of
 10 preliminary hearing.
 11 MR. COFFEE: Correct, as well.
 12 THE COURT: Okay.
 13 MR. TURNER: And finally, Your Honor, the
 14 final stipulation would be to the following
 15 facts: That Detective Travis Ivie, the last
 16 name I-V-I-E, who's with the homicide detail of
 17 the Las Vegas Metropolitan Police Department,
 18 responded to the crime scene in this case, that
 19 being at 325 Altamira on July 27th of this
 20 year, approximately 1:44 p.m. and he was there
 21 to investigate the homicide of Echo White and
 22 the shooting of Joe Averman.
 23 And that while there, he observed the
 24 following items of evidence at that crime
 25 scene. In the driveway of that residence, Your

1 Honor, he observed a spent bullet that was
 2 located in the driveway. There was a black and
 3 white backpack. Inside of that backpack was an
 4 empty holster for a handgun. There was also a
 5 bullet hole on the exterior of the front of
 6 that residence.
 7 That he went inside the residence, and in
 8 the northwest bedroom, which would have been
 9 the crafts room, as testified by Mr. Averman,
 10 he located a spent shell casing for a
 11 9-millimeter. That would be a 9-millimeter
 12 Win, capital W-I-N, 9-millimeter Luger head
 13 stamp on that. And that that door was open
 14 when he went through the residence.
 15 That in the southwest bedroom, which has
 16 been described as the master bedroom, he
 17 located the baby crib, which is in close
 18 proximity to that doorway, as well as a bullet
 19 hole with a direct trajectory, indicating that
 20 that bullet hole went through that bedroom, and
 21 it openly exited out the front, which is
 22 consistent with where the bullet was recovered
 23 in the driveway.
 24 That he also in the hallway between those
 25 two bedrooms, in proximity to those two

1 bedrooms, he located a third spent shell
 2 casing, also 9-millimeter Win Luger consistent
 3 with the other two shell casings that he
 4 recovered.
 5 Later that same day, Your Honor,
 6 July 27th, approximately 8:00 p.m., Detective
 7 Ivie, with another detective and a crime scene
 8 analyst, responded to Yavapai, the spelling is
 9 Y-A-V-A-P-A-I, County Sheriff's office in
 10 Prescott, Arizona. There he came into contact
 11 with the defendant, Troy White.
 12 He was also present during the execution
 13 of the search warrant of Mr. White's vehicle, a
 14 silver Durango, license plate NV USN3PYZ. That
 15 there was a bullet strike to the bottom
 16 driver's side door of that vehicle.
 17 That additionally, in the trunk of that
 18 vehicle, that was ultimately impounded, was a
 19 black Torres 9-millimeter with a serial number
 20 of TOA33791. That firearm was unloaded.
 21 However, next to the firearm were two
 22 magazines for a 9-millimeter handgun. In those
 23 magazines, one magazine contained 12 cartridge
 24 cases for a Win 9-millimeter Luger. The second
 25 cartridge case had nine Win 9-millimeter Luger

1 shell casings in it.
 2 And I believe that concludes the
 3 stipulation.
 4 MR. COITTE: We agree.
 5 THE COURT: So that is all stipulated to?
 6 MR. COITTE: Yes.
 7 THE COURT: And all that testimony is in
 8 and stipulated to.
 9 MR. TURNER: And I believe with that, Your
 10 Honor, the State would rest.
 11 MR. COFFEE: Judge, I've advised Mr. White
 12 of his right to testify, and he's not going to
 13 avail himself of that today.
 14 I would ask that the list of names of
 15 those people that may be potential witnesses in
 16 the penalty phase that was taken earlier, and I
 17 thank everybody for providing those names, I'd
 18 ask that that be made part of the record.
 19 THE COURT: What I am going to do now
 20 because I want to make sure I have these names
 21 correct, I'm going to call these names for the
 22 record, and acknowledge that you signed it,
 23 okay?
 24 Is there, first of all, a Betty Blake, the
 25 grandmother of the victim. Did you sign your

1 name to that?
 2 MS. BETTY BLAKE: Yes.
 3 THE COURT: Okay. There is an Amber -- is
 4 that Gaines?
 5 MS. AMBER GAINES: Yes.
 6 THE COURT: And listed as the mother of
 7 the victim; is that correct?
 8 MS. AMBER GAINES: Yes.
 9 THE COURT: Then there's a Michael Gaines,
 10 a stepfather. Is that you?
 11 MR. MICHAEL GAINES: Yes, sir.
 12 THE COURT: And then there's a Brad Blake.
 13 I can't read the first name.
 14 MR. BRAD BLAKE: Uncle.
 15 THE COURT: Is that uncle? Uncle Brad
 16 Blake.
 17 And then there's a Florence H. Potter, a
 18 friend?
 19 MS. FLORENCE M. POTTER: M. Potter.
 20 THE COURT: And what?
 21 MS. FLORENCE M. POTTER: M, as in Mary.
 22 Florence M. Potter.
 23 THE COURT: Oh, Florence M. Potter. I'm
 24 sorry.
 25 And then a Nancy Manning, a cousin; is

1 that correct?
 2 MS. NANCY MANNING: Here.
 3 THE COURT: And a Theresa -- is that
 4 Sheahan?
 5 MS. THERESA SHEAHAN: Yes.
 6 THE COURT: A cousin; is that correct?
 7 MS. THERESA SHEAHAN: Correct.
 8 THE COURT: And an Ashley and --
 9 MS. ASHLEY OWSLEY: Owsley.
 10 THE COURT: Owsley. Is that O-U --
 11 MS. ASHLEY OWSLEY: O-W-S-L-E-Y.
 12 THE COURT: O-W-S-L-E-Y. That's why it's
 13 important we get the spelling for the record.
 14 That's all.
 15 And then there is a Jennifer Gaines, a
 16 sister?
 17 MS. JENNIFER GAINES: Yes.
 18 THE COURT: And then there's a Joanna --
 19 is that Rens?
 20 MS. JOANNA RENS: Yes.
 21 THE COURT: R-E-N-S?
 22 MS. JOANNA RENS: Yes.
 23 THE COURT: And you're listed as a friend;
 24 is that correct?
 25 MS. JOANNA RENS: Correct.

1 THE COURT: And then there's a Misty Todd,
 2 a friend?
 3 MS. MISTY TODD: Yes.
 4 THE COURT: A Jacqueline Trujillo, a
 5 friend; is that correct?
 6 MS. JACQUELINE TRUJILLO: Yes.
 7 THE COURT: Diego -- Diego Trujillo?
 8 MR. DIEGO TRUJILLO: Diego.
 9 THE COURT: I have as a friend.
 10 MR. DIEGO TRUJILLO: Yes.
 11 THE COURT: Raquel Brooks as a friend.
 12 MS. RAQUEL BROOKS: Yes.
 13 THE COURT: You have best friend.
 14 MS. RAQUEL BROOKS: Yes.
 15 THE COURT: I didn't want to get anything
 16 going.
 17 All right. Then Jennifer, and what is
 18 that -- who is Jennifer? I have Jennifer
 19 A-R-T-U-R-O; is that right?
 20 A FEMALE VOICE: She stepped out, Your
 21 Honor.
 22 THE COURT: Is that correct? Is that her
 23 name?
 24 And then Crystal Becker. Okay.
 25 And then it looks like -- is that

1 Romandia?
 2 MS. SHEENA ROMANDIA: Correct.
 3 THE COURT: What's your first name?
 4 MS. SHEENA ROMANDIA: Sheena.
 5 THE COURT: Sheena, S-H-E-E-N-A. Okay.
 6 And that's spelled R-O-M-A-N-D-I-A?
 7 MS. SHEENA ROMANDIA: Yes.
 8 THE COURT: As a friend.
 9 Nichole Robertson listed as a family
 10 friend; is that correct?
 11 And Bruce -- is that Behl?
 12 MR. BRYCE BEHL: Bryce.
 13 THE COURT: What is it?
 14 MR. BRYCE BEHL: Bryce.
 15 THE COURT: I have Bruce B-E-H-L..
 16 MR. BRYCE BEHL: B-R-Y-C-E.
 17 THE COURT: B what?
 18 MS. MERCER: B-R-Y-C-E.
 19 THE COURT: Oh, B-R -- all right, Bryce.
 20 I'm sorry. And your last name is?
 21 MR. BRYCE BEHL: Behl.
 22 THE COURT: B-E-H-L?
 23 MR. BRYCE BEHL: Yes.
 24 THE COURT: Listed as a friend.
 25 Okay. Did you get all that now? Leave

1 THE COURT: You're a friend of?
 2 MS. NICOLE ANTILL: Echo.
 3 THE COURT: Okay. And then we have Gina
 4 Antill, also a friend of Echo.
 5 Then we have Sara Spencer, I presume also
 6 a friend of Echo.
 7 And then we have Patricia Lucas; is that
 8 right? And you're a friend of Echo. And
 9 Nicole, again, R-O-M-A-N-D-I-A, and you're a
 10 friend of Echo?
 11 MS. NICOLE ROMANDIA: Yes.
 12 THE COURT: Okay. Now, the Court is going
 13 to take both of these lists and make them as
 14 exhibits for the State, if you have no
 15 objection.
 16 MR. TURNER: No, Your Honor.
 17 MS. MERCER: No, Your Honor.
 18 THE COURT: And I'm going to ask that they
 19 be entered into evidence for the people who are
 20 here today, who may be called at future
 21 hearings, put it that way.
 22 MR. COFFEE: I appreciate it.
 23 THE COURT: Okay. And I've done that at
 24 the request of the defense attorney.
 25 Are you satisfied or do you want anything

1 the list. And these are the names, and you get
 2 them for the record.
 3 MS. MERCER: Your Honor, I believe that
 4 side of the room did not get the paper to sign,
 5 unfortunately.
 6 THE COURT: Okay. Then we'll get those
 7 papers signed, and I want you to -- and when
 8 you're done signing that, then I will have
 9 those for the record.
 10 MR. COFFEE: Thank you, Judge.
 11 THE COURT: Okay. Now, when I say the
 12 relatives and the friends and the names I just
 13 called, they were all relatives and friends of
 14 the victim in this case, of Echo Lucas White;
 15 is that correct?
 16 A FEMALE VOICE: Correct.
 17 THE COURT: Okay.
 18 Let's wait until they get signed and then
 19 we'll proceed on.
 20 Okay. I'm going to call these names now
 21 and acknowledge that you signed it.
 22 I have a Nicole -- is that Antill,
 23 A-N-T-I-L-L.? And I presume you're a friend of
 24 the defendant; is that correct or not?
 25 MS. NICOLE ANTILL: No.

1 else?
 2 MR. COFFEE: No. And I thank everybody
 3 for their cooperation.
 4 (State's Proposed Exhibit No. 2
 5 was marked for identification
 6 and admitted into evidence.)
 7 THE COURT: Okay. All right. Now, you
 8 may proceed.
 9 I think the State rests now.
 10 MR. COFFEE: Defense rests.
 11 THE COURT: Okay. So any argument?
 12 MS. MERCER: We'll waive and reserve, Your
 13 Honor.
 14 THE COURT: Okay.
 15 MR. COFFEE: A couple things, and the
 16 amended is fairly long, so it's going to take a
 17 few more minutes to go through them and try to
 18 do it a piece at a time.
 19 THE COURT: Go ahead. Take your time. If
 20 you want time to read it, go ahead.
 21 MR. COFFEE: No, I've familiarized myself
 22 with it.
 23 And the first thing I'm going to question
 24 about, Judge, is Count I, the Burglary in
 25 Possession of a Firearm. It is clear that the

1 home is in Mr. White's name. He has a key to
2 the home that he resides there on the weekends
3 with the children. So there's a couple legal
4 questions I think.

5 First off, can you burglarize your own
6 house? Second off, did they show an intent to
7 commit one of the underlying things that they
8 have alleged here? They alleged assault,
9 battery, those were the things upon entry.

10 I know he comes into the house with a gun.
11 That's the testimony you have before you
12 anyway. Is that enough to show an intent to
13 commit assault or battery because what we have
14 is testimony that his demeanor when entering
15 the house was nothing out of the usual. They
16 go into a room and things escalate. That's not
17 burglary necessarily.

18 I think for those two reasons the burglary
19 count as alleged in Count I should bail, I
20 think. Rather than try to confuse things,
21 maybe we should deal with it at the end of the
22 time because --

23 THE COURT: I agree.

24 MR. COITTE: -- this might get long.

25 THE COURT: I agree.

1 MS. MERCER: Your Honor, I'm not aware of
2 any case law that says you can't burglarize
3 your own home. The issue is the intent when
4 you enter the residence.

5 And in this case, you heard testimony that
6 in the weeks leading up to the murder and
7 attempted murder, the defendant was threatening
8 Joseph Averman, that he was constantly calling,
9 texting, harassing Echo.

10 That when he showed up at the house, the
11 testimony wasn't that he was calm, cool, and
12 collected. The testimony was that he was
13 agitated, that he was upset that she wasn't
14 returning his phone calls.

15 That when she awoke from her nap in the
16 minutes leading up to her death, she had
17 several missed telephone calls and text
18 messages. That he had showed up at the house
19 at two a.m. the night before, upset with her,
20 banging on the bedroom window.

21 Certainly you can draw the inference that
22 when he arrived at the residence with a firearm
23 concealed on his person and an empty backpack
24 that was found in the driveway with a -- or not
25 an empty backpack, a backpack with an empty gun

1 holster, he entered that residence with the
2 intent to shoot somebody. That's an assault or
3 battery and/or kill.

