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Counsel for Respondent

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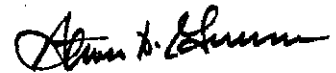
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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
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THE STATE OF NEVADA

Plaintiff

vs.

TROY RICHARD WHITE

Defendant
.....

CASE NO. C-286357

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

JURY TRIAL - DAY 7

THURSDAY, APRIL 16, 2015

APPEARANCES:

FOR THE STATE:

ELIZABETH MERCER
JEFFREY S. ROGAN
Deputy District Attorneys

FOR THE DEFENDANTS:

SCOTT L. COFFEE
DAVID LOPEZ-NEGRETE
Deputy Public Defenders

COURT RECORDER:

DEBRA WINN
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, APRIL 16, 2015, 9:30 A.M.
2 (Court was called to order)
3 (Jury is not present)
4 THE COURT: I apologize for having my assistant send
5 out the jury instructions that were incomplete. I had missed
6 one of the instructions I'd specifically taken from a footnote
7 in a case that Mr. Coffee had cited, and I'd left it out when
8 he sent them out. Then I realized it and I added it back in.
9 MR. COFFEE: Well, I haven't seen what you'd sent
10 out.
11 THE COURT: Hold on a second. So did you get the
12 verdict form?
13 MR. ROGAN: Yes.
14 MR. COFFEE: I didn't get anything. Can I approach?
15 THE COURT: It's the last three pages of the pack
16 you got.
17 MR. COFFEE: I didn't get the pack.
18 THE COURT: You didn't get the packet?
19 MR. COFFEE: My fault. I didn't check my email.
20 I've been working on --
21 THE COURT: Okay. Hold on. We can't even talk,
22 then.
23 Dan, can you go print one for Mr. Coffee.
24 THE COURT: All right. So where's my marshal?
25 MS. MERCER: Oh. There was a third version?

1 MR. ROGAN: No. It's okay.
2 I'm sorry. We didn't get the third version. We got
3 the second version.
4 THE COURT: So, Dan, make a couple copies. And then
5 this was -- good thing we did this part.
6 Then let's switch gears. Where's my marshal?
7 Can you go ask him to bring me Juror Number 6,
8 Ricky.
9 MR. COFFEE: You'd warned us you were sending these
10 out, too, Judge. I was busy printing proposed and other
11 things.
12 THE COURT: It's okay. I was having some issues
13 with some of the language and I was reading cases, and I just
14 didn't type as well as I thought I did. And then I started my
15 civil calendar, which appeared to be much worse because we
16 couldn't agree on who was going when and how long they were
17 going to take. And that was almost a half-hour discussion for
18 next week.
19 MR. COFFEE: I did print hard copies with case cites
20 and language so we could avoid -- I know the Court's reviewed
21 what we did. I just wanted to avoid lengthy argument on
22 anything if there's any disagreements.
23 THE COURT: Well, here's even a better choice. I
24 marked -- I have here a packet that include all of the email
25 correspondence between us through -- starting Tuesday at 6:06

1 and concluding with the April 15th 5:57. I'm going to ask the
2 clerk to mark each of these individually as Court's exhibits.
3 So each stapled version in the order they're stacked is a
4 separate Court's exhibit.

5 THE CLERK: Okay, Your Honor.

6 THE COURT: Then I want you to come up and make sure
7 that I didn't miss any. Mr. Rogan's for some reason went to
8 my spam folder.

9 Yours, on the other hand, did not go to my spam
10 folder.

11 MR. COFFEE: I'm not going to comment.

12 THE COURT: So I don't know.

13 Can I have my one juror. Is he here? Outside the
14 door? Okay. Hold on a second.

15 So Dulce is marking those as the Court's exhibits
16 next in order. How far are you up, Dulce?

17 THE CLERK: [Inaudible].

18 MR. COFFEE: Judge --

19 THE COURT: Hold on. Hold on.

20 THE CLERK: State's Exhibit 17 through 27.

21 THE COURT: So in a little bit I'm going to have you
22 -- before we formally settle the instructions I'm going to
23 have you look at those to make sure that I completely and
24 accurately -- my assistant completely and accurately printed
25 all of the versions that you had been exchanging with us so

1 that we have a complete record of all of the versions and the
2 comments that were made by both sides. Because most of the
3 arguments I would typically have during the settling of jury
4 instructions you appropriately made by email yesterday, and I
5 considered them, evaluated them, and this morning I read --
6 yesterday and this morning both I read cases that you had
7 cited so that I could make sure that the set that I prepared
8 and which I distributed to you this morning and which you have
9 now been provided, which in my computer is called Court's 3,
10 is the version that I think most appropriately represents the
11 instructions to be given to the jurors.

12 Yes.

13 MR. COFFEE: Before we bring the juror back we
14 should probably waive Mr. White's presence for the settling of
15 instructions and for --

16 THE COURT: Is it okay?

17 Just leave him there for a minute.

18 Is that okay, if we waive his presence for this?

19 MR. ROGAN: Yes, ma'am.

20 MS. MERCER: Yes, Your Honor.

21 THE COURT: All right. Bring me the juror.

22 (Juror Number 6 entered courtroom)

23 THE COURT: Good morning, sir. How are you doing?

24 JUROR NUMBER 6: Good. How are you?

25 THE COURT: I am well. Can you come to the front

1 row so the mike can pick you up even though that's not your
2 usual assigned seat.

3 JUROR NUMBER 6: Sure.

4 THE COURT: Somebody noticed you using I don't know
5 if it was an iPad or a phone to text during I don't know if it
6 was a break or sometime when we didn't have things happening.
7 Can you tell me a little bit about what you were doing with
8 the texting and the emails.

9 JUROR NUMBER 6: I was just turning it off onto
10 airplane mode most of the time.

11 THE COURT: Okay.

12 JUROR NUMBER 6: And then there were like alerts
13 coming, and I was just clearing those out.

14 THE COURT: Okay. So you haven't been doing
15 anything related to this case during the proceedings?

16 JUROR NUMBER 6: No.

17 THE COURT: Any questions you'd like to ask him?

18 MR. ROGAN: No.

19 THE COURT: Any questions you'd like to ask him?

20 MR. COFFEE: No.

21 THE COURT: Thank you, sir. We appreciate that.

22 Now, Kevin, this is what I want you to do. I want
23 you to go tell the jurors that my case for next week still has
24 something I have to handle this morning, because I'm not done
25 with Sands-Jacobs. So if you could let the jurors go on a

1 break for about an hour, because that's how long it's going to
2 take me to finish with Sands-Jacobs, given how long they've
3 already spent here this morning.

4 THE MARSHAL: 10:45?

5 THE COURT: Yeah, that's my best guess. Tell them
6 thank you and I'm really, really sorry.

7 (Juror Number 6 exited courtroom)

8 THE COURT: Okay. Now, I've handed you -- or my
9 assistant has handed you what has been marked as what was my
10 Court's 3 and the verdict form. I am going to have those
11 marked by the clerk as the next in order Court's exhibits.
12 The verdict form will be Court's --

13 THE CLERK: 28.

14 THE COURT: And the instructions will be?

15 THE CLERK: 29.

16 THE COURT: The instructions are unnumbered and are
17 in the identical condition with what you've been provided. If
18 you will look at the last three pages of the pack my assistant
19 has given you, that should be Court's Exhibit 28, which starts
20 as "Verdict," and is then three pages long.

21 MR. COFFEE: Yes.

22 THE COURT: Does anyone disagree with the form of
23 verdict other than the portion at Count 2 where there is not
24 an attempt voluntary manslaughter portion?

25 MR. COFFEE: No.

1 THE COURT: Okay. Now, can you tell me about the
2 attempt voluntary manslaughter portion, Mr. Coffee.

3 MR. COFFEE: Yes. We had tendered some instructions
4 concerning attempt voluntary manslaughter. They are part of
5 the Court's record at this point, I expect. Here's the
6 problem. I'll try to make it as simple as I can, my
7 understanding of the problem anyways. There's a case called
8 Curry in Nevada that says that attempt voluntary manslaughter
9 is not a crime in Nevada. That follows a case called Williams
10 -- or Allen, I'm sorry. Case called Allen that said it was
11 error for the District Court to refuse to give an instruction
12 on attempt voluntary manslaughter.

13 The problem with both these cases, they're decided
14 pre Byford. And Byford is a watershed case in Nevada homicide
15 jurisprudence. It represented a change in the law pursuant to
16 Ika. And we've got that laid out someplace else in our
17 instructions.