4 And I think that's it with regard to the
5 burglary count, Your Honor.

6 MR. COITTE: I don't know if you need more
7 argument or not.

8 THE COURT: What?

9 MR. COFFEE: I don't know if you need any
10 more input from our side or not.

11 THE COURT: I know that the house is in
12 joint tenancy, and that they both are the
13 owners of it, but who -- at the time, who had
14 the primary possession of the house?

15 MR. COFFEE: Well, it is a switch thing.
16 He showed up earlier on switch days, so I
17 suppose the argument is that it is, you know,
18 burglary for showing up early that day. But
19 he's got a key. Nobody tells him not to be
20 there. So we've got that issue.

21 Additionally, while I would like to say
22 there was agitation beforehand, he might have
23 been agitated the night before. When he comes
24 in, what we heard from the gentleman who was
25 there, Mr. Averman, is when he walked in he

1 didn't think there was anything particularly
2 unusual about his demeanor.

3 "I stayed by the door because of past
4 incidences, but there was nothing that told me
5 there was doing to be a fight. I know enough
6 to call 9-1-1. I didn't do it, wasn't that
7 concerned about it."

8 It escalated, started slow and it
9 escalated. That's not burglary, and I think
10 for those two reasons, the burglary can't
11 stand.

12 MR. TURNER: Well, Judge, home invasion, I
13 think counsel is mixing up his felonies here.
14 Home invasion, you can't do a home invasion to
15 your own home. With a burglary, certainly you
16 can.

17 If you go into your residence with the
18 intent to commit a crime, murder, whatever it
19 may be, you are guilty of burglary. It being
20 your own home is not a defense.

21 MR. COFFEE: With all due respect, I'm not
22 mixing up anything. If that is the case, if it
23 is burglary any time you commit a felony in
24 your own home, then the statute is void for
25 vagueness, and I can give you a very simple

1 example.
 2 If I go into my house and smoke
 3 methamphetamine, under his theory that would be
 4 a felony burglary also. That seems a
 5 ridiculous extension of the law. I have never
 6 seen it charged that way because it wouldn't
 7 hold up to scrutiny. It would be void for
 8 vagueness. You couldn't figure out what you
 9 were doing inside your own house.
 10 So while I appreciate the difference
 11 between burglary and home invasion, I'm not
 12 mixing up the two.
 13 MR. TURNER: Well, I'm just telling you,
 14 that's the state of the law. If we could
 15 somehow prove in every case the individual went
 16 in their home with the intent to commit a
 17 felony, then we could.
 18 I know *Crawford* case where we allege
 19 burglary where he went into the house, and you
 20 can commit a burglary in your own home. Home
 21 invasion, you can't. I don't know of any case
 22 law where counsel can point to.
 23 I know the elements of the offense are you
 24 enter into a structure with the intent to
 25 commit a crime, assault, battery, petit larceny

1 or a felony. I don't know of any case law that
 2 says anything different than that.
 3 I know with home invasion, it is
 4 specifically within it, it can't be your own
 5 residence for that particular offense.
 6 MR. COFFEE: But with all due respect,
 7 Counsel, *Crawford* was my case, and I took the
 8 issue up to the Supreme Court. It wasn't
 9 Mr. Crawford's house. It was the home of his
 10 girlfriend.
 11 MR. TURNER: Okay.
 12 MR. COFFEE: I can give her name and the
 13 verse, if you'd like. What it says is you
 14 don't have to charge individual rooms in a home
 15 particularly --
 16 THE COURT: With burglary.
 17 MR. COFFEE: -- when you come in for a
 18 burglary. It's just individual rooms of the
 19 home, but it wasn't his home. He drove from
 20 Pahrump with his gun. The prelim was in front
 21 of this Court, in fact.
 22 MR. TURNER: Okay. Either way, it doesn't
 23 change the fact. I think we've proven the
 24 elements for a burglary.
 25 THE COURT: Right now, I don't know the

1 answer without doing some research, okay? So
 2 I'll be truthful on that.
 3 MR. COFFEE: Okay.
 4 THE COURT: I think it's best to let it
 5 go, I'll bind it up, and then you can argue
 6 that and have it researched in front of the
 7 District Court Judge.
 8 MR. COFFEE: I'd ask this Court to
 9 consider doing some of the research. I know
 10 you only have a couple weeks left, but I trust
 11 this Court's opinion on things, and I hate to
 12 bind something up when it may not be legally
 13 appropriate.
 14 THE COURT: I'll be glad to do it, if you
 15 want to.
 16 MS. MERCER: Your Honor, the statute
 17 specifically says --
 18 THE COURT: Let me have the statute. Let
 19 me have it.
 20 MR. COFFEE: The statute says any room
 21 residence.
 22 MS. MERCER: It's 205.060.
 23 THE COURT: 205 --
 24 MS. MERCER: 060.
 25 THE COURT: Let me get it. 205.060.

1 MR. COFFEE: The statute doesn't make a
 2 distinction between your home or somebody
 3 else's home.
 4 THE COURT: That's the --
 5 MR. COFFEE: I agree with that.
 6 MS. MERCER: Or would there be one that
 7 states that there's not.
 8 MR. COFFEE: You'd think there would be
 9 something. I think there probably is.
 10 *Crawford* is not it.
 11 MR. TURNER: And I'd also ask the Court to
 12 review the home invasion statute where it talks
 13 about to enter a residence or structure without
 14 permission, so that there is that added element
 15 that we have to prove.
 16 MR. COFFEE: And so the playing field
 17 is --
 18 THE COURT: Well, I think the issue is
 19 whether a person can be charged with burglary
 20 by entering a home which the person owns.
 21 MR. COFFEE: That is the issue because
 22 there are some cases that say what Mr. Turner
 23 is saying. For example, by going into a
 24 7/Eleven, even though I have a public license
 25 to enter that place, that can certainly be a

1 burglary. There's some Nevada cases on point
 2 on that.
 3 I don't know that there's anything on
 4 point when it is your own home. That's really
 5 just the crux of the question, and I think it
 6 is a different property issue, by the way, than
 7 it is when I enter a 7-Eleven under some sort
 8 of false pretense. I'm entering my own home.
 9 How can I be entering under some sort of false
 10 pretense?
 11 MR. TURNER: Consent just isn't --
 12 permission isn't an element. I'd just ask the
 13 Court for a plain reading of the statute, as
 14 opposed to home invasion, which requires
 15 permission, and you have to show that it was
 16 done without permission. And in this one, that
 17 doesn't matter. It's enters --
 18 THE COURT: Well, does the person need
 19 permission to enter a person's home?
 20 MR. TURNER: Well, we have to prove -- in
 21 other words, a homeowner is always going to
 22 have permission to enter into his own home.
 23 THE COURT: Right.
 24 MR. TURNER: So in a home invasion, we
 25 have to establish that they didn't have a right

1 according to the legislature.
 2 And what we're talking about here, I know
 3 he's talking about these other potential
 4 scenarios, but what we're talking about here is
 5 the facts of this case.
 6 I believe the constitutionality of the
 7 burglary statute has been upheld multiple
 8 times. It is a clear reading. If you go into
 9 a structure with the intent to commit a felony,
 10 it's a burglary, whatever it may be.
 11 MS. MERCER: And if he's challenging the
 12 constitutionality of the statute, it has to be
 13 done by a written motion and served on the
 14 A.G.'s office. This isn't the appropriate
 15 forum to challenge that.
 16 MR. COFFEE: So I'm just explaining why my
 17 statutory interpretation is correct, because if
 18 we adopt here, it would be unconstitutional.
 19 THE COURT: Well, I can do one of two
 20 things. I've got to admit I don't know the
 21 answer to it without sufficient research of
 22 whether a person can be charged with burglary
 23 for entering his or her own home when they have
 24 a key and all that. That's the issue.
 25 MR. COFFEE: And there might be some law

1 to be there.
 2 THE COURT: Right.
 3 MR. TURNER: It was done without
 4 permission. In a burglary, that's not
 5 required. We just have to prove a specific
 6 intent. We have to prove entry and a specific
 7 intent to commit one of the enumerated
 8 offenses.
 9 MR. COFFEE: But, again, if it's that
 10 broad, if I call somebody to commit a fraud on
 11 the telephone, I've committed a burglary --
 12 MR. TURNER: Yes.
 13 MR. COFFEE: -- by making a call in my own
 14 house to say, "Please buy these vitamins that
 15 aren't actually good for you," or whatever it
 16 might be. That seems unduly expansive and
 17 seems unconstitutional.
 18 MR. TURNER: Well, now he's arguing the
 19 constitutionality of it.
 20 MR. COFFEE: I'm arguing both. I'm
 21 arguing either it doesn't apply, or if it does
 22 apply, it's unconstitutional.
 23 MR. TURNER: I mean we don't charge those,
 24 but because we elect not to charge them in the
 25 D.A.'s office, doesn't mean it's not a burglary

1 that I'm not aware of.
 2 THE COURT: I can do one of two things,
 3 you know, send it up, and you can address it
 4 and argue it in District Court. I think that
 5 would be the best where you have more time,
 6 because you are going to have briefs and
 7 briefs, and my time here is short, as you well
 8 know.
 9 MS. MERCER: Correct.
 10 THE COURT: So I think it is best. I
 11 don't know the answer. I'll let the record
 12 know, but I think it should be researched and
 13 it should be argued in the District Court, and
 14 properly briefed, and at that time, allow the
 15 District Court Judge to make a decision.
 16 MR. COFFEE: And in regards to that,
 17 working on that assumption, the Court is making
 18 a factual finding that coming into the house is
 19 enough to support probable cause for burglary,
 20 coming into the house with a weapon?
 21 THE COURT: Do what now?
 22 MR. COFFEE: There's a factual question
 23 and a legal question. Can you burglarize your
 24 own house? You got a factual question. Did
 25 they establish factually a burglary, to

1 establish probable cause for a burglary
2 factually?
3 MR. TURNER: I think --
4 MR. COFFEE: Can he --
5 MR. TURNER: Is there sufficient evidence
6 to support a specific intent when he entered
7 that he was going to commit assault and/or
8 battery and --
9 MS. MERCER: Or murder.
10 MR. TURNER: -- or murder. And we've
11 already submitted on that argument.
12 THE COURT: Well, that will be a question
13 of fact for the jury to determine as far as I'm
14 concerned.
15 I think the State's met the burden, as far
16 as I'm concerned, that a person who enters a
17 house with a gun and, you know, with the
18 intent.
19 MR. COFFEE: Fair enough. That was the
20 only question as to whether or not the Court
21 was finding probable cause and the intent,
22 because if we do do a writ at some point, it
23 would probably be on both issues, and it's
24 better to have a clear ruling on the record.
25 Moving forward.

1 THE COURT: Okay. And I'm going to have
2 that looked up myself because before I leave I
3 want to get an answer.
4 MR. COFFEE: I will submit on Counts II
5 through IV, Count V and Count VI, and there is
6 one argument, rather than going in -- in five
7 and six.
8 MR. TURNER: Okay.
9 MR. COFFEE: I think that Counts V and VI
10 should be combined. I think Counts VI and
11 VII -- let's see, let me make sure I'm doing
12 this right. Five and six, six and seven, eight
13 and nine, and it is every other count. I think
14 there should be one count of child abuse and
15 neglect for each child, not two counts.
16 The way they pled it, if you take a look
17 at the way this is pled, and it's essentially a
18 consistent pleading for each child, right?
19 MR. TURNER: Correct.
20 MR. COFFEE: Okay. The way they've pled
21 it, it says, okay, on Count V, by discharging a
22 firearm inside the child's home, in the
23 proximity of the child.
24 If you take a look at Count VI, it says by
25 shooting the child's mother. Okay. It is part

1 and parcel. It is really the same activity.
2 It is shooting with children nearby.
3 Now, I think there is a question
4 factually, but it is probably a jury question,
5 is whether it is child abuse and neglect simply
6 firing a weapon inside a home, which is what
7 they've pled. This is another issue that we
8 will writ. But we'll submit on that at this
9 point.
10 But I think it's really one count child
11 abuse and neglect. It's one incident. It's
12 not two firings of the weapon. I don't think
13 there's been any facts to support two charges.
14 I think they should be combined, one count to
15 each of the children, and we'd submit that to
16 the Court.
17 MR. TURNER: And, Judge, what we've done
18 in those two counts, as the Court can see, is
19 we did allege two separate counts for each
20 child, but what we're alleging are two separate
21 things.
22 As the Court is aware, with child abuse,
23 you have a situation where you either cause
24 physical injury or place the child in a
25 situation where physical injury may result.

1 We've charged that for each of those for him
2 discharging that firearm in the residence with
3 the children being present.
4 But there's also the alternative, the
5 other theory under child abuse, which is cause
6 them to suffer unjustifiable mental injury or
7 be placed in a situation where mental injury
8 may result.
9 So there may be a circumstance where the
10 jury, when we go in front of the jury, they may
11 decide that, you know what, there wasn't a risk
12 of harm to this child, physical harm, but
13 nevertheless, him murdering their mother in
14 their presence, not seeking help for her,
15 leaving the children there, that would result
16 in mental injury to that child.
17 So that is a separate act or separate
18 circumstance that we're arguing under that same
19 statute, and the statute allows two separate
20 theories.
21 MR. COFFEE: What I would suggest is
22 combining the counts into a single count and
23 making them disjunctive, or by doing this, or
24 doing that. I don't have a problem doing it
25 that way.

1 THE COURT: I think that would be the best
2 way of doing it. I think by going in, I think
3 where the endangerment took place is not when
4 he entered in at first, but when the shooting
5 took place. That's where it is, so I sort of
6 agree with counsel that you can reword that and
7 have one count with each child.