18 The problem is when you look at Curry, Curry
19 essentially doesn't consider the word "deliberate." Express
20 malice requires the deliberate intention to take away human
21 life. And Curry gives absolutely no meaning to that
22 "deliberate" word. It pretty essentially says if you have the
23 intent to kill, the specific intent to kill, it's attempt
24 murder. Of course, the problem with that is manslaughter may
25 include the attempt to kill. So we end up in this Hobsian

1 situation, for lack of a better description, where if I fire a
2 shot and hit somebody and they die it is attempt murder and I
3 have the state of mind for attempt murder. Let's make that
4 assumption to start with, I fire a shot and I hit somebody and
5 they -- I'm sorry, I fire at somebody, hit somebody that died,
6 it is voluntary manslaughter, all right. The exact same state
7 of mind and they don't die it is attempt murder under Curry.
8 Of course, the problem with that is there's a lesser penalty
9 for voluntary manslaughter than there is for attempt murder.
10 It's a one to ten, as opposed to two to twenty. So you've got
11 a public policy problem in addition to everything else we've
12 talked about that it is advantageous for me if the victim dies
13 if I have the intent to kill, but it would otherwise be
14 manslaughter. It doesn't make a lot of sense. Curry
15 recognized it was a minority position, one of only a few
16 states that had adopted it. There were some cases afterwards.
17 I think the case is Gonzalez -- it's cited again in our papers
18 -- from Kansas that looked at Curry and said Curry doesn't
19 make a lot of sense. And I think the reason Curry doesn't --

20 THE COURT: Well, regardless of whether the Nevada
21 Supreme Court makes any sense, regardless --

22 MR. COFFEE: I understand.

23 THE COURT: -- they are the controlling authority in
24 Nevada.

25 MR. COFFEE: I understand. My position is that

1 Curry is one of those cases that got swept away with the
2 Byford decision and the change of law, and after the change of
3 law in Byford we should be entitled to attempt voluntary
4 manslaughter. Because if I have the appropriate state of mind
5 and meet all the other conditions and the only failing in my
6 case is that the person doesn't die, then I should not be
7 charged with a higher crime because they did not die, if that
8 makes sense. So that's the reason for it.

9 THE COURT: I understand your position, but I feel
10 constrained by the decision the Nevada Supreme Court has made,
11 so I'm not going to provide on the verdict form the attempt
12 voluntary manslaughter.

13 MR. COFFEE: Understood.

14 THE COURT: Would you like a few minutes to go
15 through the packet of instructions that have been marked as
16 Court's Exhibit 29 before we formally settle them?

17 MS. MERCER: Your Honor, we've had a chance to go
18 through them.

19 THE COURT: Mr. Coffee.

20 MR. COFFEE: I can go through as we go. I do -- how
21 familiar -- I do have one question for the Court given the
22 ruling on attempt voluntary manslaughter.

23 THE COURT: How familiar am I?

24 MR. COFFEE: Yeah.

25 THE COURT: I wrote them.

1 MR. COFFEE: I understand. I understand. But I
2 will tell you I've got a lot of information in my head, and
3 it's hard for me to keep track of things.

4 THE COURT: It's okay.

5 MR. COFFEE: Because we were not given the
6 instruction concerning Curry, is there an instruction in the
7 packet -- the only thing that I'm left curious about -- as to
8 what happens if it would otherwise be an attempt murder but it
9 meets the conditions of heat of passion? Because the way I
10 read -- the way I read Curry --

11 THE COURT: Hold on. Let me go to that portion.

12 MR. COFFEE: -- and the way I read Keys is that
13 means a not guilty verdict. And that's one of the problems I
14 think, of course, with no attempt voluntary manslaughter, is
15 you put a jury in a position of shots are fired, somebody's
16 hit with shots, but they are constrained for a not guilty
17 verdict if it happened in qualifying heat of passion, which
18 seems to be a kind of ridiculous position to put a jury in,
19 too.

20 THE COURT: There is not an instruction related to
21 that on the attempt murder section. There are two attempt
22 murder instructions that appears immediately before the
23 instruction on the deadly weapon enhancement.

24 MR. COFFEE: I had tendered one in our -- in
25 later --

1 THE COURT: I know you had.

2 MR. COFFEE: -- in the other packet, and I would ask
3 that they be instructed on that point of law.

4 MR. ROGAN: Your Honor, I think it's -- in response,
5 it's already subsumed in the instruction on attempt murder
6 that you have to have the specific intent to kill. The State
7 concedes that an attempt killing in the heat of passion
8 doesn't have the intent to kill element present so the verdict
9 is not guilty.

10 THE COURT: So you like the portion that says
11 "Implied malice is not an element of attempt murder and is not
12 to be considered by you in regards to this charge"?

13 MR. ROGAN: Right.

14 THE COURT: Because it has to be express malice.

15 MR. ROGAN: Correct.

16 THE COURT: Which is the deliberate intention.

17 MR. COFFEE: And, Judge, pursuant to Crawford v.
18 State we're entitled to negatively phrased position
19 instructions that point out exactly the point that we are
20 asking for. The reason we're entitled to those is that jurors
21 are not expected to be as conversant in the law as we are and
22 it's supposed to be a plain understanding. With that in mind
23 we would ask for a plain instruction that says, if it would
24 otherwise be heat of passion -- or I think the Court
25 understands the principle I'm asking for, and I think we'd

1 suggested one, if it would otherwise be heat of passion then
2 you must find the defendant not guilty on the attempt murder,
3 the attempt murder charge.

4 THE COURT: Mr. Rogan, I don't have that in my pack.

5 MR. ROGAN: No. I don't think it was submitted. I
6 think a negative instruction would simply say that, if you
7 find that the State has not proven express malice, namely,
8 deliberate intention unlawfully to kill, then you must find
9 the defendant not guilty. And then he can refer back to the
10 heat of passion instruction and the voluntary manslaughter to
11 indicate that an action that's done, that's rash, that's
12 impulsive is not intentional and there's no express malice in
13 that regard.

14 THE COURT: Dictate again, please, Mr. Rogan. If
15 you find that the defendant did not --

16 MR. ROGAN: If you find that the State did not prove
17 that the defendant acted with express malice, namely, the
18 deliberate intention unlawfully to kill, then you cannot find
19 the defendant committed the crime of attempt murder.

20 THE COURT: Mr. Coffee, are you okay with that?

21 MR. COFFEE: No.

22 THE COURT: Okay. Tell me what you want.

23 MR. COFFEE: And we did submit -- attempt -- Court's
24 indulgence for just a second, because I'm removing some
25 language. Court's indulgence.

1 THE COURT: It's okay, Mr. Coffee. Please take your
2 time.

3 MR. COFFEE: All right. Heat of passion, unlawful
4 provocation may be considered in determining whether or not
5 the State has proven the charge of attempted murder. If the
6 State has failed to prove that either -- and it's those two
7 possibilities -- that either the defendant was not acting in
8 heat of passion or, two, that the provocation was not legally
9 adequate, then the defendant is entitled to a verdict of not
10 guilty on the charge of attempt murder.

11 THE COURT: I'm waiting for Mr. Rogan to finish
12 thinking.

13 MR. ROGAN: Court's indulgence.

14 THE COURT: He's going to look over your shoulder.

15 MR. COFFEE: Sure.

16 (Pause in the proceedings)

17 MR. ROGAN: Your Honor, I think we've come to a
18 compromise here.

19 THE COURT: All right. And you've got to go slow,
20 because I'm typing.

21 MR. ROGAN: Okay.

22 THE COURT: It starts, "You are instructed that if
23 you find the State has not established that the defendant --"
24 MR. ROGAN: I think we're changing the entire --
25 MR. COFFEE: Actually we're going to [inaudible] to

1 be consistent with the other instruction, I'm sorry.

2 THE COURT: Okay.

3 MR. ROGAN: "If you are satisfied beyond a
4 reasonable doubt that there was an unlawful attempt to kill,
5 but --"

6 THE COURT: "...satisfied beyond a reasonable
7 doubt --"

8 MR. ROGAN: "...that there was an unlawful attempt
9 to kill, but you have a reasonable doubt whether the crime of
10 attempt murder was done in the heat of passion -- or sudden
11 heat of passion," rather --

12 THE COURT: You're using the word "sudden heat of
13 passion"?

14 MR. ROGAN: Yeah, "...sudden heat of passion caused
15 by a provocation apparently sufficient to make the passion
16 irresistible, you must give the defendant the benefit of the
17 doubt and return a verdict of not guilty."

18 And then I think it should also -- Court's
19 indulgence again.

20 (Pause in the proceedings)

21 MR. ROGAN: Okay. And then a new paragraph.

22 THE COURT: Okay.

23 MR. ROGAN: "There must -- for you to find that the
24 defendant -- for you to find that the defendant acted in the
25 heat of passion there must be a serious and highly provoking

1 injury inflicted upon the defendant sufficient to excite an
2 irresistible passion in a reasonable person."

3 THE COURT: Okay. Go again. "...sufficient to
4 excite..."

5 MR. ROGAN: "...sufficient to excite an irresistible
6 passion in a reasonable person."

7 And then a new paragraph. "Heat of passion and
8 lawful provocation may be considered in determining whether
9 the State has proven intent -- deliberate intent in regards to
10 the charge of attempt murder."

11 THE COURT: Mr. Coffee?

12 MR. COFFEE: That's fine.

13 THE COURT: Okay. Let me read it back to you after
14 I clean up a couple of things here.

15 Okay. This is what I have, and I may not have
16 gotten it all, because I am not good at dictation. "If you
17 are satisfied beyond a reasonable doubt that there was an
18 unlawful attempt to kill but you have a reasonable doubt
19 whether the crime of attempt murder was done in the sudden
20 heat of passion caused by a provocation apparently sufficient
21 to make the provocation irresistible, you must give the
22 defendant the benefit of that doubt and return a verdict of
23 not guilty of attempt murder.

24 "For you to find the defendant acted in the heat of
25 passion there must be a serious and highly provoking injury

1 inflicted upon the defendant sufficient to excite an
2 irresistible passion in a reasonable person.

3 "Heat of passion and lawful provocation may be
4 considered in determining whether the State has proven
5 deliberate intention in regards to the charge of attempt
6 murder."

7 Did I get it pretty close?

8 MS. MERCER: Yes, Your Honor.

9 MR. COFFEE: Sounds right.

10 THE COURT: All right. So we've resolved that
11 issue.

12 MR. COFFEE: Yes.

13 THE COURT: Next? And I have added that at the end
14 of the last two attempt murder instructions.

15 MR. COFFEE: Okay.

16 THE COURT: I will give you a new pack as soon as we
17 get through this process, and it will be numbered.

18 MR. COFFEE: And, Judge, as far as specials, I saw
19 the Court had incorporated the language I think that the State
20 had agreed to concerning heat of passion can include attempt
21 to kill, so we withdraw our objections in that regard that
22 satisfies what we were asking for.

23 THE COURT: Okay.

24 MR. COFFEE: And I assume that was included in the
25 pack.

1 Did the Court include an instruction concerning the
2 duration of provocation?

3 THE COURT: I did not.

4 MR. COFFEE: And we've offered that just very
5 briefly in our packet. What we had offered was, "While the
6 state of mind consisting -- constituting heat of passion must
7 be the result of a sudden impulse, the provocation leading to
8 the sudden heat of passion --" it should say "can occur,"
9 "-- can occur over either a long or short period of time and
10 may be the result of an ongoing series of events." We would
11 offer that.

12 We would also offer splitting this in two with an
13 instruction that just says, "...may occur over a long or short
14 period of time," or an instruction that says, "...may be the
15 result of an ongoing series of events." There are no Nevada
16 cases that I can compel the Court to give me this instruction.
17 Would have given some cases from outside the jurisdiction. It
18 seems to be consistent with the rationale of Boikins
19 [phonetic], as we've pointed out. I know that's a self
20 defense case. But, again, that's a situation where you've got
21 provocation for self defense arguably and it takes place over
22 a long period of time. You've got Roberts that, while he
23 finds out his wife's having an affair, they also talk about a
24 dinner that he's been stood up for and some other things that
25 take place over a long period of time. That's the reason we

1 ask for the instructions.

2 Pursuant to 175 -- there's a statute that allows us
3 to request instructions, and if they're pertinent it says they
4 should be given.

5 THE COURT: Uh-huh.

6 MR. COFFEE: That's we pressed it. We think that
7 it's pertinent because it's going to lead up to the events
8 here.

9 THE COURT: Okay. Anything else that you want to
10 say on that issue?

11 MR. COFFEE: No.

12 MS. MERCER: Your Honor, we'll submit it on our
13 written opposition.

14 THE COURT: Okay. I had previously decided not to
15 give that given my review of the cases which indicated at
16 least in Nevada there was no basis for the instruction.

17 Okay. Next?

18 MR. COFFEE: Understood. There was one line of the
19 malice instruction that we had objected to. I don't know if
20 that was removed or not.

21 THE COURT: Did not remove it.

22 MR. COFFEE: And we'll just submit on what we had
23 submitted as to why it should be removed.

24 THE COURT: Okay. Any others that you think we need
25 to consider, remembering I already went through your entire

1 package?

2 MR. COFFEE: Understood. The last thing is just the
3 Clay objection to the child abuse.

4 THE COURT: And I read Clay again yesterday while I
5 was sitting at the airport, and I understand your position,
6 but I think the modification that is made to the instruction
7 covers the issues addressed in the Clay case.

8 MR. COFFEE: Understood. And the only thing we
9 would note is without alleging some kind of actual injury I
10 don't know how it could be a felony as opposed to a gross.
11 But --

12 THE COURT: Well, but they've alleged the mental
13 injury, which has related in an attempt suicide, has related
14 in psychological treatment, and additional other kinds of
15 injuries which are included in that child abuse definition.

16 MR. COFFEE: I understand. But we don't give a
17 definition of mental injury with the tendered instruction that
18 they had -- they had removed the definition of "injury" from
19 the tendered instruction yesterday.

20 MR. ROGAN: Right. Because it's the -- the statute
21 requires mental suffering.

22 THE COURT: Right.

23 MR. ROGAN: Mental injury only relates to a
24 particular form of child abuse caused by nonaccidental injury,
25 and so those definitions relate only to that particular form

1 of abuse which we're not alleging. That's why we removed
2 them.

3 THE COURT: "To suffer unjustifiable physical pain
4 or mental suffering" is what the instruction reads. And the
5 mental suffering I think we've had testimony on.

6 MR. COFFEE: We haven't had testimony of mental
7 suffering. There's no specific definition. I think it's
8 limited by statute. But we'll submit on the objection, Judge.
9 I don't want to go far afield.

10 THE COURT: Okay. Anything else before I give you a
11 numbered set?

12 MS. MERCER: No, Your Honor.

13 THE COURT: All right. Mr. Kutinac, if you would
14 please print Court's 4.

15 While we're printing Court's 4 is there anything
16 else outside the presence before I go to Sands-China's motions
17 in limine that I still have to hear this morning?

18 MS. MERCER: No, Your Honor. Not from the State.

19 THE COURT: I'm going to number them probably as
20 they argue. You're going to get a numbered version. Then you
21 can identify specifically, Mr. Coffee, those particular
22 instructions that you object to for the record. You don't
23 have to give any additional reasons, because I think we're
24 covered under the Court's exhibits and the discussion we've
25 had. But I think it's critical that you identify the specific

1 instructions after reviewing the numbered set.

2 And if there are any that the State objects to, you
3 can do the same thing.

4 MS. MERCER: Thank you, Your Honor.

5 THE COURT: All right. And I also note that the
6 verdict form has been objected to because I did not include
7 the attempt voluntary manslaughter and the attempt voluntary
8 manslaughter with use.

9 MR. COFFEE: Thank you.

10 THE COURT: And I overruled those objections.

11 (Court recessed at 9:58 a.m., until 10:44 a.m.)

12 THE COURT: This is the formal settlement of jury
13 instructions. While I was handling Sands-Jacobs did my
14 assistant provide you with a copy of the jury -- Court's
15 proposed jury instructions numbered 1 through 38?

16 MR. COFFEE: He did.

17 MS. MERCER: Yes, Your Honor.

18 MR. ROGAN: Yes, Your Honor.

19 THE COURT: Have the parties had an opportunity to
20 review the proposed instructions numbered 1 through 38?

21 MS. MERCER: Yes, Your Honor.

22 MR. COFFEE: We have.

23 THE COURT: Were there any typos or other things
24 that you saw in that review?

25 MR. COFFEE: There are two typos that we're aware

1 of, Judge.

2 THE COURT: And where are they?

3 MR. COFFEE: Page 4 says an "indictment." That
4 should read an "information."

5 THE COURT: That isn't my fault. That's the State.
6 But, yes, that would be correct, that we need to change that.
7 See why I wouldn't let Dan run the copies?

8 This is Court's exhibit in order for the record.

9 THE CLERK: Yes, Your Honor. That would be 30.

10 THE COURT: Mine says "an information" on top of
11 Instruction Number 3.

12 MS. MERCER: Oh. That's weird.

13 MR. ROGAN: Instruction Number 4.

14 THE COURT: Oh. Instruction Number 4. You're
15 right. There it is. "...an information." Okay. So we'll
16 have that change made on Instruction 4.

17 MS. MERCER: And then in Instruction Number 13 there
18 was some superfluous language that doesn't apply to the case
19 that we probably should have removed.