8 MR. COITTE: And I don't mind binding
9 over -- combining the language again from both
10 counts. I'm just stating it's disjunctive,
11 that he prove either theory that they like, but
12 what they can't do is charge him separate
13 counts for that. That's the problem.

14 MR. TURNER: Well, I don't know of any
15 case law for that either. I mean while we can
16 combine the two and/or. I mean what we're
17 alleging is two separate --

18 THE COURT: I agree with counsel there. I
19 agree that the fact that coming in with the
20 child in danger with the gun and when the
21 shooting took place. That would do it.

22 In other words, he coming in, they did not
23 see the gun, and went into the room. And after
24 the shooting took place is where the child was
25 in danger. They didn't know what was going to

1 take place. He was home. He could walk in.
2 He was their dad. So I agree with counsel. I
3 agree.

4 MS. MERCER: But, Your Honor, the way that
5 we pled it is the --

6 THE COURT: Well, why don't you plead it
7 like that in one count?

8 MS. MERCER: We're not alleging that he
9 endangered the child when he came into the
10 residence. We're alleging that he endangered
11 the child when he fired a firearm in close
12 proximity of them, and then separately that he
13 continued to endanger them or --

14 THE COURT: I think it is an all
15 continuation thing. I agree with counsel. I
16 agree with counsel.

17 MR. COFFEE: Would ask that it be amended
18 again. I don't think they should have to do up
19 this hearing.

20 MR. TURNER: Then we'll just consolidate
21 it and/or, so...

22 MS. MERCER: But there still will be five
23 separate counts of child abuse.

24 THE COURT: Yes, there will still be five
25 separate charges.

1 MR. TURNER: Yes, Judge.

2 THE COURT: And/or, but not two in each
3 one.

4 MR. TURNER: Okay.

5 THE COURT: Yeah, I agree with counsel
6 that to have that amended as to and/or where
7 there's five counts of child abuse and neglect,
8 instead of ten.

9 MR. COFFEE: So, Judge, just so we're
10 clear on what the Court will be doing is
11 binding over Count V, incorporating the
12 language of Count VI in the alternative. Is
13 that appropriate, Counsel?

14 MR. TURNER: I think that's what the
15 Court's ruling is to combine those in theory as
16 to one.

17 THE COURT: Right.

18 MR. COITTE: And the same thing with seven
19 and eight, binding over Count VII, and
20 incorporating language in Count VIII in the
21 alternative. Same thing with nine and ten, and
22 11 and 12, and 13 and 14.

23 THE COURT: That's correct. Now, what
24 we're doing is. What we'll do is -- hold it.
25 We'll bind them over like on Count V with

1 and/or in placing them in mental suffering, and
2 then dismiss Count VI.

3 MR. COFFEE: So the even numbered counts
4 would be eliminated.

5 THE COURT: Yeah, the even numbered counts
6 would be --

7 MR. COFFEE: Six, eight, ten, 12 and 14.

8 THE COURT: Right.

9 MR. TURNER: Consolidated.

10 THE COURT: Consolidated in Count --
11 Count VI would be consolidated in five. That
12 would be for Jodey.

13 And Count VIII would be consolidated in
14 seven for Jesse.

15 Count X would be consolidated in Count IX
16 for Jayce.

17 Count XII would be consolidated into
18 Count XI for Jazzy.

19 And Count XIV would be consolidated into
20 Count XIII for Jett.

21 MR. TURNER: Yes, Your Honor.

22 THE COURT: Okay. I think that is the
23 appropriate way of doing it.

24 MR. COFFEE: Very good.

25 MR. TURNER: Thank you, Your Honor.

1 THE COURT: And you've still got it there.
 2 You've still got the and/or, and you still have
 3 the whole thing.
 4 MR. TURNER: Okay.
 5 THE COURT: I think it's not a separate
 6 count.
 7 So, therefore, I'm not done yet, so,
 8 therefore, it appearing to me from the
 9 complaint on file herein that crimes have been
 10 committed, and those are the crimes that are
 11 set forth now in the amended criminal complaint
 12 in Case 12F12500X, and those are the crimes in
 13 Count I, Burglary While in Possession of a
 14 Firearm; Count II, Murder With Use of a Deadly
 15 Weapon; Count III, Attempt Murder With Use of a
 16 Deadly Weapon; Count IV, Carrying a Concealed
 17 Firearm or Other Deadly Weapon; and then
 18 Count V, Child Abuse and Neglect; as well as
 19 Count VII, Child Abuse and Neglect; as well as
 20 Count IX, Child Abuse and Neglect; as well as
 21 Count XI, Child Abuse and Neglect; and 13, as
 22 to Child Abuse and Neglect, and there's
 23 reasonable cause to believe that the defendant,
 24 Troy Richard White, committed these crimes, I
 25 hereby order said defendant to be held to

1 answer to said charges in the Eighth Judicial
 2 District Court, State of Nevada, in and for the
 3 County of Clark.
 4 MR. TURNER: Thank you, Your Honor.
 5 MS. MERCER: Thank you, Your Honor.
 6 MR. COITTE: Thank you, Your Honor.
 7 THE CLERK: January 2nd, 1:30. Lower
 8 level, Courtroom A.
 9 MR. TURNER: May I approach briefly on an
 10 unrelated matter?
 11 MS. MERCER: What time was that?
 12 THE CLERK: Are you setting bail on this?
 13 THE COURT: I'll get with you in just a
 14 minute.
 15 MS. MERCER: What was the time?
 16 THE CLERK: 1:30.
 17 MR. COFFEE: Thanks, Judge. Good seeing
 18 you again.
 19 THE COURT: All righty.
 20 MS. MERCER: Your Honor, we've added four,
 21 five, seven and nine. It should be set in
 22 court.
 23 THE COURT: I think what we did was we
 24 have him held on no bail. So let's just hold
 25 him on no bail at this time.

1
 2 (Whereupon, the proceedings
 3 concluded.)
 4
 5 ATTEST: Full, true, and
 6 accurate transcript of
 7 proceedings.
 8
 9 /s/ Carlila Jasper
 10 Carlila Jasper, CCR #346
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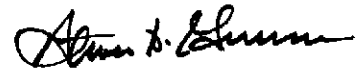
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COURT ADMIN EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
CLERK OF THE COURT

State of Nevada

PLAINTIFF

-VS-

Troy White

DEFENDANT

CASE NO: C-12-286357-1
6286357DEPT. NO: 9**MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS*** Please fax to (702) 671-4548 to ensure that
the request will be processed as quickly as possible.Guy DeMarco (name), of 8 News NOW (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. 9, the Honorable Judge Melisa De La Garza Presiding, on the 8/16 day of
January, 20 13 TogliattiI hereby certify that I am familiar with, and will comply with Supreme Court Rules 229-246, inclusive. If this request is being
submitted less than twenty-four (24) hours before the above-described proceedings commence, the following facts provide good
cause for the Court to grant the request on such short notice:It is further understood that any media camera pooling arrangements shall be the sole responsibility of the media and must be
arranged prior to coverage, without asking for the Court to mediate disputes.Dated this 3 day of January, 20 13SIGNATURE: PHONE: 702-792-8882*****
IT IS HEREBY ORDERED THAT:☐ The media request is denied because it was submitted less than 24 hours before the scheduled proceeding was to
commence, and no "good cause" has been shown to justify granting the request on shorter notice.☐ The media request is denied for the following reasons: _____☒The media request is granted. The requested media access remains in effect for each and every hearing in the above-
entitled case, at the discretion of the Court, and unless otherwise notified. This order is made in accordance with
Supreme Court Rules 229-246, inclusive, at the discretion of the judge, and is subject to reconsideration upon motion
of any party to the action. Media access may be revoked if it is shown that access is distracting the participants,
impairing the dignity of the Court, or otherwise materially interfering with the administration of justice.☐ OTHER: _____**IT IS FURTHER ORDERED** that this document shall be made a part of the record of the proceedings in this case.Dated this 11th day of January, 20 13
DISTRICT COURT JUDGE

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

State of Nevada

PLAINTIFF

-VS-

Troy White

DEFENDANT

CASE NO: C-12-286357-1

DEPT. NO: 9

**NOTIFICATION OF
MEDIA REQUEST**

TO: COUNSEL OF RECORD IN THE ABOVE-CAPTIONED CASE:

You are hereby notified pursuant to Supreme Court Rules 229-246, inclusive, that media representatives from KLAS have requested to obtain permission to broadcast, televise, record or take photographs of all hearings in this case. Any objection should be filed at least 24 hours prior to the subject hearing.

DATED this 15 day of January, 2013


Eighth Judicial District Court

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION

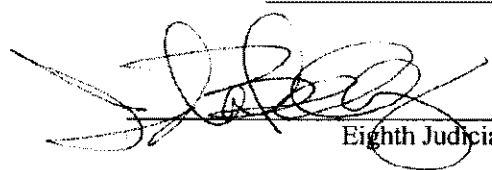
I hereby certify that on the 15 day of January, 2013, service of the foregoing was made by facsimile transmission only, pursuant to Nevada Supreme Court Rules 229-246, inclusive, this date by faxing a true and correct copy of the same to each Attorney of Record addressed as follows:

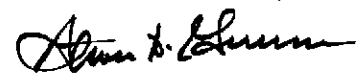
Plaintiff
District Attorney

(702) 455-2294

Defendant
Public Defender

(702) 455-5112


Eighth Judicial District Court



CLERK OF THE COURT

PWHC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
SCOTT L. COFFEE
Deputy Public Defender
Nevada Bar No. 5607
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Application of,

CASE NO. C-12-286357-1

DEPT. NO. XI

Troy Richard White,
for a Writ of Habeas Corpus.

DATE: March 27, 2013
TIME: 9:00 a.m.

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of
The State of Nevada, in and for the County of Clark

The Petition of TROY RICHARD WHITE submitted by SCOTT L. COFFEE,
Deputy Public Defender, as attorney for the above-captioned individual, respectfully affirms:

1. That he is a duly qualified, practicing and licensed attorney in the City of Las
Vegas, County of Clark, State of Nevada.

2. That Petitioner makes application for a Writ of Habeas Corpus; that the place
where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty
is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is
Doug Gillespie, Sheriff.

3. That the imprisonment and restraint of said Petitioner is unlawful in that:
Count one of the information charging Burglary must be dismissed as a legal impossibility and/or
the State failed to produce probable cause at preliminary hearing to support Count 1.

1 4. That Petitioner consents that if Petition is not decided within 15 days before
2 the date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date
3 designated by the Court.

4 5. That Petitioner personally authorized his aforementioned attorneys to
5 commence this action.

6 WHEREFORE, Petitioner prays that this Honorable Court make an Order directing
7 the Court Clerk for the County of Clark to issue a Writ of Habeas Corpus directed to the said Doug
8 Gillespie, Sheriff of Clark County, Nevada, instruction said Sheriff to produce the body of the
9 Petitioner before this Court.

10 DATED this 4 of February, 2013.

11 PHILIP J. KOHN
12 CLARK COUNTY PUBLIC DEFENDER

13
14 By:


15 SCOTT L. COFFEE, #5607
16 Deputy Public Defender
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DECLARATION


SCOTT L. COFFEE makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. That I am the attorney of record for Petitioner in the above matter; that I have read the foregoing Petition, 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 to those matters, I believe them to be true; that Petitioner, TROY RICHARD WHITE, personally authorizes me to commence this Writ of Habeas Corpus action.

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

EXECUTED this 4 day of February, 2013.



SCOTT L. COFFEE

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

3 COMES NOW the Petitioner, TROY RICHARD WHITE, by and through his
4 counsel, SCOTT L. COFFEE, Deputy Public Defender, and submits the following Points and
5 Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas Corpus.

6
7 **STATEMENT OF FACTS**

8 Defendant, TROY WHITE, is charged by way of Criminal Complaint with Burglary While
9 in Possession of a Firearm, Murder with Use of a Deadly Weapon, Attempt Murder with Use of a
10 Deadly Weapon, Carrying a Concealed Firearm or Other Deadly Weapon and Child Abuse and
11 Neglect or Endangerment. See Exhibit A- Preliminary Hearing Transcript (PHT). A
12 Preliminary Hearing was held on December 12, 2012 in Justice Court Department 5. This Writ is
13 addressed solely to the charge of burglary.

14 Prior to June 2011, Defendant Troy White and Echo Lucas were married. In June 2011,
15 Defendant Troy White was told by Echo Lucas and family friend Joseph Averman that there was an
16 ongoing affair between the two. White and Lucas were separated. Averman moved into the White
17 residence during the week, but White returned home on weekends to help care for the family
18 children. PHT 14:11-13. Although Joseph Averman, Mrs. Lucas' boyfriend, moved into the
19 residence during the week, Mr. White retained full title to the home. PHT 36:14-16. Mr. White also
20 kept his keys to the home and continued to enter the residence at any time he desired. PHT 22:18-20

21 On July 27, 2011, Mr. White went to the residence after several failed attempts to reach Mrs.
22 Lucas. Mr. White left the residence but returned later that day. At the preliminary hearing, Mr.
23 Averman acknowledged that Mr. White still had the key for the purpose of entering the house.
24 Furthermore, Mr. Averman acknowledged he was aware Mr. White is the owner of the residence.
25 Mr. White came back to the house and, as always, used his key to enter. Mr. Averman
26 acknowledged that Mr. White made no threats to either him or Mrs. Lucas and did not feel anything
27 out of the ordinary or unusual that would prompt him to call the police. PHT 41:18-20.