20 THE COURT: And what is that?

21 MS. MERCER: After "sufficient to make the passion
22 irresistible," the rest of that should be deleted.

23 THE COURT: After "or involuntary"?

24 MR. ROGAN: Yes.

25 THE COURT: So period --

1 MR. ROGAN: No, no, no. No, no, no.
2 MS. MERCER: Before "involuntary."
3 MR. ROGAN: Before.
4 MR. COFFEE: Involuntary is not part of our case.
5 THE COURT: I know. So where do you want me to put
6 the period?
7 MS. MERCER: After "irresistible."
8 THE COURT: On line 5.
9 MS. MERCER: Yes, Your Honor.
10 THE COURT: So after "irresistible" on line 5 we
11 will strike the remainder of that paragraph. Is that correct?
12 MR. COFFEE: Yes.
13 THE COURT: Okay.
14 MS. MERCER: And that was it, Your Honor.
15 THE COURT: Other than the typos that have been
16 identified on Instruction 4 and 13, are there any
17 modifications of language that appear to need to be made?
18 MS. MERCER: No, Your Honor.
19 THE COURT: Are there any objections by the State to
20 any of the instructions numbered 1 through 38?
21 MS. MERCER: No, Your Honor.
22 THE COURT: Are there any additional instructions to
23 be offered by the State?
24 MS. MERCER: No, Your Honor.
25 THE COURT: Mr. Coffee, have you had a chance to

1 review 1 through 38?

2 MR. COFFEE: I have.

3 THE COURT: Other than the typos we're correcting on
4 4 and 13, do you have an objection to any of the instructions?

5 MR. COFFEE: Yes, Judge.

6 THE COURT: Can you tell me which ones.

7 MR. COFFEE: Sure. Beginning with Instruction 6, we
8 object to the last line for the reasons that were submitted
9 before.

10 THE COURT: And that is part of the written
11 submission that's part of the Court's exhibits that we've
12 already marked.

13 Anything else? Any other numbers?

14 MR. COFFEE: I'm getting there, looking at my notes
15 real quickly. We're good through at least 15.

16 Instruction 18, object to line 6 for the same
17 reasons that we've objected to the last line of the malice
18 instruction.

19 THE COURT: And those are part of written
20 submissions that have already been marked as Court's exhibits,
21 as well as our other discussions.

22 Any additional ones, Mr. Coffee?

23 MR. COFFEE: Yes. 24 and 25 object as a group
24 pursuant to the Clay decision in the confusion that is set
25 forth in -- it's, again, our court submission.

1 THE COURT: And we've already addressed that both on
2 the record earlier today, as well as in the written
3 submissions you provided yesterday. They've been marked as
4 Court's exhibits.

5 MR. COFFEE: Correct.

6 THE COURT: Any additional objections to the
7 instructions from the defendant?

8 MR. COFFEE: I believe that's it, Judge.

9 THE COURT: Does the defendant have any additional
10 instructions to offer at this time?

11 MR. COFFEE: The ones we'd offered before. Do you
12 want me to --

13 THE COURT: Were there any specific ones that are in
14 the packet you've offered before that you want the clerk to
15 specifically number today?

16 MR. COFFEE: Yes.

17 THE COURT: They're already Court's exhibits, but if
18 there's a particular one you want her to specifically number,
19 I need you to tell me which ones.

20 MR. COFFEE: Okay. The instruction concerning
21 duration of -- well, if a record's made -- I just don't
22 know --

23 THE COURT: As you remember to designate Court's
24 exhibits as part of your record, I think your record's made.

25 MR. COFFEE: Perfect.

1 THE COURT: The problem is lots of people forget to
2 designate the Court's exhibits and then they aren't part of
3 your record.

4 MR. COFFEE: Perfect, Your Honor.

5 THE COURT: But that's not my problem, because I
6 don't designate your record.

7 MR. COFFEE: No. But as long as the Court's not
8 considering it a waiver because I'm not tendering them again
9 right now and having them numbered, we're in good shape.

10 THE COURT: No. You tendered them yesterday, I went
11 through them, we had email correspondence, and there were even
12 supplemental discussions that were provided by the State in
13 response to some of your comments later in the day. I
14 provided you my comments and my versions, and I even asked for
15 clarification on a couple, and that's all represented in the
16 emails that have been provided.

17 MR. COFFEE: Perfect.

18 THE COURT: So I think you've made your record. But
19 if there's something else --

20 MR. COFFEE: No.

21 THE COURT: Like I used to have a partner who would
22 have eight versions, and he would just keep going after the
23 judge would say no in offering them. So --

24 MR. COFFEE: No.

25 THE COURT: No. Okay.

1 MR. COFFEE: And we'd offer the alternatives on the
2 duration instruction. They aren't typed alternatives. We
3 would offer breaking off -- striking language on the duration
4 instruction to strike the "short and long" portion of the
5 language and just leave "series of events." Or strike the
6 "series of events" and just leave "short and long" for
7 duration. So we're good.

8 THE COURT: Okay. And we've previously discussed
9 that we don't think the Nevada caselaw supports that
10 particular issue.

11 MR. COFFEE: Understood.

12 THE COURT: Anything else? All right. Then I'm
13 going to have copies made for the jurors of the instructions
14 with the corrected 4 and 13 in there, and we will be in recess
15 until those copies are ready.

16 (Court recessed at 10:52 a.m., until 11:08 a.m.)

17 (Jury is present)

18 THE COURT: Counsel, you can be seated.

19 Good morning, ladies and gentlemen. I apologize for
20 being so late. One of my cases, the one that starts on Monday
21 for the next couple of weeks, had some serious problems this
22 morning which caused me to be delayed. So I hope this
23 additional break you had this morning wasn't too inconvenient.
24 I apologize.

25 Ms. Clerk, could you please call the roll of the

1 jurors.

2 THE CLERK: Yes, Your Honor.

3 (Jury roll called)

4 THE COURT: Counsel stipulate the presence of the
5 jury?

6 MS. MERCER: Yes, Your Honor.

7 MR. COFFEE: Yes, Judge.

8 THE COURT: Ladies and gentlemen of the jury, I'm
9 about to instruct you upon the law as it applies in this case.
10 I would like to instruct you orally without reading to you.
11 However, these instructions are of such importance that it is
12 necessary for me to read to you these carefully prepared
13 written instructions. The instructions are long, and some are
14 quite complicated. If they are not especially clear when I
15 read them to you, you will have your own copy which the
16 marshal will now pass out along with a copy of the verdict
17 form so that you can read along with me as I go through the
18 instructions, and make notes on the instructions as the
19 attorneys in their closing arguments explain the application
20 of the facts to these instructions.

21 (Jury instructions read - not transcribed)

22 THE COURT: Ladies and gentlemen, given the hour,
23 rather than start the closing arguments and interrupt them
24 midstream, we're going to take an early lunch break and come
25 back at 1:00 o'clock. During this recess you're admonished

1 not to talk or converse among yourselves or with anyone else
2 on any subject connected with this trial, or read, watch, or
3 listen to any report of or commentary on the trial or any
4 person connected with this trial by any medium of information,
5 including, without limitation, social media, texts,
6 newspapers, television, the Internet, and radio, or form or
7 express any opinion on any subject connected with the trial
8 until the case is finally submitted to you.

9 We'll see you at 1:00 o'clock outside Courtroom 14A.
10 Have a nice lunch.

11 (Jury recessed at 11:37 a.m.)

12 THE COURT: Counsel, is there anything outside the
13 presence?

14 MR. COFFEE: There is.

15 THE COURT: Okay.

16 MR. COFFEE: Two matters. When we were exchanging
17 instructions back and forth the State's conferred instruction
18 -- we had a Roberts instruction, an instruction that is
19 required by Roberts that says physical injury isn't necessary.

20 THE COURT: Yes.

21 MR. COFFEE: It's not in the final packet. We'd
22 agreed to move it into the -- the State had wanted to move it
23 into the body of the instruction.

24 MR. ROGAN: Yeah. It should have been there.

25 MR. COFFEE: But the final packet that the Court has

1 put together, it's not there. And Roberts they held it was
2 reversible error not to give that.

3 THE COURT: What is it? What's the language?

4 MR. COFFEE: Direct physical contact -- hold on.

5 MR. ROGAN: A minute.

6 THE COURT: When did you send it to me, Mr. Rogan,
7 so I can see if I can find it real quick?

8 MR. ROGAN: It was the conferred instructions.

9 MR. COFFEE: Do you have the last version?

10 MR. ROGAN: Yeah.

11 MR. COFFEE: There was another conferred instruction
12 that didn't -- some way or another didn't make it.

13 THE COURT: I saw you guys talking, so I figured
14 there was something.

15 MR. COFFEE: Yeah.

16 MR. ROGAN: I'm sorry. It's not -- it's not the
17 conferred instructions, it's the manslaughter instructions
18 that defense counsel submitted. Here it is.

19 THE COURT: So defendant's specials final? Specials
20 updated final?

21 MR. COFFEE: No, it's not the specials. When we
22 were going back and forth on the manslaughter we had it as a
23 separate instruction. The State had sent me a suggestion to
24 move it into the -- move it into the body. The Court may have
25 not been in the emails between the two of us.

1 THE COURT: Okay. We can add it as an A. It won't
2 be a problem.

3 MR. COFFEE: Okay.

4 THE COURT: I just need you to tell me what the
5 language is.

6 MR. ROGAN: Yeah. We'll find it.

7 THE COURT: Well, can you give it to me now.
8 Because I'm going to do it before I break -- before I leave to
9 go to the meeting at lunch so that I can have the copies made
10 and ready so when the jurors come back I can read them the
11 supplemental instructions.

12 MR. COFFEE: Yeah. If the Court will let me boot my
13 computer, I'll give you the exact language.

14 And the other problem is we had a similar -- it was
15 in the -- I thought it was in the conferred instructions
16 concerning absence of heat of passion and Crawford
17 instruction, which is mandatory pursuant to Crawford v. --
18 mandatory pursuant to Crawford v. State. And that doesn't
19 look like that made it, either.

20 MR. ROGAN: Which one is it?

21 MR. COFFEE: I'll show you.

22 THE COURT: I've got your conferred instructions up,
23 so tell me which one it is.

24 MR. ROGAN: These are Mr. -- it's not -- it's
25 actually not the conferred instructions. It's the

1 instructions that Mr. Coffee had drafted on voluntary
2 instruction -- voluntary manslaughter. I think the title of
3 the document was "Voluntary Manslaughter with Specials on
4 Crawford."

5 THE COURT: I don't even have anything with that
6 title.

7 MR. COFFEE: I think it may have went back and forth
8 between the two, and I assumed it ended up in the conferred.

9 THE COURT: It's okay. If you two agree to the
10 language, I will type them right now --

11 MR. COFFEE: We had.

12 THE COURT: -- we will give them numbers, and we
13 will copy them, and the jurors will insert them into their
14 things. We will give them a staple remover, bring the huge
15 stapler in --

16 MR. COFFEE: I know we discussed them.

17 Permission to approach, Judge?

18 THE COURT: Yes. Please. So I can fix this issue.

19 MR. COFFEE: And this -- I know we'd sent it,
20 because the Court had asked us about this legally adequate
21 provocation on the bottom.

22 THE COURT: Well, that legally adequate provocation
23 was in like eight different places and it was never defined,
24 and it was bothering me.

25 MR. COFFEE: Yeah.

1 MR. ROGAN: I thought we'd just agreed to take it
2 out.

3 THE COURT: Yeah.

4 MR. ROGAN: Right.

5 THE COURT: Which solved the problem.

6 MR. COFFEE: Yeah, we can leave that last line off.
7 I don't care. The last line is not critical to me at all.

8 THE COURT: Okay. So you want me to add an
9 instruction that reads, "If there is some evidence of heat of
10 passion caused by legally adequate provocation, the State has
11 the burden of proving beyond a reasonable doubt that either
12 the defendant was not acting in the heat of passion when he
13 killed or the passion was not caused by legally adequate
14 provocation. If they have failed to meet this burden but you
15 find the State has proven an unlawful killing, then you must
16 return a verdict of voluntary manslaughter."

17 MR. COFFEE: Yes.

18 THE COURT: Okay. And I'll add that in the
19 voluntary manslaughter section.

20 And what was the other one that you -- that we
21 didn't get included?

22 MR. COFFEE: Just -- we're going to just do
23 something real simple. The injury suggested need not be
24 facility. Fair enough?

25 MR. ROGAN: Right. Yeah. The injury contemplated

1 by the manslaughter instructions need not be physical.

2 MR. COFFEE: That's good enough. That covers
3 Roberts.

4 MS. MERCER: I think it's a highly provoking injury.

5 MR. COFFEE: Sure. Sure. Yeah. The highly
6 provoking injury need not be physical. That's fine. Whatever
7 you want for the front end language. I didn't mean to shorten
8 it.

9 MS. MERCER: The language is right here, Scott.

10 (Pause in the proceedings)

11 MR. COFFEE: Perfect.

12 MS. MERCER: The language we had proposed, Your
13 Honor, was the "serious and highly provoking injury which
14 causes the sudden heat of passion can occur without direct
15 physical contact and may not be the result of direct physical
16 assault on the defendant."

17 THE COURT: You've got to read slower. I was at
18 "injury which causes."

19 MS. MERCER: "...which causes the sudden heat of
20 passion can occur without direct physical contact and need not
21 be the result of direct physical assault on the defendant."

22 THE COURT: "...which causes the sudden heat of
23 passion..."

24 MS. MERCER: "...can occur without direct physical
25 contact..."

1 THE COURT: And?
2 MS. MERCER: "...and need not be the result of
3 direct physical assault on the defendant."
4 MR. COFFEE: Very good. Thank you. Apologize to
5 the Court for the --
6 THE COURT: It's okay. Let me type real quick.
7 Did you want it before the transitional
8 instructions, or do you want it after them? Because it can go
9 either way with voluntary manslaughter. It's referenced in
10 both places.
11 MS. MERCER: Probably before.
12 MR. COFFEE: Before. Yeah. Right after the initial
13 voluntary manslaughter.
14 THE COURT: So I will put it after the instruction.
15 They will go in as 15A and B if that's where you want them.
16 MR. COFFEE: That's fine. That's fine.
17 MS. MERCER: Perfect.
18 THE COURT: Well, look and make sure.
19 MR. ROGAN: That's great.
20 MS. MERCER: That's perfect.
21 MR. COFFEE: David says it's good. I trust him.
22 THE COURT: All right. Okay. Let me type, and then
23 you can have them before you leave, and then we'll give them
24 to the jurors.
25 (Pause in the proceedings)

1 THE COURT: Okay. So the first one reads, "If there
2 is some evidence of heat of passion caused by legally adequate
3 provocation, the State has the burden of proving beyond a
4 reasonable doubt that either the defendant was not acting in
5 the heat of passion when he killed or that the passion was not
6 caused by legally adequate provocation. If they have failed
7 to meet this burden but you find the State has proven an
8 unlawful killing, then you must return a verdict of
9 manslaughter."

10 MR. COFFEE: It should be "voluntary manslaughter,"
11 since that's the only one we'd offered.

12 THE COURT: "...verdict of voluntary manslaughter."
13 That's what I've got.

14 MR. COFFEE: Oh. Okay.

15 THE COURT: I may not have read correctly. Okay.
16 Let me send this one to the printer, and then I will type the
17 other one.

18 (Pause in the proceedings)

19 THE COURT: And this is the one you'd dictated to
20 me, so let's see how I do on this one.

21 (Pause in the proceedings)

22 THE COURT: "The serious and highly provoking injury
23 which causes the sudden heat of passion can occur without
24 direct physical contact and need not be the result of a direct
25 physical assault on the defendant."

1 MS. MERCER: Perfect.

2 THE COURT: Is that accurate?

3 MR. COFFEE: Yeah. I would take out the second

4 "direct."

5 THE COURT: So it'd just be?

6 MR. COFFEE: "...a physical assault on the

7 defendant."

8 THE COURT: Is that okay?

9 MS. MERCER: Yes, that's fine.

10 MR. COFFEE: But Roberts's situation where somebody

11 finds his wife with another man.

12 (Pause in the proceedings)

13 THE COURT: Okay. Counsel, I'm going to mark 15A

14 and B. Will you please come look at them, and then I will

15 canvass you related to 15A and B. And then I'll make copies

16 for you as soon as you think they're okay.

17 MR. COFFEE: Very good. Thank you.

18 THE COURT: Counsel, have you both had an

19 opportunity to review the contents of our proposed additional

20 instructions, Instruction Number 15A and 15B?

21 MS. MERCER: Yes, Your Honor.

22 MR. COFFEE: Yes, Your Honor.

23 THE COURT: Does anyone object to the giving of

24 Court's Instructions 15A and 15B?

25 MS. MERCER: No, Your Honor.

1 MR. COFFEE: No, Your Honor.

2 THE COURT: Okay. Then when the jury returns from
3 lunch we will have copies made for them, we will have a big
4 staple remover and a large stapler, and our first order of
5 business will be to -- for me to read 15A and B and substitute
6 them into their packages.

7 Anything else?

8 MR. COFFEE: No.

9 THE COURT: All right. Thank you. Have a nice
10 lunch. See you about 1:00.

11 (Court recessed at 11:52 a.m, until 1:03 p.m.)

12 (Jury is not present)

13 THE COURT: Counsel, my assistant is even more
14 efficient than any of us noted. He removed the staples,
15 inserted 15A and B, and restapled all the jurors' packs and
16 for the one juror who had it marked at a different place than
17 the others he restored it to that location.