28 ///

1 A Conversation began between Mr. White and Mrs. Lucas. Mr. Averman enters the room
2 after several minutes when the conversation escalates. Prior to this time, Mr. Averman did not feel
3 frightened of Mr. White. PHT 42:5-8. At this time, Mr. White's demeanor changed and as Mr.
4 Averman described, Mr. White became irrational. PIIT 45:10-14.

5 Mr. White is now charged with multiple counts including burglary, even though he never
6 moved entirely out of the residence, never gave up ownership, did not surrender his keys and
7 continued to enter the home at will. There was no restraining order or other legal mechanism to
8 encumber White's right to enter the home. In Short, White has been charged with burglarizing his
9 own home. For the reasons that are set forth below said burglary charge cannot stand.

11 LEGAL ARGUMENT

12 **I. It is legally impossible to burglarize your own home.**

13 At common law, burglary was the breaking and entering the house of another in the
14 nighttime, with intent to commit a felony therein, whether the felony is actually committed or not.
15 Smith v. First Judicial District Court, 347 P.2d 526, 75 Nev. 526 (1959).

16 Nevada, like many other states, has statutorily enlarged the definition of burglary. See NRS
17 205.060. The enlargement of the burglary statute did not eviscerate its purpose, a point recognized
18 by The Nevada Supreme Court when it affirmed and adopted the Supreme Court of Washington's
19 explanation of the evolution of common law burglary which had held: "While there has been an
20 enlargement of the definition, the central idea which has obtained for hundreds of years, the
21 unlawful breaking and entering of some kind of an enclosed structure, has been retained." Id. The
22 Nevada Supreme Court stated that Washington's reasoning "is directly in point and we approved its
23 reasoning." Id. Simply put, the legislative intent in adopting the current burglary statute was to
24 broaden the definition of a structure, not to abandon in its entirety the common law underpinnings of
25 the charge. Id.

26 NRS 205.060 defines burglary as:

27 A person who, by day or night, enters any house, room, apartment, tenement, shop,
28 warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle
trailer, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to

1 commit grand or petit larceny, assault or battery on any person or any felony, or to obtain
2 money or property by false pretenses.

3 Despite this statute having been in place for decades, there are no cases directly on point as to
4 whether a person may be convicted of burglarizing their own home, perhaps a good indication that
5 the state seldom seeks to stretch the definition of burglary to such unreasonable lengths. There are
6 Nevada cases such as State v. Adams, 94 Nev. 503 (1978), and Thomas v. State, 94 Nev. 605
7 (1978), which hold that consent to entry is no defense to a charge of burglary, but said cases are not
8 on point to the issue at hand. The aforementioned cases are premised on the idea that the authority
9 to enter a building open to the public is limited to those persons entering for a purpose consistent
10 with the reason the building is open, hence entry with the intent to commit larceny (or some other
11 felony), cannot be said to be within the authority to enter which is granted to customers. If anything,
12 the reasoning behind Adams and Thompson buttresses the position that Nevada's burglary statute
13 maintains the common law requirement of unlawful entry.

14 While Nevada has not directly decided the issue, other jurisdictions have. The most
15 exhaustive discussion of the issue probably occurs in the California case of People v. Gauze, 15
16 Cal.3d 709 (1975). At the onset it is important to note that the language of California's burglary
17 statute mirrors that of Nevada in that it too has broadened the definition of structure well beyond the
18 common law.¹

19
20
21 ¹ In Bedard v. State, 118 Nev. 410, 413 (2002), our high court noted: "California Penal Code § 459,
the California burglary statute, is very similar to NRS 205.060."

22 CPC § 459 reads: Every person who enters any house, room, apartment, tenement, shop,
23 warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, as defined in Section 21
24 of the Harbors and Navigation Code, floating home, as defined in subdivision (d) of Section
25 18075.55 of the Health and Safety Code, railroad car, locked or sealed cargo container, whether or
26 not mounted on a vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house
27 car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of
28 the Vehicle Code, vehicle as defined by the Vehicle Code, when the doors are locked, aircraft as
defined by Section 21012 of the Public Utilities Code, or mine or any underground portion thereof,
with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this
chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A
house, Trailer, vessel designed for habitation, or portion of a building is currently being used for
dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or
other disaster caused the occupants to leave the premises.

Gauze recognized that the common law notion of unlawful entry is implied even in the revised burglary statute, and that therefore a person cannot be convicted of burglarizing their own home. In Gauze, the defendant shared an apartment with his roommate and had the right to enter the premises at all times. Id. at 714. After a heated argument, defendant shot his roommate in their apartment. Id. Court held that defendant could not be charged with burglary "because his entry into the home, even for a felonious purpose, invaded no possessory right of habitation, only the entry of an intruder could have done so."

Burglary is, at its most basic, a crime against property. The Statute defining burglary, NRS 205.060, is found in the “crimes against property” chapter of the NRS. It is not possible to commit a property crime against your own property, indeed the very notion of private property implies an absolute right upon the owner to do with that property as he sees fit. A burglary is an entry that invades a possessory right in a structure and has no right to enter that structure. Gauze at 714. A defendant cannot be charged with burglary because the defendant does not invade a possessory right of another. Id.

Here, Mr. White had title to the home. He retained the right to enter the premises at all times and stayed at the house on weekends. The day of the shooting was actually a day in which White normally stayed at the home. White never gave up his keys to the home. Further, there is no indication that there was some legal prohibition, such as a restraining order, preventing Mr. White from entering the premises as he saw fit. Thus, Mr. White owned the home and had the absolute legal right to enter the home. He cannot be charged with burglary for said entry.

CONCLUSION

It is clear that the common law definition of burglary still impacts the current statutory interpretation and thus, unlawful entry is still needed for the crime of burglary. At no time did Mr. White enter the residence unlawfully and he cannot be charged with burglary. The motion to dismiss the burglary charge should be granted.

///

///

1 As to the alternative filing of the instant motion as a Writ of Habeas Corpus, as a person
2 cannot be found guilty of burglary for entry into their own home, the State failed to produce
3 probable cause to hold the defendant to answer on a charge of burglary and his current detention is
4 unlawful in that respect.

5 Therefore, and based on the foregoing, Troy White respectfully requests this Honorable
6 Court to grant this Motion to Dismiss Burglary Count/Writ of Habeas Corpus.

7
8
9 DATED this 4 of February, 2013.

10 PHILIP J. KOHN
11 CLARK COUNTY PUBLIC DEFENDER

12
13 By:


14 SCOTT L. COFFEE, #5607
15 Deputy Public Defender
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1 **NOTICE**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF
4 HABEAS CORPUS will be heard on 27th day of March, 2013, at 9:00 a.m., in Department No. XI
5 District Court.

6 DATED this 4 day of February, 2013.

7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9
10 By: 
11 SCOTT L. COFFEE, #5607
12 Deputy Public Defender
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16 **CERTIFICATE OF ELECTRONIC SERVICE**

17 I hereby certify that service of PETITION FOR WRIT OF HABEAS CORPUS, was
18 made this 4th day of February, 2013 to:

19
20 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
21 PDMotions@ccdancv.com

22 By: 
23 Employee of the Public Defender's Office
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EXHIBIT "A"

1 C-12-286357-1
 2 IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP
 3 IN AND FOR THE COUNTY OF CLARK
 4
 5
 6 THE STATE OF NEVADA,)
 7 Plaintiff,) CASE NO. 12F12500X
 8) DEPT. NO. 5
 9 TROY WHITE,)
 10 Defendant.)
 11 _____)
 12
 13
 14
 15 BEFORE THE HONORABLE WILLIAM D. JANSEN
 16 JUSTICE OF THE PEACE
 17 REPORTER'S TRANSCRIPT OF
 18 PRELIMINARY HEARING
 19 TAKEN ON WEDNESDAY, DECEMBER 12, 2012
 20 AT 8:30 O'CLOCK A.M.
 21
 22 APPEARANCES:
 23 For the State: T. MERCER, ESQ.
 24 B. TURNER, ESQ.
 25 Deputy District Attorneys
 26 For the Defendant: S. COFFEE, ESQ.
 27 D. NEGRETTE-LOPEZ, ESQ.
 28 Special Deputy Public Defenders

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Alvin D. Lavin
 CLERK OF THE COURT

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LAS VEGAS JUSTICE COURT, WEDNESDAY, DECEMBER 12, 201

*** PROCEEDINGS ***

THE COURT: All right. Then, Mr. Coffee,
 are you ready to proceed?

MR. COFFEE: Yes.

THE COURT: All right. This is now the
 time and place for the preliminary hearing in
 the State of Nevada versus Troy Richard White.

Let the record reflect that the -- the
 exclusionary rule will be invoked.

MS. MERCER: Liz Mercer, Your Honor.

THE COURT: It's been a while since I've
 seen you.

MS. MERCER: Yeah. I've been in DV court.

THE COURT: Yeah.

I know you, Brad.

MR. TURNER: Yes, sir.

THE COURT: Okay. Let the record reflect
 the defendant is present, along with his
 attorney, Mr. Coffee. And I don't know the
 individual --

MR. LOPEZ-NEGRETTE: David Lopez-Negrete
 for the record.

THE COURT: David Lopez?

1 MR. LOPEZ-NEGRETTE: Yes.
 2 THE COURT: Okay. And then for the State
 3 there's Brad Turner and Liz Mercer.
 4 MS. MERCER: Yes.
 5 THE COURT: So, let me ask you this, how
 6 many witnesses do you anticipate?
 7 MR. TURNER: Judge, it looks like at this
 8 point we're only going to need one to put this
 9 on.
 10 THE COURT: All right. Now, are there any
 11 other potential witnesses in the courtroom that
 12 would be subject to be called. Because if so,
 13 I am going to have to ask them to be excluded
 14 from the courtroom just in case if something
 15 comes down the line.
 16 MS. MERCER: Your Honor, we don't believe
 17 so at this time.
 18 THE COURT: Now, if they are in the
 19 courtroom, I can't allow them to testify.
 20 You understand that?
 21 MS. MERCER: Yes.
 22 THE COURT: You all understand that?
 23 Now, Mr. Coffee, do you have any
 24 witnesses, other than possibly the defendant
 25 himself to testify?

1 THE COURT: Well, my policy is if they're
 2 subpoenaed witnesses to be here, those are the
 3 only ones to be excluded.
 4 MS. MERCER: They have not been
 5 subpoenaed.
 6 THE COURT: And they've not been
 7 subpoenaed, and I can only do it for this
 8 hearing. So, therefore, your motion to exclude
 9 them for this hearing, I'm not going to grant,
 10 so we'll proceed.
 11 MR. COFFEE: That's fine, Judge. Pursuant
 12 to any possible motions, I request we get the
 13 names of the people that are in the courtroom
 14 and sitting through the proceedings, so that we
 15 have it in the record if we need it later.
 16 MS. MERCER: And, Your Honor, this entire
 17 side of the courtroom is full of people related
 18 to the victim, so...
 19 THE COURT: Well, if you want to stand and
 20 give your names, each one want to stand and
 21 give your name for the record, we will go for
 22 it.
 23 THE COURT REPORTER: Can we please take a
 24 paper and pass it around so they can write
 25 their names and spell them?

1 MR. COFFEE: I don't, Judge.
 2 Can I speak to the District Attorney,
 3 please?
 4 THE COURT: Sure.
 5 MR. COFFEE: Judge, after a conversation
 6 with the District Attorney, I don't know if
 7 this is going to be a capital case one way or
 8 the other. It's too early in the process to
 9 know that. They have more review to do.
 10 The concern that I have is there are a
 11 number of people in the courtroom who may well
 12 be victim impact witnesses at a penalty phase,
 13 if we get to that point, if this is a capital
 14 case.
 15 I talked to the District Attorney, and
 16 they agree with that proposition. I think
 17 they're probably going to say that it would be
 18 a penalty phase issue, not a trial issue.
 19 While I understand the difference, the
 20 Supreme Court said penalty phase, trial, all
 21 the same thing for evidentiary purposes, so I
 22 have some concerns about leaving those people
 23 in the courtroom during this testimony.
 24 And I would object and submit it to your
 25 discretion.

1 THE COURT: Maybe that would be better.
 2 yeah. Take a legal pad and then we'll read it
 3 off for the record. That might be a better
 4 idea.
 5 MR. COFFEE: We have to notice all of them
 6 anyway.
 7 MR. TURNER: I understand.
 8 MR. COFFEE: But if you didn't notice
 9 them, there would be a breach you didn't notice
 10 them.
 11 (Whereupon, an unrelated matter was
 12 heard.)
 13 THE COURT: Now, in the Troy Richard White
 14 case, the charges are Burglary While in
 15 Possession of Firearm, Murder With Use of a
 16 Deadly Weapon, and Attempt Murder With Use of a
 17 Deadly Weapon.
 18 Oh, wait a minute, I've got the amended
 19 criminal complaint. Burglary While in
 20 Possession of a Firearm -- I just got that.
 21 Murder With Use of a Deadly Weapon, Attempt
 22 Murder With Use of a Deadly Weapon, Carrying a
 23 Concealed Firearm or Other Deadly Weapon, and
 24 Child Abuse and Neglect or Endangerment.
 25 MR. COFFEE: And they notified us

1 beforehand that they were going to be filing an
2 amended. We have no objection.
3 THE COURT: All right. So, then, you can
4 go ahead and call your first witness, State.
5 MS. MERCER: Your Honor, the State calls
6 Joseph Averman.
7 THE COURT: Joseph who?
8 MS. MERCER: Averman.
9 THE COURT: I thought you said Immerman,
10 and I was going to say.
11 THE MARSHAL: Step up here, sir. Remain
12 standing, face the clerk over there, and raise
13 your right hand.
14 THE CLERK: Do you solemnly swear to tell
15 the truth, the whole truth, and nothing but the
16 truth, so help you God?
17 THE WITNESS: I do.
18 THE CLERK: Please be seated. State your
19 full name and spell your name, please.
20 THE WITNESS: Joseph Douglas Averman.
21 J-O-S-E-P-H, Douglas, D-O-U-G-L-A-S, Averman,
22 A-V, as in Victor, E-R-M-A-N.
23 MS. MERCER: May I proceed, Your Honor?
24 THE COURT: Now, Mr. Averman, if the
25 question is asked of you by either one of these

1 attorneys calls for a "yes" or "no" answer,
2 please state "yes" or "no." Do not just shake
3 your head or say "ugh-huh," because down below
4 you is a court reporter, and she cannot record
5 those types of responses.
6 Do you understand that?
7 THE WITNESS: Yes, Your Honor.
8 THE COURT: So why don't you scoot up
9 close to the mic so everyone can hear you.
10 Okay?
11 THE WITNESS: Yes, sir.
12 THE COURT: All right. You may proceed.
13 MS. MERCER: Thank you, Your Honor.