18 Go get my jurors.

19 THE CLERK: [Inaudible].

20 THE COURT: Next in order, whatever that is.

21 THE CLERK: 31 and 32.

22 THE COURT: Thank you, Dulce.

23 (Jury reconvened at 1:04 p.m.)

24 THE COURT: Counsel stipulate to the presence of the
25 jury?

1 MS. MERCER: Yes, Your Honor.

2 MR. ROGAN: Yes, Your Honor.

3 MR. LOPEZ-NEGRETTE: We do, Judge.

4 THE COURT: You may be seated.

5 Ladies and gentlemen, after I read the instructions
6 to you we discovered that inadvertently two instructions had
7 been left out of your package. Those are now numbered as 15A
8 and 15B. During the lunch hour my assistant unstapled your
9 packs, put 15A and B after 15, and restapled your packs.

10 I am now going to read 15A and 15B to you before you
11 begin hearing closing arguments.

12 (Jury Instructions 15A and 15B read -
13 not transcribed)

14 THE COURT: Would you like to make your opening
15 statement -- or your closing argument.

16 MR. ROGAN: Yes, Your Honor. Thank you very much.

17 STATE'S CLOSING ARGUMENT

18 MR. ROGAN: It's their fault. It's Echo's fault,
19 it's Joe's fault; they provoked the defendant. If they hadn't
20 engaged in their sinful, backsliding, whoring and
21 whoremongering ways, the defendant never would have shot them.
22 It's their fault. It's Echo's fault that she's dead. If she
23 had only done what he wanted her to do, which is go back to
24 him, she'd be alive today with her kids, and you wouldn't be
25 here and we wouldn't be here.

1 Ladies and gentlemen, to find the defendant guilty
2 of voluntary manslaughter that's what you'd have to believe,
3 it's Echo's fault and it's Joe's fault for the defendant's
4 conduct, that they provoked him into a state of irresistible
5 passion to take a life, to shoot to kill, to shoot to try to
6 kill.

7 But that's not what we've proven. We've proven that
8 the defendant acted on his own accord by his own choice after
9 thinking about what he wanted to do and choosing to do it.
10 And today we're going to ask you to hold him responsible for
11 his own conduct and not blame Echo Lucas and not blame Joe
12 Averman for getting shot.

13 Ladies and gentlemen, in every criminal case the
14 defendant has -- the State has the burden to prove that the
15 crimes that we charged in our information were committed and
16 the defendant is the one who committed those crimes. In this
17 particular case half your job is done. Identity is not an
18 issue. We know that the defendant is the one that shot Echo
19 and killed her, murdered her, and we know that the defendant
20 is the one that shot Joe Averman all in front of those kids.
21 Joe Averman told us that, Jodey Gaines White told us that,
22 Jayce White told us that, Herman Allen admitted that the
23 defendant told him that he had shot them, and the deputies
24 from Prescott, Arizona, also insinuated the same thing. And
25 so the point is that you don't need to worry about who did it.

1 It's not a whodunit. You know who did it. Him.

2 The question that you have in your deliberations are
3 whether all of those crimes that we mentioned at the outset of
4 this case, that's murder with use of a deadly weapon, attempt
5 murder with use of a deadly weapon, carrying a concealed
6 weapon, and child abuse, were committed. That's where your
7 deliberations are going to focus.

8 Don't forget that there are other crimes that he
9 committed. It's not just murder, it's not just attempt
10 murder. He committed the crime of carrying a concealed
11 weapon. This instruction that you see on the screen, and it's
12 in your packets, tells you that "A person who carries a
13 firearm concealed on his person is guilty of carrying a
14 concealed weapon as long as he doesn't have a permit. And we
15 know that he didn't have a permit for that, because that's
16 what Detective Tate Sanborn told you.

17 Now, concealed weapon means that it has to be
18 carried on his person, in a pocket, in his waistband, in the
19 bag that he's carrying with him. Concealed so that no
20 ordinary reasonable person or no person could discern that gun
21 just by looking.

22 What's the facts that prove that he did that? Well,
23 when he came inside that house, 325 Altimira, nobody saw him.
24 Not Joe, not Jodey, not Jayce. And we can presume that if
25 they did, given those text messages that the defendant was

1 sending to Echo they would have never let him in the house if
2 he had a gun in his hand or a gun on his hip. So the gun must
3 have been concealed in his waistband.

4 We also know from Joe that he said -- actually it
5 was on cross-examination I think this came out -- that when
6 the defendant shot Echo he had reached to his waistband,
7 pulled out that gun, and shoot [sic]. And Jayce corroborates
8 that. When the defendant left the house what did he do? He
9 put that gun in the small of his back and concealed it
10 underneath his shirttails. The gun was not in a holster, it
11 was not in his pocket.

12 Which leads me to this point. That holster. Where
13 was that holster? It was in a backpack outside of the house.
14 Why? Why would that holster be in that backpack? The
15 reasonable inference from that evidence is this. The
16 defendant placed the gun in its holster inside that backpack
17 when he was coming from Herman Allen's apartment to 325
18 Altimira. Why? Remember that he had to take a bus. What
19 would people on the bus think if he's carrying around a gun
20 hidden or open carry? He didn't want to incite people. He
21 didn't want to have a reason for police to be called because
22 he was afraid -- or that they were afraid that he was carrying
23 that gun to do something harmful. So he hides it in the
24 backpack. And when he gets to the house what does he do? He
25 discards the backpack on the ground, takes the gun out of the

1 holster, out of the bag, and hides it on his body so that when
2 he goes to the house Echo is not going to be that alarmed,
3 Joe's not going to be that alarmed, and, more importantly, the
4 children aren't going to be that alarmed.

5 So when you consider all the evidence and the
6 inferences drawn from that evidence you know that the
7 defendant is guilty of carrying a concealed firearm.

8 What about child abuse. Counts 4 through 8 allege
9 child abuse or neglect for all of the children inside of that
10 house. Child abuse is a crime that we may not know all the
11 legal intricacies about. We understand what child abuse
12 really is. Sometimes it's beat a child and they're hurt,
13 they're injured. That's child abuse. You deprive them of
14 food or shelter, that's all child abuse. But child abuse can
15 also just be this. Not caring, controlling, or supervising
16 the children. That's what the defendant did.

17 This statute, this crime encompasses conduct like
18 the defendant admitted. He's not caring for his children
19 appropriately when he takes a gun and unjustifiably kills
20 their mother and shoots his rival in the house in front of the
21 children. Why? We know why. That can cause harm to those
22 kids. They could be injured by the those bullets going off or
23 they could be mentally injured by what they see and what they
24 experience. That's not properly caring for your children.

25 Under the law, though, it's not enough that we show

1 that he was negligent or mistreated his kids. We have to show
2 one of two things, either that the kids actually suffered some
3 harm or that his improper care placed them in a situation
4 where they could have been harmed either physically or
5 mentally. And if you look on the screen, that's what you'll
6 see. The kids were -- either suffered unjustifiable physical
7 pain or mental suffering, they actually did that, or they were
8 placed in a situation by the defendant where that could have
9 happened. We actually have both here, don't we.

10 You heard Amber Gaines testify about her
11 grandchildren, the ones that she cares for now, the oldest,
12 Jodey, Jayce, and Jesse. And she described their changes in
13 their mental behavior since their mom's murder. You heard
14 Jesse, bedwetting which only stopped recently, Jodey and Jayce
15 suffering in school, their grades falling, and seeking
16 treatment for posttraumatic stress disorder, having nightmares
17 and night terrors and sleepwalking, all because of things that
18 this man did. That conduct that he engaged in harmed those
19 kids. And, of course, I'm sure you remember the fact that
20 Jodey tried to hurt himself two weeks after the defendant
21 killed Jodey's mom.

22 So the defendant is guilty of those crimes of child
23 abuse for Jodey, Jayce, and Jesse.

24 But what about Jazzy and Jett, the two youngest,
25 Jett, the two-year-old boy, Jazzy, the six-month-old girl? We

1 didn't hear anything about them, their mental injury, did we?
2 We know that they weren't hurt, they weren't shot. And
3 remember, they're young thankfully. They probably don't know
4 what happened. They were too little. So they probably didn't
5 suffer any mental injury, did they, have any mental suffering?
6 But still, look at that Section B on the television screen,
7 Did the defendant place those kids in a situation where they
8 could have suffered physical pain or mental suffering? The
9 answer to that is an obvious yes. The defendant is shooting
10 his gun three to four times in a location where those kids
11 are, in that hallway, in that living room, in that master
12 bedroom. Think back to that photograph of Jazzy's crib. She
13 was in that crib at the time the defendant shot Joe Averman.
14 And you remember that bullet hole that went right past that
15 crib into that mirror, inches away from the crib where Jazzy
16 was? That's placing a child in a situation where they could
17 have suffered physical pain. Jazzy could have been shot, Jett
18 could have been shot.

19 So both of those kids -- all of those kids were
20 placed in harm's way. And for that reason the defendant's
21 guilty of child abuse and neglect for all of those five
22 children.

23 Now we get to the heart of the matter, the reason
24 we're here, the big crime, murder with use of a deadly weapon.
25 Did the defendant's actions that day constitute murder, or was

1 it the lesser crime, as the defendant is going to say, of
2 voluntary manslaughter? If you look on the screen now in your
3 instructions, you'll learn that there's essentially three
4 types of killing that are involved in this case. It's first
5 degree murder, second degree murder, and voluntary
6 manslaughter. And I'll go through these and I'll explain the
7 differences between them so that you understand why the
8 defendant is guilty of first degree murder with use of a
9 deadly weapon.

10 This is a verdict form similar to the one you have
11 in your packet. You have seven options. At the conclusion of
12 your deliberations you're to select one of those seven as long
13 as all 12 of you agree that that is the crime that he
14 committed or all 12 of you agree that he's not guilty of that
15 offense.

16 So let's start at the bottom, not guilty. Is the
17 defendant not guilty of these crimes? No. He's presumably
18 going to come up here and say that he committed a voluntary
19 manslaughter. That's an unlawful killing of a human person.
20 He was not justified when he shot and killed Echo. He was not
21 acting in self defense. He killed her unlawfully, without an
22 excuse. So your verdict should not be not guilty. It should
23 be something else.

24 So you have six left. Let's cross off three more.
25 You have to determine whether the defendant committed the

1 crime of murder with use of a deadly weapon. Deadly weapon is
2 defined in one of your instructions. You can just look to the
3 bottom of that instruction. "You are instructed that a
4 firearm is a deadly weapon." Easy. It's done for you.
5 You're told that it's a deadly weapon. It makes sense. It's
6 designed to kill or cause substantial bodily harm to people.
7 That's what the purpose of a gun is. And you heard Ana Lester
8 get up on the stand and tell you that the firearm that's in
9 evidence, that the gun in evidence is an operable firearm
10 that can cause pain, that can cause death. So you can cross
11 off three more of your possible verdicts.

12 That means that you're just left with three options.
13 Is the defendant guilty of voluntary manslaughter with use of
14 a deadly weapon, second degree murder with use of a deadly
15 weapon, or first degree murder with use of a deadly weapon?

16 Let's again start at the bottom? What's voluntary
17 manslaughter? And your instruction looks similar to this and
18 it tells you that voluntary manslaughter is a purposeful
19 killing, a voluntary killing that is committed in the heat of
20 passion, and not just the heat of passion, the sudden heat of
21 passion. It arises suddenly, immediately based upon a
22 provocation that makes the killer want to kill, that he cannot
23 control his emotions to such an extent that he can't stop
24 himself from killing.

25 And it's not just that. That passion that has

1 arised, that irresistible desire to kill, the one that the
2 killer, the defendant, can't control has to be provoked in a
3 situation that an ordinary everyday person is also going to be
4 provoked. This is an example on your screen. Father comes
5 home from work, he discovers his young daughter being sexually
6 abused, he becomes so emotionally enraged, unimaginably
7 enraged that he kills the abuser right there, right then.
8 That could be, that may be a situation where a reasonable
9 person in that same situation would also react by killing,
10 would also have that irresistible desire to kill. And I say
11 may be, I say could be because there are significant
12 limitations on whether voluntary manslaughter applies in a
13 particular situation.

14 And as I will explain, this situation that the
15 defendant was in on July 27th, 2012, was not one where the
16 irresistible desire to take a human life was reasonable. An
17 ordinary person in the defendant's circumstances that day in
18 that room would have not had the desire to kill.

19 First, as I've said, the circumstances that the
20 defendant was in must have caused him to be something more
21 than angry or enraged. Every murder is accompanied by some
22 kind of emotion. Every murder. Unless it's a psychopath
23 that's killing -- that's doing the killing. Everybody that
24 kills is going to be angry. They're going to be killing out
25 of jealousy or killing out of rage or killing out of whatever

1 emotion, despair that you can imagine. So simply suffering
2 from an emotion at the time that the killing is done doesn't
3 make it a voluntary manslaughter.

4 It's something more than that. It's something
5 greater, significantly greater. I would submit to you that
6 it's an emotion, it's an experience that no one in this
7 courtroom has ever felt or will ever feel because it is so
8 rare. It's an irresistible desire to take a human life.
9 We've all been angry in situations, and we have broken bats,
10 punched a wall. And you're thinking to yourself, gosh, I
11 can't believe I just did that, that was stupid.

12 There was a juror here, potential juror that drove a
13 car through a wall at a restaurant because he was so angry
14 about what his girlfriend or wife was doing. But what didn't
15 he do? He didn't kill. He didn't have that irresistible
16 desire to kill. So it's not just simply an irresistible
17 desire to do harm, it's an irresistible desire to take life.

18 Second, a limit on voluntary manslaughter is that
19 the provocation -- the response to that provocation has to be
20 reasonable. Let me give you another example. If I'm at home
21 tonight watching television with my wife and I ask her to go
22 get a beer and she doesn't get that beer for me and I become
23 so enraged I get that irresistible desire to kill her and I
24 kill her, is that a reasonable response to the provocation?
25 Is that a reasonable, justified killing because she wouldn't

1 get me a beer? Absolutely not. That is a limitation on
2 voluntary manslaughter. It has to be a reasonable response to
3 provocation.

4 So that tells you something, doesn't it? It tells
5 you that you have to know what the provocation is, you've got
6 to know what that trigger was that set the killer off. So I
7 ask you something. What set Troy White off on July 27th,
8 2012? Do you have any idea? Do you have any idea what was
9 said or done inside that room just before he pulled out that
10 gun and shot and killed Echo Lucas? You don't, do you?
11 Everything that you know about that would be based on
12 speculation or guess. And if you look through those
13 instructions, you'll see that you are prohibited from
14 speculating, you are prohibited from guessing. You have to
15 know. You can draw reasonable inferences from the evidence,
16 but you cannot speculate. Do you have any idea what happened
17 in that room? If your answer is no, the defendant cannot be
18 found guilty of voluntary manslaughter, because you can't
19 decide whether his action was reasonable, you can't decide
20 whether he killed because Echo wouldn't get him a beer. You
21 understand? You don't know what the provoking event is. He
22 can't be found guilty of that crime.

23 And finally, final limitation I want to talk to you
24 about is that the defendant actually had to have killed in
25 that heat of passion during that time that he had the

1 irresistible desire to take human life and that he didn't have
2 the time to cool off. So I ask you again, what evidence do
3 you have that the defendant had that irresistible desire to
4 take human life, that emotional frenzy, something that we
5 probably will never experience in our life. What evidence do
6 you have? Joe Averman tells us that when the defendant came
7 in he was irate, he was upset, he was frustrated because Echo
8 wasn't responding to text messages, wasn't responding to his
9 calls. But he wasn't in an irresistible desire to take human
10 life. If he were, when he came to the door he would have
11 killed her right there. But he didn't. So you know that he
12 wasn't in that state at that time.

13 So what about afterwards? How would you expect a
14 person who has just taken human life because of some
15 provocative triggering event, how would you expect that person
16 to act? You expect them to act irrationally; right? You'd
17 expect them to be, I don't know, similar to someone on drugs,
18 not making any sense when they're talking, not making reasoned
19 judgments, their behavior is erratic.

20 Was the defendant's behavior afterwards erratic, or
21 was it something different? How did he behave after he
22 killed? Well, after he shot Joe he went into that room and
23 said something along the lines of, might as well kill you,
24 'cause I'm going to prison anyway. Wait a second. He knew
25 that he was going to prison? He knew the consequences of his

1 actions immediately after doing that? Is that a person who's
2 acting irrationally, someone who isn't thinking about what
3 he's doing? It clearly shows that he knew what he was doing
4 was wrong. If he knew what he was doing was wrong, his
5 killing wasn't in the heat of passion.

6 What else does he do? He knows enough to keep those
7 kids -- or try to keep those kids away from their dead mom.
8 He's corralling them. He's telling them to get in the room.
9 Is that someone who's acting erratically or irrationally in
10 the heat of passion right after he killed? No. Of course
11 not.

12 What else does he do? Jodey takes off. He chases
13 after him. He tries to bring him back to prevent him from
14 seeking help so that he doesn't himself get in trouble. The
15 defendant doesn't want the police coming.