JOSEPH AVERMAN,

1 Having been first duly sworn to tell
2 the truth, the whole truth and nothing but
3 the truth testified as follows:

DIRECT EXAMINATION

1 BY MS. MERCER:
2 Q Sir, do you know an individual by the name
3 of Troy White?
4 A Yes, I do.
5 Q And do you see him in the courtroom today?

11

12

1 A Yes, I do.
2 Q Could you please point to him for me and
3 identify an article of clothing that he is wearing
4 today?
5 A He is sitting right there with a blue
6 sleeveless shirt.
7 MS. MERCER: Your Honor, may the record
8 reflect that he's identified the defendant?
9 THE COURT: So reflect.
10 BY MS. MERCER:
11 Q And, sir, did you also know an individual
12 by the name of Echo Lucas White?
13 A Yes, I did.
14 Q And when did you first meet Echo Lucas
15 White?
16 A About eight years ago.
17 Q About eight years ago.
18 Where did the two of you meet?
19 A We originally met at church.
20 Q And did the two of you have a close
21 friendship in that eight years or just see each
22 other infrequently?
23 A Close friendship.
24 Q To your knowledge, were the defendant and
25 Echo Lucas White married?

1 A Yes.
2 Q Earlier this year, did you become aware
3 that the two had separated?
4 A Yes.
5 Q Do you recall when that was?
6 A About in June.
7 Q June of 2012?
8 A Yes.
9 Q Do you recall whether it was early in June
10 or late in June?
11 A Early in June.
12 Q And after the two had separated, did you
13 and Echo develop a relationship?
14 A Yes.
15 Q And that relationship was a romantic
16 relationship?
17 A Yes.
18 Q At some point, did you move in with Echo?
19 A Yes.
20 Q Where did you move into?
21 A To her house.
22 Q Do you recall where that house was?
23 A On Altamira.
24 Q Okay. And that's here in Clark County?
25 A Yes.

1 Q What are the closest cross streets?
 2 A Buffalo and Alta.
 3 Q Okay. Who else resided in the house with
 4 you and Echo?
 5 A Her kids.
 6 Q And what are the children's names for the
 7 record?
 8 A Jodey, Jayce, Jesse, Jett, and Jazzy.
 9 Q And could you do me a favor and spell
 10 those names for the court reporter?
 11 A Jodey is J-O-D-E-Y. Jayce, J-A-Y-C-E.
 12 Jesse, J-E-S-S-E. Jett, J-E-T-T. Jazzy, J-A-Z-Z-Y.
 13 Q Okay. And do you know the children's
 14 ages?
 15 A I believe Jodey was ten, Jayce was nine,
 16 Jesse is six, Jett is two, and Jazzy is almost a
 17 year.
 18 Q What did you say about Jazzy, I'm sorry?
 19 A Almost a year.
 20 Q Okay. When is Jazzy's birthday?
 21 A January 16th.
 22 Q So back in June she would have been -- or
 23 July she would have been about six months?
 24 A Six months.
 25 Q During the time that you resided with Echo

1 Q Okay. During the time period of your
 2 relationship with Echo, did you learn that the
 3 defendant was upset about the separation?
 4 A Yes.
 5 Q And how did you become aware of that?
 6 A Between Echo and harassing phone calls and
 7 text messages.
 8 Q When you say harassing phone calls and
 9 text messages, was the defendant calling her and
 10 texting her continuously?
 11 A Yes.
 12 Q And is it something that occurred every
 13 day throughout the day, or every other day? You
 14 know, what kind of frequency are we talking about?
 15 A Every day.
 16 Q And you were with her when she would
 17 receive those text messages and phone calls?
 18 A Yes.
 19 Q Did he ever make -- did he know that the
 20 two of you were dating?
 21 A Yes.
 22 Q And when I say "the two of you," I mean
 23 you and Echo?
 24 A Yes.
 25 Q Did he ever make any threats to you

1 and her children, were you familiar with or did you
 2 know the defendant had visitation with the children?
 3 A Yes.
 4 Q And do you know how that visitation took
 5 place?
 6 A On the weekends.
 7 Q And what was the arrangement?
 8 A He would come and pick them up on Fridays
 9 after he got off work, and then Sunday nights he
 10 would have the kids back.
 11 Q Did he stay in the home at some point on
 12 the weekends?
 13 A On the weekends.
 14 Q And was that because of the number of
 15 children it was just easier to do it that way?
 16 A Yes.
 17 Q You indicated that his visitation would
 18 begin when he got off work on Fridays?
 19 A Yes.
 20 Q About what time would he typically show up
 21 for visitation?
 22 A It would be somewhere between two and
 23 three.
 24 Q In the afternoon?
 25 A Yes.

1 because of your relationship with Echo?
 2 A Yes, he did.
 3 Q And when did he make those threats?
 4 A A few different times over texts and voice
 5 mails.
 6 Q And when did those threats begin?
 7 A About in June.
 8 Q June of 2012?
 9 A Yes.
 10 Q I apologize if I already asked you this,
 11 but what point in June did you move into the
 12 residence?
 13 A Later on in June towards the end of the
 14 month.
 15 Q And was the defendant aware that you were
 16 living there?
 17 A Yes.
 18 Q What kind of specific threats was he
 19 making to you?
 20 A He said that "If you don't stay away, I'm
 21 going to fucking kill you."
 22 Q And when he made those threats to you, was
 23 it over the phone or in person?
 24 A Voice mails.
 25 Q Voice mails.

1 Okay. I want to fast-forward to
2 July 27th of 2012. On that date, were you at the
3 residence with Echo and the children?
4 A Yes, I was.
5 Q And what day of the week was that for the
6 record?
7 A A Friday.
8 Q Did something unusual happen about
9 2:00 a.m. that morning?
10 A About 2:00 in the morning, there was a big
11 bang, which I thought was on the front door.
12 THE COURT: Excuse me, what date did you
13 say? July what?
14 MS. MERCER: July 27th.
15 THE COURT: July 27th, okay. I thought
16 you said -- that is a Friday. You're correct,
17 that is a Friday.
18 Go ahead.
19 MS. MERCER: Thank you, Your Honor.
20 BY MS. MERCER:
21 Q I'm sorry, you heard a big bang and you
22 thought what?
23 A I thought there was a bang on the front
24 door, and I guess it was on the bedroom window from
25 what Echo had told me.

1 THE COURT: All women like to do their
2 hair, not just Echo, all of them. I have one
3 that does it all the time.
4 BY MS. MERCER:
5 Q When you said that she was doing her hair,
6 what did you mean?
7 A She was putting her hair in braids.
8 Q And did she have something on her hands?
9 A She had some gel or whatever to help her
10 do her hair. I'm not really for sure exactly what
11 it was.
12 Q Okay. But she couldn't answer the phone
13 with that substance on her hands?
14 A Yes.
15 Q Okay. And she called him because he was
16 constantly calling and texting throughout that
17 period?
18 A Well, at that time, she wasn't responding
19 until after the banging on the door.
20 Q Okay. And then she called him?
21 A And then she called him.
22 Q And then what happened?
23 A She had asked him basically "What are you
24 doing? You can't be coming over here banging on the
25 door or window. We have our kids over here.

1 Q What was the loud bang?
2 A He was pounding on the door or the window.
3 Q I'm sorry, it was what?
4 A He was pounding on the door or the window.
5 Q And by "he," you mean the defendant?
6 A Troy.
7 Q The defendant?
8 A Yes.
9 Q Did he come into the residence at that
10 point?
11 A No.
12 Q Where were you when that occurred?
13 A In the living room.
14 Q The living room of the residence?
15 A Yes.
16 Q And that's the house on Altamira?
17 A Yes.
18 Q After the banging, what happened? Did the
19 two of you just go to sleep?
20 A Echo had called Troy after the banging
21 because he had texted her and called her numerous
22 times, and she didn't respond. She was doing her
23 hair. All you guys know how Echo loved to do her
24 hair.
25 Q Okay.

1 They're trying to sleep." And the other part of the
2 conversation I don't know.
3 Q Did he eventually leave the area?
4 A He eventually left.
5 Q And then did the two of you go to sleep
6 after that, shortly after that?
7 A Yes.
8 Q Do you recall about what time you woke up
9 later that morning?
10 A I want to say around seven or eight.
11 Q And were the children all still with you
12 at this point?
13 A Yes.
14 Q What were you all doing that day, that
15 morning when you woke up?
16 A Had some breakfast, cleaning, and then we
17 were watching "I Shouldn't Be Alive."
18 Q Is that a TV show?
19 A Yes.
20 Q And what was Echo doing?
21 A She was doing some laundry, folding
22 laundry, and then she fell asleep on the couch from
23 being awake all night.
24 Q Okay. So she took a nap on the sofa?
25 A She took a nap.

1 Q And that was in the living room?
 2 A Yes.
 3 Q Where you and the children were watching
 4 TV?
 5 A Yes, which was around 10:30 in the
 6 morning.
 7 Q 10:30 in the morning?
 8 A Yes.
 9 Q Was she still receiving communications
 10 from the defendant during this period?
 11 A At that time, I'm not for sure.
 12 Q At some point, did she wake up from her
 13 nap on the sofa?
 14 A Yes.
 15 Q And what time did she wake up?
 16 A About ten to 12.
 17 Q Ten to 12?
 18 A Quarter to 12.
 19 Q And when she woke up, do you know whether
 20 she received any communication?
 21 A She told me that there was numerous texts
 22 and phone calls and voice mails.
 23 Q That she missed --
 24 A Yes.
 25 Q -- while she was napping?

1 first she told him that he wasn't supposed to be
 2 there yet. You know, "Come back whenever or later
 3 when you are supposed to get the kids, and we'll
 4 talk then."
 5 And he looked at me and he said,
 6 "Joe, please, just give me five minutes. She hasn't
 7 returned my calls or my texts all day long. I just
 8 need to talk to her."
 9 Q Okay. Let me stop you for a minute.
 10 When he came into the house, did you
 11 see him carrying anything?
 12 A No.
 13 Q Did you see a gun in his hand?
 14 A No.
 15 Q Okay. So after he asked you to let him
 16 speak with Echo for five minutes, what happens next?
 17 A Echo looked at me and she said, "All
 18 right, just give me five minutes."
 19 Q And then did they have a discussion?
 20 A They went into the back bedroom, the spare
 21 bedroom.
 22 Q Where is the spare bedroom in relation to
 23 the master bedroom in which the crib was in?
 24 A Directly across the hall.
 25 Q Okay. And that spare bedroom, what kinds

1 A Yes.
 2 Q What happened after she woke up?
 3 A She woke up. She apologized for falling
 4 asleep and having me sit there with the kids, and I
 5 told her it was fine. And I told her why didn't she
 6 go lay down in bed. So she went to go lay down in
 7 bed, and I had -- I was holding Jazzy, and I put her
 8 to sleep, so as Echo was going to lay down in the
 9 bed, they have the crib in the bedroom.
 10 Q In the master bedroom where Echo sleeps?
 11 A Yes.
 12 And I went to put Jazzy in bed to lay
 13 her down in her crib, and shortly after, Troy comes
 14 to the house.
 15 Q And how did you know that he was there?
 16 A 'Cause the two older boys, Jodey and
 17 Jayce, were saying, "Mommy, Mommy, Daddy's here."
 18 Q Do you know how he entered the residence?
 19 A He still had a key for that so he came in
 20 with the key.
 21 Q Okay. Once the defendant was inside, what
 22 happened?
 23 A He had asked to speak to her.
 24 Q Asked who?
 25 A Troy had asked Echo to talk to her, and

1 of things were kept in it?
 2 A Just a bunch of crafting stuff.
 3 Q Okay. So the defendant and Echo go into
 4 the spare bedroom?
 5 A Yes.
 6 Q Where are you at this point?
 7 A I'm in the master bedroom.
 8 Q With Jazzy?
 9 A Yes.
 10 Q At the time that he walked into the
 11 bedroom, did you see anything in his hand?
 12 A No.
 13 Q When you went into the master bedroom, did
 14 you have the door open or shut?
 15 A I shut -- it wasn't completely shut, but I
 16 closed it some way.
 17 Q And why did you close it?
 18 A Just, I'm not sure. I just closed it.
 19 Q Okay. When Echo and the defendant went
 20 into the spare bedroom, did they have the door open
 21 or shut?
 22 A Shut.
 23 Q At some point when you were in the master
 24 bedroom with Jazzy, did you become alarmed?
 25 A Yes.

1 Q And why?
 2 A Because I heard Echo say, "Troy, no,
 3 please don't, and stop."
 4 Q When you heard that, what did you do?
 5 A I opened the door to go make sure she was
 6 okay. From prior abuse that he's done to her, I was
 7 making sure that he wasn't hurting her.
 8 Q When you opened the door, was the door to
 9 the craft room open at this point?
 10 A It was -- she was trying to come out of
 11 the bedroom.
 12 Q And what did you see?
 13 A He grabbed her arm and he pulled her back
 14 into the room.
 15 Q When you say that "he pulled her back in
 16 the room," which room are we talking about?
 17 A The spare room.
 18 Q So he pulled her back into the craft room
 19 when she was trying to walk away?
 20 A Yes.
 21 Q And when you saw him grab her, what
 22 happened after that?
 23 A He pushed her to the wall and then he shot
 24 her.
 25 Q Could you tell where she was shot?

1 Q In relation to where the door to enter the
 2 room is, which wall was it?
 3 A It was the wall that the door is right up
 4 against.
 5 Q On the same wall as the door?
 6 A Yes.
 7 Q And is that the wall that is against the
 8 hallway that divides that room from the hallway?
 9 A Yes.
 10 Q So that wall is directly across from where
 11 the baby was situated?
 12 A Yes.
 13 Q Then after you saw Echo buckle over, what
 14 happened?
 15 A He turned and he shot me.
 16 THE COURT: I didn't hear you. What did
 17 you say?
 18 THE WITNESS: Troy shot me.
 19 BY MS. MERCER:
 20 Q Where were you shot?
 21 A I was shot once in the right arm and twice
 22 in the abdomen.
 23 Q After you were shot, what did you do?
 24 A I fell over.
 25 Q And where were you at the time that he

1 A It looked like she was shot in the
 2 stomach, but I'm not for sure.
 3 Q What led you to believe that she was shot
 4 in the stomach?
 5 A Just how she -- how she buckled over.
 6 Q When he shot her, did you see the gun in
 7 his hand?
 8 A Can you repeat that?
 9 Q When he shot her, did you actually see the
 10 gun in his hand?
 11 A Yes.
 12 Q And where was he holding the firearm?
 13 A About waist high.
 14 Q At the point that he shot her, where were
 15 all of the children in the house?
 16 A They were -- I believe the two oldest boys
 17 were in the hallway.
 18 Q And the two oldest boys are?
 19 A Jodey and Jayce.
 20 Jesse and Jett, I'm not for sure
 21 where they were. And Jazzy was in her crib.
 22 Q And when you say that he pushed her
 23 against the wall, which wall to the bedroom was it
 24 that he pushed her?
 25 A I'm -- it's --

1 shot you?
 2 A In the master bedroom.
 3 Q Okay. So had he come into the master
 4 bedroom or was he still standing in the hallway?
 5 A He was basically in the doorway of the
 6 spare bedroom. When I was shot, I was in the
 7 doorway of the master bedroom.
 8 Q And did he look at you when he shot you?
 9 A Yes.
 10 Q Did he say anything to you when he shot
 11 you?
 12 A When he first shot me, no.
 13 Q Where was the defendant standing when he
 14 shot Echo?
 15 A Directly in front of her, about arm's
 16 length away.
 17 Q At the time that you were shot, where were
 18 the children?
 19 A I'm not for sure.
 20 Q After you fell to the floor, what
 21 happened?
 22 A Troy comes to the bedroom.
 23 Q When you say that he came to the bedroom,
 24 what was he doing in the bedroom? Was he talking to
 25 you? Was he just wandering around? What was he

1 doing?
 2 A He came in the bedroom and he said, "I
 3 told you this would happen." And then I believe it
 4 was Jodey and Jayce that come into the bedroom, but
 5 they were right there in the hallway in between the
 6 doors, and they were checking on Echo and me.
 7 Q And how were they behaving at the time?
 8 A Hysterical.
 9 Q When you say hysterical --
 10 A Crying.
 11 Q -- were they saying anything?
 12 A They said, "We need to call for help. You
 13 killed Mommy."
 14 Q They told the defendant that?
 15 A Troy.
 16 Q What happened at that point?
 17 A He said that -- Troy had said that he was
 18 trying to call but his phone wasn't working.
 19 Q And then what happened?
 20 A Then I guess he tried to corral the kids
 21 all into one room, and Jayce managed to get by.
 22 Jayce had come back into the room where I was at, to
 23 the master bedroom.
 24 Q Why did he go back to the room where you
 25 were at?

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1 push the kids back into the other room.
 2 Q And then what happened?
 3 A And Troy come back into the room, and he
 4 told me, you know, "You're a coward. I told you
 5 this was going to happen. I told you to stay away."
 6 And...
 7 Q Did he make any comments to you about him
 8 going to prison?
 9 A He said if he -- he mentioned if I'm going
 10 to go to prison, that he was going to kill me.
 11 Q Did you ever ask the defendant to call for
 12 help?
 13 A No. Oh, yes, I did. I'm sorry. Yes, I
 14 did.
 15 Q What specifically did you tell him?
 16 A I told him, "Forget me. Let me die. I
 17 don't care. Just call for help and get her help."
 18 Echo.
 19 Q And what did he say to you?
 20 A I can't recall.
 21 Q Did he call for help, to your knowledge?
 22 A Not that I'm aware of.
 23 Q At some point, did you become aware the
 24 police were called?
 25 A I didn't know that they were called.

1 A I guess to check on me.
 2 Q Okay. Did he have anything with him when
 3 he went back there?
 4 A No.
 5 Q And what happened at that point?
 6 A I told Jayce to go get my phone that was
 7 on the nightstand so I could call.
 8 Q Did he get your phone?
 9 A Yes, he did.
 10 Q And what happened once he had the phone?
 11 A He had told Troy he got my phone so I
 12 could call for help.
 13 Q So the child told Troy that he was getting
 14 you the phone to call for help?
 15 A Yes.
 16 Q And how did the defendant respond to that?
 17 A He came back into the room and stood over
 18 me with the gun to my head, and he took my phone and
 19 said, "You ain't calling nobody."
 20 Q What happened at that point?
 21 A I'm not sure which children it was, a few
 22 of them, they had come back into the room to the
 23 master bedroom.
 24 Q Where you were?
 25 A Where I was and distracted Troy to try to

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1 Q Did they come into the house?
 2 A Yes, they did.
 3 Q While you were still lying on the master
 4 bedroom floor?
 5 A Yes.
 6 Q And were you ultimately removed from the
 7 house in an ambulance?
 8 A Yes.
 9 Q Which hospital were you taken to?
 10 A I believe it was UMC.
 11 Q And how long were you in the hospital?
 12 A Three days.
 13 Q Three days?
 14 A Three days.
 15 Q Do you know what kind of car Echo had?
 16 A She had a Durango. It was silver or gray.
 17 Q A Dodge Durango?
 18 A Dodge Durango.
 19 Q And was that car there in the morning when
 20 you got up on July 27th of 2012?
 21 A Yes, it was.
 22 Q When you were taken to the hospital, was
 23 the car still there?
 24 A No.
 25 Q When the police arrived to the house, was

1 the defendant still there?
 2 A No.
 3 Q Did you have any firearms on you on that
 4 day?
 5 A No.
 6 Q To your knowledge, did Echo have any
 7 firearms?
 8 A No.
 9 Q During the time period that the defendant
 10 was at the house, did either one of you ever have a
 11 weapon?
 12 A Repeat that.
 13 Q During the time the defendant was at the
 14 house on July 27th of 2012, did either you or Echo
 15 ever have a weapon?
 16 A No.
 17 Q Did you see the firearm that the defendant
 18 shot Echo and yourself with?
 19 A Yes.
 20 Q And what did it look like?
 21 A A pistol.
 22 Q Okay. Was it a revolver or --
 23 A Semiautomatic.
 24 Q Okay. Do you recall what color it was?
 25 A Black.

1 when he was coming back and forth, "Who's a coward
 2 now?"
 3 A Yes.
 4 Q He had made some threats in the past to
 5 you?
 6 A Yes.
 7 Q You didn't necessarily take those threats
 8 very seriously, though, did you?
 9 A No, I didn't.
 10 Q Why not?
 11 A I guess just, I don't know, didn't seem
 12 like that kind of a person.
 13 Q You had known him for a number of years,
 14 right?
 15 A Yes.
 16 Q You said you had met Echo about eight
 17 years before. You met Troy around the same time?
 18 A Yes.
 19 Q You were a family friend; is that a fair
 20 characterization?
 21 A Yes.
 22 Q Friends with Mr. White, as well as with
 23 Echo?
 24 A Yes.
 25 Q You'd seen him around his children?

1 MS. MERCER: Court's indulgence?
 2 I'll pass the witness, Your Honor.
 3 THE COURT: All right. Mr. Coffee?

CROSS-EXAMINATION

6 BY MR. COFFEE:
 7 Q Good morning, Mr. Avernian.
 8 A Good morning.
 9 Q I'm going to ask you some questions, and
 10 if anything I ask you is confusing, please stop me
 11 and I'll try to do more to make sure it is clear.
 12 All right?
 13 A Yes, sir.
 14 Q Okay. Very good. It's Scott or
 15 Mr. Coffee. You don't need to call me sir.
 16 You talked a moment ago about
 17 Mr. White coming back and forth in the room saying
 18 something about a coward or mentioning the word
 19 coward. Do you remember that?
 20 A Yes.
 21 Q When you talked to the police, do you
 22 remember saying what he said is "Who's a coward
 23 now?"
 24 A Yes.
 25 Q Does that sound like what he actually said

1 A Yes.
 2 Q There were five children in the household?
 3 A Yes.
 4 Q Three were Mr. White's?
 5 A Yes.
 6 Q The house -- there was a Dodge Durango
 7 that eventually left the home that night, right?
 8 A Yes.
 9 Q Echo drove that car?
 10 A Yes.
 11 Q It was registered to Mr. White; is that
 12 true?
 13 A Yes.
 14 Q Same thing with the home, the home was
 15 actually in Mr. White's name, correct?
 16 A Yes.
 17 Q And you said that he would come to visit,
 18 he would stay there on the weekends to take care of
 19 the children; is that a fair characterization?
 20 A Yes.
 21 Q He took good care of the children, yes?
 22 Let me put it this way. You cared
 23 about the children?
 24 A Yes.
 25 Q If you thought he was abusing the

1 children, you would have reported it to somebody?
 2 A Yes.
 3 Q You never made any of those reports?
 4 A No.
 5 Q You never had information that he was
 6 abusing those children, correct?
 7 A No.
 8 Q In fact, he moved out of the home that was
 9 in his name, left the car that was in his name with
 10 Echo, so she could help provide for those children;
 11 is that fair?
 12 A Yes.
 13 Q You said that you moved in in June?
 14 A Yes.
 15 Q And you said your relationship started in
 16 June?
 17 A Yes.
 18 Q Had there been a relationship before that?
 19 A It -- there was not a serious -- we had
 20 started talking a little bit before that, but it
 21 became --
 22 Q How much before?
 23 A Around April.
 24 Q April.
 25 Is it fair to say that Mr. White was

1 aware these sorts of conversations or suspected
 2 there was something going on with you and his wife,
 3 Echo?
 4 A Yes.
 5 Q And he confronted you about that?
 6 A Yes.
 7 Q He wasn't happy about it?
 8 A No.
 9 Q That's why he made the threats to you?
 10 A Yes.
 11 Q Mr. White leaves the house in June?
 12 A Yes.
 13 Q And you move in in June?
 14 A Yes.
 15 Q How soon after Mr. White left the house
 16 did you move in, if I might ask?
 17 A He moved out towards the beginning of
 18 June, and I started staying there towards the end of
 19 June.
 20 Q Fairly quickly. Not immediately, but
 21 within a few weeks?
 22 A Yes.
 23 Q Had you had a discussion with Echo and
 24 Mr. White about the relationship when the three of
 25 you talked about you moving into the house?

1 A Yes.
 2 Q Did Mr. White eventually give his blessing
 3 to that, at least temporarily? I mean, I know it
 4 didn't turn out that way.
 5 A Yes. Not to me, but to Echo.
 6 Q Okay. From living there, though, it was
 7 clear that Mr. White was having problems getting
 8 over the relationship; is that fair?
 9 A Yes.
 10 Q Wanted desperately to have the
 11 relationship back, wasn't he?
 12 A Yes.
 13 Q I want to move forward to the day of the
 14 shooting, if I might.
 15 You said there was a knock at the
 16 door or a knock on the window at two in the morning?
 17 A Yes.
 18 Q Did you actually see Mr. White knock on
 19 the window?
 20 A No.
 21 Q Do you know for certain it was Mr. White?
 22 A From what Echo said, yes.
 23 Q But you didn't actually see it yourself?
 24 A No.
 25 Q And I suppose that brings up another

1 point. You talked about there being perhaps other
 2 abuse in the past.
 3 Did you ever actually see Mr. White
 4 abuse Echo?
 5 A No.
 6 Q Now, the day in question, he comes into
 7 the house. He still has a key?
 8 A Yes.
 9 Q Does he still have some things there for
 10 when he stays on the weekends?
 11 A I'm not for sure.
 12 Q Okay. He has a key, he comes into the
 13 house, and he tells you "I need to talk to Echo,"
 14 something along those lines?
 15 A Yes.
 16 Q At that point, can you describe his
 17 demeanor for me?
 18 A He seemed a little irate or irritated.
 19 Q Said that his calls hadn't been returned
 20 all night by Echo?
 21 A Yes.
 22 Q Not openly angered?
 23 A Correct.
 24 Q Did not make any particular threats
 25 towards you at that point?

1 A No.
 2 Q Did not pull out a handgun and wave it
 3 towards you at that point?
 4 A No.
 5 Q Okay. You didn't see the gun at that
 6 point?
 7 A No.
 8 Q Didn't make any threats towards Echo?
 9 A No.
 10 Q If you had thought anything was out of the
 11 ordinary, I would imagine -- how old are you, sir,
 12 if I might ask?
 13 A Twenty-eight.
 14 Q Twenty-eight.
 15 You are old enough to know how to
 16 dial 9-1-1 obviously?
 17 A Yes.
 18 Q If there had been anything out of the
 19 ordinary, unusual, if you thought the situation was
 20 going to explode, you know enough to call 9 1 1?
 21 A Yes.
 22 Q Okay. Or to perhaps intervene on your
 23 own?
 24 A Yes. That's why I stayed right there by
 25 the back door.

1 A Yes.
 2 Q Were you in the military during the time
 3 that you knew them?
 4 A I eventually joined the military, yes.
 5 Q Okay. There we go.
 6 You said there weren't any weapons
 7 around the house; true? No weapons around your
 8 house?
 9 A My house, no.
 10 Q But you're familiar with weapons. In the
 11 military, you learned how to shoot them. I know
 12 that?
 13 A Yes.
 14 Q And were able to identify the gun that was
 15 used, for example, in this case, as a semiautomatic.
 16 You know the difference between that and a revolver
 17 and pistol?
 18 A Yes.
 19 Q They go into a room and the door is
 20 closed?
 21 A Yes.
 22 Q And at first, you don't hear much; is that
 23 fair?
 24 A Correct.
 25 Q But the conversation escalates at some

1 Q That's why you stayed back there.
 2 You weren't necessarily frightened of
 3 Mr. White; is that fair?
 4 A Yes.
 5 Q Now you obviously would be frightened of
 6 Mr. White, you know what he might be capable of with
 7 a weapon, but at the time, you weren't necessarily
 8 frightened of him; true?
 9 A Yes.
 10 Q You've actually got -- you were in the
 11 military?
 12 A Yes.
 13 Q What branch?
 14 A Army National Guard.
 15 Q For how long?
 16 A Almost three years.
 17 Q Was that while you had the relationship,
 18 or relationship is an inappropriate word. Is that
 19 while you were a family friend of Mr. White's and
 20 Echo?
 21 A Can you repeat that?
 22 Q Yeah.
 23 You've known him for about eight
 24 years, so that means you met him when you were
 25 around 20; is that true?

1 point; is that right?
 2 A Yes.
 3 Q When the conversation escalates, you
 4 become concerned?
 5 A Yes.
 6 Q Were you able to hear what led to the
 7 escalation of the conversation or why the
 8 conversation escalated? Did you hear any of those
 9 things?
 10 A No.
 11 Q You don't know what was said back and
 12 forth?
 13 A No.
 14 Q Don't know what happened up until the
 15 point you hear Echo say something along the lines of
 16 "Troy, don't" or "Troy, stop"?
 17 A That's correct.
 18 Q And that's the first time that you become
 19 concerned?
 20 A Yes.
 21 Q Become concerned enough to enter into the
 22 room; yes?
 23 A I didn't enter the room.
 24 Q Opened the door. I'm sorry.
 25 A Open the door.

1 Q Okay. You open the door, and you see
 2 Mr. White with a weapon; yes? Or did you notice the
 3 weapon then?
 4 A Not at that point.
 5 Q Okay. Did the fight -- is it fair to say
 6 Mr. White's demeanor had changed from the time he
 7 walked in until the time you opened that door?
 8 A Yes.
 9 Q How had it changed?
 10 A More angry and aggressive.
 11 Q Angry, aggressive, upset?
 12 A Yes.
 13 Q Irrational to some extent?
 14 A Yes.
 15 Q You open the door and there is a shot
 16 fired. That happens pretty quickly I imagine?
 17 A Yes.
 18 Q Okay. And before you can either run in or
 19 run out to call 9-1-1, Mr. White turns and shoots
 20 you?
 21 A Correct.
 22 Q How quickly did that happen between the
 23 time Echo is shot and the time you were shot? Is it
 24 a matter of seconds?
 25 A Yes.

1 A After he heard the sirens coming, yes.
 2 Q Okay. How long did that go on in the
 3 house? How long was he going in and out of the room
 4 making threats?
 5 A I'm not for sure.
 6 Q And, obviously, you're injured, you don't
 7 have a stopwatch. I understand.
 8 Fair to say everything does move
 9 pretty quickly in that situation? It's a tense
 10 situation?
 11 A Yes.
 12 Q You were hit three times, twice in the
 13 stomach, once in the wrist; is that right?
 14 A Once in the arm.
 15 Q Once in the arm.
 16 Do you know how many shots were
 17 fired? And I understand it is a tense situation,
 18 but I thought there was going to be a stipulation at
 19 some point that there were three shell casings found
 20 in the house. We're going to be stipulating to
 21 that.
 22 Do you know if there were actually
 23 four shots fired or three? And it's not critical if
 24 you don't. I'm just curious.
 25 A I don't know.

1 Q Now, afterward, the police do arrive?
 2 A Yes.
 3 Q You were unable to call 9-1-1? You just
 4 weren't physically able to do it, right?
 5 A He took the phone.
 6 Q He took the phone.
 7 You told the police at one point that
 8 you thought that Mr. White may have called 9-1-1,
 9 you just don't know; is that true?
 10 A Correct.
 11 Q Mr. White mentioned threats when he was
 12 standing over you?
 13 A Yes.
 14 Q Had a gun, said "If I'm going" -- and I
 15 think we paraphrased it before. Tell me if I'm
 16 pretty close to what he says. You understand what
 17 the question is going to be, right?
 18 A Yes.
 19 Q He says something along the lines of "If I
 20 am going to go to prison anyway, I should just kill
 21 you, too," or "I can just kill you, too," something
 22 along those lines?
 23 A Yes.
 24 Q Okay. But he just leaves eventually,
 25 correct?

1 Q Okay. When all of this was going on, did
 2 you hear any threats to the children at all?
 3 A No.
 4 Q Did Mr. White work, to your knowledge?
 5 A I'm sorry?
 6 Q Did Mr. White work?
 7 A Yes.
 8 Q Where did he work?
 9 A Yesco.
 10 Q Young Electric Sign Company?
 11 A Yes.
 12 Q Had he been there for a while?
 13 A Yes.
 14 MR. COFFEE: Court's indulgence?
 15 Thank you for answering my questions. We
 16 appreciate it.
 17 Pass the witness.
 18 MS. MERCER: Briefly, Your Honor.
 19 THE COURT: Sure.

REDIRECT EXAMINATION

22 BY MS. MERCER:
 23 Q Sir, the gun that you saw the defendant
 24 with that night, had you seen that gun on any prior
 25 occasions?

1 A Yes.
 2 Q And when?
 3 A I can't recall the date, but he brought it
 4 out and showed it to me.
 5 Q And when you say "he," you're --
 6 A Troy.
 7 Q -- referring to the defendant?
 8 A Yes.
 9 Q Okay. Now, defense counsel asked you
 10 about how you knew that it was the defendant
 11 knocking on the window at 2:00 in the morning. You
 12 indicated that you didn't personally see him or hear
 13 his voice?
 14 A Correct.
 15 Q Were you present when Echo called him and
 16 told him to knock it off?
 17 A Yes.
 18 Q You were also asked about whether or not
 19 you witnessed any incidents of prior abuse by the
 20 defendant against the victim. Do you recall that
 21 question?
 22 A Yes.
 23 Q And I believe your response was no?
 24 A Correct.
 25 Q Did you ever have the opportunity to

1 observe any injuries on Echo's person that she
 2 claimed was from the defendant?
 3 A She had had some bruises and scratches on
 4 her back.
 5 Q And she showed you those?
 6 A Yes.
 7 Q Defense counsel also asked you whether or
 8 not you were frightened of the defendant when he
 9 came to the house around noon on July 27th of 2012.
 10 Do you recall that question?
 11 A Yes.
 12 Q You indicated that you weren't personally
 13 afraid for your safety?
 14 A Correct.
 15 Q What was it that made you stay so close to
 16 the defendant and Echo?
 17 A For Echo's sake and the kids.
 18 Q Okay, so you believed that he might harm
 19 Echo?
 20 A Yes.
 21 Q After the defendant shot you and Echo, did
 22 you see the children going in and out of the room
 23 where Echo was lying?
 24 A I could not see.
 25 Q Okay. Could you hear them in the

1 vicinity?
 2 A Yes.
 3 Q And from the time that you were shot and
 4 the time that the police arrived on scene, did the
 5 demeanor of the children change at all, or did they
 6 remain hysterical the entire time?
 7 A Hysterical.
 8 Q Were they crying?
 9 A Yes.
 10 Q You indicated that the defendant was not
 11 screaming at the children or being angry towards
 12 them. Did you hear him trying to console them in
 13 any way?
 14 A No.
 15 Q How many times did the defendant come in
 16 and out of the room which you were in before the
 17 police arrived on scene after he shot you?
 18 A I believe at least three times.
 19 Q At the time that you were shot by the
 20 defendant, you indicated that you were standing in
 21 the doorway of the master bedroom where the crib was
 22 situated, correct?
 23 A Correct.
 24 Q Where were you standing in relation to the
 25 crib in that room?

1 A Right next to it. It was off to my right
 2 side.
 3 Q And Jazzy was still in it?
 4 A Yes.
 5 MS. MERCER: No further questions, Your
 6 Honor.

RECROSS-EXAMINATION

1 BY MR. COFFEE:
 2 Q The children, just so we're clear, three
 3 were Mr. White's and two were not. Echo had had
 4 them before she met Mr. White?
 5 A Correct.
 6 Q Was he abusive to the two that weren't his
 7 biological children or did he treat the children, by
 8 and large, the same?
 9 A Very much the same.
 10 Q Pretty much the same.
 11 MR. COFFEE: Okay. Thank you,
 12 Mr. Averman.
 13 THE COURT: Anything else?
 14 MS. MERCER: No, Your Honor.
 15 THE COURT: How did you meet Echo? If you
 16 did say that, I didn't hear you.
 17 THE WITNESS: I met her at church.
 18 THE COURT: Okay. Okay. I guess you're

1 excused then. Thank you for coming and
 2 testifying.
 3 Any other witnesses?
 4 MR. TURNER: Your Honor, at this time, I
 5 believe that the parties just have to put on
 6 the stipulations.
 7 THE COURT: Okay.
 8 MR. TURNER: I think we do have a State's
 9 Proposed Exhibit 1, which is an affidavit from
 10 Sergeant E.T. Brown, with the concealed
 11 firearms detail, that indicates in the exhibit
 12 that he did a thorough search for subject, Troy
 13 White, with the defendant's ID number, 1383512.
 14 After that diligent search, he was unable
 15 to locate any concealed firearm permit for that
 16 particular individual.
 17 And I would move to admit that proposed
 18 exhibit.
 19 MR. COFFEE: No objection.
 20 THE COURT: So admitted.
 21 (State's Proposed Exhibit No. 1
 22 was marked for identification
 23 and admitted into evidence.)
 24 MS. MERCER: And then just, Your Honor,
 25 it's my understanding that defense counsel at

1 Honor, he observed a spent bullet that was
 2 located in the driveway. There was a black and
 3 white backpack. Inside of that backpack was an
 4 empty holster for a handgun. There was also a
 5 bullet hole on the exterior of the front of
 6 that residence.
 7 That he went inside the residence, and in
 8 the northwest bedroom, which would have been
 9 the crafts room, as testified by Mr. Averman,
 10 he located a spent shell casing for a
 11 9-millimeter. That would be a 9-millimeter
 12 Win, capital W-I-N, 9-millimeter Luger head
 13 stamp on that. And that that door was open
 14 when he went through the residence.
 15 That in the southwest bedroom, which has
 16 been described as the master bedroom, he
 17 located the baby crib, which is in close
 18 proximity to that doorway, as well as a bullet
 19 hole with a direct trajectory, indicating that
 20 that bullet hole went through that bedroom, and
 21 it openly exited out the front, which is
 22 consistent with where the bullet was recovered
 23 in the driveway.
 24 That he also in the hallway between those
 25 two bedrooms, in proximity to those two

1 this time is willing to stipulate that Dr. Lisa
 2 Gavin, with the Clark County Coroner's office,
 3 performed an autopsy on the victim in this
 4 case, Echo Lucas White, and that she
 5 determined, pursuant to that autopsy, that the
 6 cause of death was a gunshot wound to the
 7 abdomen, and that the manner of death was
 8 homicide, and that he's stipulating to the
 9 identity of the victim for purposes of
 10 preliminary hearing.

11 MR. COFFEE: Correct, as well.

12 THE COURT: Okay.

13 MR. TURNER: And finally, Your Honor, the
 14 final stipulation would be to the following
 15 facts: That Detective Travis Ivie, the last
 16 name I-V-I-E, who's with the homicide detail of
 17 the Las Vegas Metropolitan Police Department,
 18 responded to the crime scene in this case, that
 19 being at 325 Altamira on July 27th of this
 20 year, approximately 1:44 p.m. and he was there
 21 to investigate the homicide of Echo White and
 22 the shooting of Joe Averman.

23 And that while there, he observed the
 24 following items of evidence at that crime
 25 scene. In the driveway of that residence, Your

1 bedrooms, he located a third spent shell
 2 casing, also 9-millimeter Win Luger consistent
 3 with the other two shell casings that he
 4 recovered.

5 Later that same day, Your Honor,
 6 July 27th, approximately 8:00 p.m., Detective
 7 Ivie, with another detective and a crime scene
 8 analyst, responded to Yavapai, the spelling is
 9 Y-A-V-A-P-A-I, County Sheriff's office in
 10 Prescott, Arizona. There he came into contact
 11 with the defendant, Troy White.

12 He was also present during the execution
 13 of the search warrant of Mr. White's vehicle, a
 14 silver Durango, license plate NV USN3PYZ. That
 15 there was a bullet strike to the bottom
 16 driver's side door of that vehicle.

17 That additionally, in the trunk of that
 18 vehicle, that was ultimately impounded, was a
 19 black Torres 9-millimeter with a serial number
 20 of TOA33791. That firearm was unloaded.

21 However, next to the firearm were two
 22 magazines for a 9-millimeter handgun. In those
 23 magazines, one magazine contained 12 cartridge
 24 cases for a Win 9-millimeter Luger. The second
 25 cartridge case had nine Win 9-millimeter Luger

1 shell casings in it.
 2 And I believe that concludes the
 3 stipulation.
 4 MR. COFFEE: We agree.
 5 THE COURT: So that is all stipulated to?
 6 MR. COFFEE: Yes.
 7 THE COURT: And all that testimony is in
 8 and stipulated to.
 9 MR. TURNER: And I believe with that, Your
 10 Honor, the State would rest.
 11 MR. COFFEE: Judge, I've advised Mr. White
 12 of his right to testify, and he's not going to
 13 avail himself of that today.
 14 I would ask that the list of names of
 15 those people that may be potential witnesses in
 16 the penalty phase that was taken earlier, and I
 17 thank everybody for providing those names, I'd
 18 ask that that be made part of the record.
 19 THE COURT: What I am going to do now
 20 because I want to make sure I have these names
 21 correct, I'm going to call these names for the
 22 record, and acknowledge that you signed it,
 23 okay?
 24 Is there, first of all, a Betty Blake, the
 25 grandmother of the victim. Did you sign your

1 that correct?
 2 MS. NANCY MANNING: Here.
 3 THE COURT: And a Theresa -- is that
 4 Sheahan?
 5 MS. THERESA SHEAHAN: Yes.
 6 THE COURT: A cousin; is that correct?
 7 MS. THERESA SHEAHAN: Correct.
 8 THE COURT: And an Ashley and --
 9 MS. ASHLEY OWSLEY: Owsley.
 10 THE COURT: Owsley. Is that O-U --
 11 MS. ASHLEY OWSLEY: O-W-S-L-E-Y.
 12 THE COURT: O-W-S-L-E-Y. That's why it's
 13 important we get the spelling for the record.
 14 That's all.
 15 And then there is a Jennifer Gaines, a
 16 sister?
 17 MS. JENNIFER GAINES: Yes.
 18 THE COURT: And then there's a Joanna --
 19 is that Rens?
 20 MS. JOANNA RENS: Yes.
 21 THE COURT: R-E-N-S?
 22 MS. JOANNA RENS: Yes.
 23 THE COURT: And you're listed as a friend;
 24 is that correct?
 25 MS. JOANNA RENS: Correct.

1 name to that?
 2 MS. BETTY BLAKE: Yes.
 3 THE COURT: Okay. There is an Amber -- is
 4 that Gaines?
 5 MS. AMBER GAINES: Yes.
 6 THE COURT: And listed as the mother of
 7 the victim; is that correct?
 8 MS. AMBER GAINES: Yes.
 9 THE COURT: Then there's a Michael Gaines,
 10 a stepfather. Is that you?
 11 MR. MICHAEL GAINES: Yes, sir.
 12 THE COURT: And then there's a Brad Blake.
 13 I can't read the first name.
 14 MR. BRAD BLAKE: Uncle.
 15 THE COURT: Is that uncle? Uncle Brad
 16 Blake.
 17 And then there's a Florence H. Potter, a
 18 friend?
 19 MS. FLORENCE M. POTTER: M. Potter.
 20 THE COURT: And what?
 21 MS. FLORENCE M. POTTER: M, as in Mary.
 22 Florence M. Potter.
 23 THE COURT: Oh, Florence M. Potter. I'm
 24 sorry.
 25 And then a Nancy Manning, a cousin; is

1 THE COURT: And then there's a Misty Todd,
 2 a friend?
 3 MS. MISTY TODD: Yes.
 4 THE COURT: A Jacqueline Trujillo, a
 5 friend; is that correct?
 6 MS. JACQUELINE TRUJILLO: Yes.
 7 THE COURT: Diego Diego Trujillo?
 8 MR. DIEGO TRUJILLO: Diego.
 9 THE COURT: I have as a friend.
 10 MR. DIEGO TRUJILLO: Yes.
 11 THE COURT: Raquel Brooks as a friend.
 12 MS. RAQUEL BROOKS: Yes.
 13 THE COURT: You have best friend.
 14 MS. RAQUEL BROOKS: Yes.
 15 THE COURT: I didn't want to get anything
 16 going.
 17 All right. Then Jennifer, and what is
 18 that -- who is Jennifer? I have Jennifer
 19 A-R-T-U-R-O; is that right?
 20 A FEMALE VOICE: She stepped out, Your
 21 Honor.
 22 THE COURT: Is that correct? Is that her
 23 name?
 24 And then Crystal Becker. Okay.
 25 And then it looks like -- is that

1 Romandia?
 2 MS. SHEENA ROMANDIA: Correct.
 3 THE COURT: What's your first name?
 4 MS. SHEENA ROMANDIA: Sheena.
 5 THE COURT: Sheena, S-H-E-E-N-A. Okay.
 6 And that's spelled R-O-M-A-N-D-I-A?
 7 MS. SHEENA ROMANDIA: Yes.
 8 THE COURT: As a friend.
 9 Nichole Robertson listed as a family
 10 friend; is that correct?
 11 And Bruce -- is that Behl?
 12 MR. BRYCE BEHL: Bryce.
 13 THE COURT: What is it?
 14 MR. BRYCE BEHL: Bryce.
 15 THE COURT: I have Bruce B-E-H-L.
 16 MR. BRYCE BEHL: B-R-Y-C-E.
 17 THE COURT: B what?
 18 MS. MERCER: B-R-Y-C-E.
 19 THE COURT: Oh, B-R -- all right, Bryce.
 20 I'm sorry. And your last name is?
 21 MR. BRYCE BEHL: Behl.
 22 THE COURT: B-E-H-L?
 23 MR. BRYCE BEHL: Yes.
 24 THE COURT: Listed as a friend.
 25 Okay. Did you get all that now? Leave

1 THE COURT: You're a friend of?
 2 MS. NICOLE ANTILL: Echo.
 3 THE COURT: Okay. And then we have Gina
 4 Antill, also a friend of Echo.
 5 Then we have Sara Spencer, I presume also
 6 a friend of Echo.
 7 And then we have Patricia Lucas; is that
 8 right? And you're a friend of Echo. And
 9 Nicole, again, R-O-M-A-N-D-I-A, and you're a
 10 friend of Echo?
 11 MS. NICOLE ROMANDIA: Yes.
 12 THE COURT: Okay. Now, the Court is going
 13 to take both of these lists and make them as
 14 exhibits for the State, if you have no
 15 objection.
 16 MR. TURNER: No, Your Honor.
 17 MS. MERCER: No, Your Honor.
 18 THE COURT: And I'm going to ask that they
 19 be entered into evidence for the people who are
 20 here today, who may be called at future
 21 hearings, put it that way.
 22 MR. COFFEE: I appreciate it.
 23 THE COURT: Okay. And I've done that at
 24 the request of the defense attorney.
 25 Are you satisfied or do you want anything

1 the list. And these are the names, and you get
 2 them for the record.
 3 MS. MERCER: Your Honor, I believe that
 4 side of the room did not get the paper to sign,
 5 unfortunately.
 6 THE COURT: Okay. Then we'll get those
 7 papers signed, and I want you to -- and when
 8 you're done signing that, then I will have
 9 those for the record.
 10 MR. COFFEE: Thank you, Judge.
 11 THE COURT: Okay. Now, when I say the
 12 relatives and the friends and the names I just
 13 called, they were all relatives and friends of
 14 the victim in this case, of Echo Lucas White;
 15 is that correct?
 16 A FEMALE VOICE: Correct.
 17 THE COURT: Okay.
 18 Let's wait until they get signed and then
 19 we'll proceed on.
 20 Okay. I'm going to call these names now
 21 and acknowledge that you signed it.
 22 I have a Nicole -- is that Antill,
 23 A-N-T-I-L-L? And I presume you're a friend of
 24 the defendant; is that correct or not?
 25 MS. NICOLE ANTILL: No.

1 else?
 2 MR. COFFEE: No. And I thank everybody
 3 for their cooperation.
 4 (State's Proposed Exhibit No. 2
 5 was marked for identification
 6 and admitted into evidence.)
 7 THE COURT: Okay. All right. Now, you
 8 may proceed.
 9 I think the State rests now.
 10 MR. COFFEE: Defense rests.
 11 THE COURT: Okay. So any argument?
 12 MS. MERCER: We'll waive and reserve, Your
 13 Honor.
 14 THE COURT: Okay.
 15 MR. COFFEE: A couple things, and the
 16 amended is fairly long, so it's going to take a
 17 few more minutes to go through them and try to
 18 do it a piece at a time.
 19 THE COURT: Go ahead. Take your time. If
 20 you want time to read it, go ahead.
 21 MR. COFFEE: No, I've familiarized myself
 22 with it.
 23 And the first thing I'm going to question
 24 about, Judge, is Count I, the Burglary in
 25 Possession of a Firearm. It is clear that the

1 home is in Mr. White's name. He has a key to
2 the home that he resides there on the weekends
3 with the children. So there's a couple legal
4 questions I think.

5 First off, can you burglarize your own
6 house? Second off, did they show an intent to
7 commit one of the underlying things that they
8 have alleged here? They alleged assault,
9 battery, those were the things upon entry.

10 I know he comes into the house with a gun.
11 That's the testimony you have before you
12 anyway. Is that enough to show an intent to
13 commit assault or battery because what we have
14 is testimony that his demeanor when entering
15 the house was nothing out of the usual. They
16 go into a room and things escalate. That's not
17 burglary necessarily.

18 I think for those two reasons the burglary
19 count as alleged in Count I should bail, I
20 think. Rather than try to confuse things,
21 maybe we should deal with it at the end of the
22 time because --

23 THE COURT: I agree.

24 MR. COFFEE: -- this might get long.

25 THE COURT: I agree.

1 MS. MERCER: Your Honor, I'm not aware of
2 any case law that says you can't burglarize
3 your own home. The issue is the intent when
4 you enter the residence.

5 And in this case, you heard testimony that
6 in the weeks leading up to the murder and
7 attempted murder, the defendant was threatening
8 Joseph Averman, that he was constantly calling,
9 texting, harassing Echo.

10 That when he showed up at the house, the
11 testimony wasn't that he was calm, cool, and
12 collected. The testimony was that he was
13 agitated, that he was upset that she wasn't
14 returning his phone calls.

15 That when she awoke from her nap in the
16 minutes leading up to her death, she had
17 several missed telephone calls and text
18 messages. That he had showed up at the house
19 at two a.m. the night before, upset with her,
20 banging on the bedroom window.

21 Certainly you can draw the inference that
22 when he arrived at the residence with a firearm
23 concealed on his person and an empty backpack
24 that was found in the driveway with a -- or not
25 an empty backpack, a backpack with an empty gun

1 holster, he entered that residence with the
2 intent to shoot somebody. That's an assault or
3 battery and/or kill.

4 And I think that's it with regard to the
5 burglary count, Your Honor.

6 MR. COFFEE: I don't know if you need more
7 argument or not.

8 THE COURT: What?

9 MR. COFFEE: I don't know if you need any
10 more input from our side or not.

11 THE COURT: I know that the house is in
12 joint tenancy, and that they both are the
13 owners of it, but who -- at the time, who had
14 the primary possession of the house?

15 MR. COFFEE: Well, it is a switch thing.
16 He showed up earlier on switch days, so I
17 suppose the argument is that it is, you know,
18 burglary for showing up early that day. But
19 he's got a key. Nobody tells him not to be
20 there. So we've got that issue.

21 Additionally, while I would like to say
22 there was agitation beforehand, he might have
23 been agitated the night before. When he comes
24 in, what we heard from the gentleman who was
25 there, Mr. Averman, is when he walked in he

1 didn't think there was anything particularly
2 unusual about his demeanor.

3 "I stayed by the door because of past
4 incidences, but there was nothing that told me
5 there was doing to be a fight. I knew enough
6 to call 9-1-1. I didn't do it, wasn't that
7 concerned about it."

8 It escalated, started slow and it
9 escalated. That's not burglary, and I think
10 for those two reasons, the burglary can't
11 stand.

12 MR. TURNER: Well, Judge, home invasion, I
13 think counsel is mixing up his felonies here.
14 Home invasion, you can't do a home invasion to
15 your own home. With a burglary, certainly you
16 can.

17 If you go into your residence with the
18 intent to commit a crime, murder, whatever it
19 may be, you are guilty of burglary. It being
20 your own home is not a defense.

21 MR. COFFEE: With all due respect, I'm not
22 mixing up anything. If that is the case, if it
23 is burglary any time you commit a felony in
24 your own home, then the statute is void for
25 vagueness, and I can give you a very simple