16 What else? He has the presence of mind to go and
17 get the keys to the car, to the Durango when he hears those
18 sirens wailing and get in that Durango and drive off. What's
19 more, he doesn't fly down the street, he doesn't take off at
20 80 miles an hour in this residential neighborhood. He drives
21 coolly, calmly and collectedly out of that neighborhood
22 someone in a way that wouldn't draw attention by the police
23 that are coming to that house.

24 But you really don't have to take my word for it, my
25 interpretation of the evidence, because you actually have the

1 defendant's own voice from that day, from 5 to 7 minutes after
2 he kills his wife, the woman that he professed to so greatly
3 love that her rejection of him caused him to kill her. And
4 how does he sound? Does he sound erratic, upset, consumed by
5 an irresistible passion, or not? Listen to him.

6 (Portion of 911 call played)

7 MR. ROGAN: Does that sound like someone who just 5
8 minutes before or 6 minutes before or 7 minutes before took a
9 life in the heat of passion, or does that sound like someone
10 who is cool, who is calm, who is collected? Does that sound
11 like someone who would have killed in the heat of passion?
12 No. You also know that by the content of what he said. When
13 the dispatch operator's asking what happened does he say, I
14 shot someone? No, he doesn't. He's already distancing
15 himself from responsibility for the crimes that he committed 5
16 to 7 minutes later when he says, shots were fired. And that
17 failure to take responsibility has continued through this day.
18 That man that you heard on that 911 call was not a man who was
19 acting in the heat of passion.

20 Let me put it to you this way, too. I expect that
21 the defendant's attorney is going to come up here and regale
22 you with tales of how Echo was a terrible wife, how Joe
23 betrayed him, how they flaunted their relationship, how they
24 got tattoos that said Juicy Joey and how he knew about it and
25 how he was emasculated about it for two months, for two months

1 just building emotion until this breaking point where the
2 flood of emotion was just too great that the damn broke and he
3 snapped and he killed in the heat of passion. Did all of that
4 go away in 5 to 7 minutes? That's what you'd have to believe
5 if you were to find the defendant guilty of voluntary
6 manslaughter. So cross it off your list. He's not guilty of
7 voluntary manslaughter. It doesn't apply under the facts and
8 circumstances of this case.

9 That leaves with you two options. Your two options
10 are whether the defendant is guilty of second degree murder
11 with use of a deadly weapon or first degree murder. Now,
12 there's differences between first and second degree murder.
13 Both require, and you'll see this word "malice" in your
14 instructions. And malice is just simply the intent to do
15 something bad, unlawful, something that is provoked by rage or
16 anger or something like that. That's all that malice is. But
17 the difference between first degree murder and second degree
18 murder is this. First degree murder is premeditated murder.
19 Means that the defendant when he killed had the intent to
20 kill, that he deliberated about it, and that he premeditated
21 about it.

22 And those words to you might seem like they all mean
23 the same thing. And that would be understandable. But they
24 don't. I'll explain why. Wilful murder is the intent to
25 kill. And what that means is, if you look on your screen,

1 that at the time that he pulled the trigger he intended his
2 actions to cause Echo to die. Deliberation. Did he
3 deliberate about killing Echo? And that means that he weighed
4 the possible consequences of killing her, what's going to
5 happen to him if he does that killing.

6 And finally, premeditation. And that means that at
7 time that he pulled that trigger that he had the determination
8 to kill her. It's not intent. It's determination. That's
9 what his purpose was. And all of these have been proven by
10 the evidence. All of these are supported beyond a reasonable
11 doubt. And for that reason your conclusion should be that he
12 committed a crime of first degree murder with use of a deadly
13 weapon. If you find in your deliberations that one of these
14 three elements, as we call them, are absent, he's guilty of
15 second degree murder with use of a deadly weapon. But all
16 three are present.

17 First I want to talk to you about whether first
18 degree murder means that it's a planned murder. And you all
19 can kind of from watching television understand what I mean by
20 that, that someone sits around and decides, well, I'm going to
21 kill my rival, and they put together this plan so that they
22 can kill the person without ever being caught. That's not
23 what first degree murder requires. It doesn't have to be
24 planned in a day or week or month or a year in advance.
25 That's what your instructions tell you. If you look at the

1 instruction on wilfulness it tells you that there need not be
2 any appreciable space of time between the formation of the
3 intent to kill and the actual killing, it can be like this.
4 Same is true for a deliberate determination. Person can weigh
5 the consequences of their actions in a fraction of a moment
6 and decide to do something.

7 It's also true for premeditation. You're told that
8 it need not be for a day, an hour, or even a minute, someone
9 can come upon a determination to do something, again, in a
10 fraction of a moment. And the way that we generally explain
11 that is this. If a person is late for work and they're
12 driving down the street and there's a streetlight coming up
13 and they know that if they make that streetlight they're not
14 going to be late for work, but if they get stuck there,
15 they're going to be late, they're going to get in trouble. As
16 they approach that light it turns yellow. At that point the
17 driver has a choice, right, press down on the accelerator or
18 press on that brake pedal, which is it going to be. And how
19 often have we been in that situation. And think back to it.
20 How quickly do we make that choice? Pretty quickly. We make
21 a choice, we weigh the consequences of the action and then we
22 determine what to do and we take that action. That's
23 deliberation, that's premeditation, and that's intent.

24 And the same is true for murder. Someone could be
25 holding a gun in their hand, their finger on the trigger, and

1 in a fraction of a moment premeditate, deliberate, and form
2 the intent to kill. It doesn't have to be for weeks, months,
3 days, hours, or minutes. It can be that quickly.

4 But in this case we are not concerned with that,
5 because the defendant's actions over the preceding three to
6 four weeks evidence that he'd been contemplating, thinking
7 about killing, weighing the consequences of his actions, and
8 that he was thinking about doing that, committing the act of
9 killing. And finally on July 27th he determined, he
10 premeditated to kill Echo Lucas White as he was texting her
11 and calling her and she wasn't responding to his advances.
12 And you might have a question -- there was a juror, a
13 potential juror we had that was talking about it during our
14 juror questioning -- how are we supposed to know what the
15 defendant was thinking at the time, how are we supposed to go
16 back in time to July 2012 and figure out what's in his head.
17 Your instructions tell you. Your instructions tell you that a
18 defendant's state of mind doesn't require the presentation of
19 direct evidence. You can infer the existence of a particular
20 state of mind of the defendant from the circumstances
21 disclosed by the evidence. And look at all the facts and
22 circumstances surrounding what happened, and you can make a
23 conclusion about what he was thinking.

24 And you also need to bring with that -- when you're
25 doing that to aid you in that determination you can use your

1 common sense. That's what this common sense instruction tells
2 you. Your not limited to what you see and hear from the
3 witnesses, but you can make reasonable inferences from what
4 they say and the evidence that's in front of you. And when
5 you do that and you try to determine what the defendant's
6 state of mind is you're going to find that he deliberated on
7 killing, that he formed the intent to kill, and that he
8 premeditated about killing.

9 Intentional killing. What is it? Instructions tell
10 you that an intentional killing can be inferred, ascertained,
11 deduced from the facts and circumstances of a killing, such as
12 the weapon used, why the person was there, why the person was
13 using that weapon, why they had it in the first place.

14 Also, motive. If you look at the facts and
15 circumstances surrounding Echo's death, did the defendant have
16 a motive to kill? Absolutely. One of the oldest motives in
17 the world, jealousy, rage, despair over the loss of a
18 relationship, an eight-year marriage, children. That's one of
19 the oldest motives in the book. Did he have a motive to kill?
20 Yeah. And what about those text messages. Do they reveal
21 that he was intending to kill Echo at the time that he was
22 there? Think about how gratuitous they were, calling her a
23 cunt, calling her a whore, asking whether she loves sucking
24 Joe's dick. That's malicious intent. That's something that
25 shows, reveals that when he went over there he was angry about

1 the relationship, he was upset about being scorned, and he
2 brought that gun with him and he intended to kill her.

3 And don't forget about that gun. How did he use
4 that gun? He brought it over there, he hid it from her, and
5 when he wanted to kill he took it out and at nearly point
6 blank range pointed it at her chest and pulled the trigger.
7 He didn't shoot it up in the air to warn her, he didn't shoot
8 it in her foot to scare her or just injure her. He pointed it
9 at a vital part of her body and pulled the trigger. And we
10 know it was vital because she was dead within a minute on the
11 floor in that craft room. His use of the weapon in the manner
12 that he did proves that he had the intent to kill when he
13 pulled that trigger. So he committed that crime wilfully. He
14 had the intent to kill.

15 What about whether he deliberated about killing
16 Echo? Deliberation, you're told, is, as I said, weighing
17 consequences. Did Troy deliberate? 2012, July 9th, he posted
18 to his Facebook, "If you love someone, set them free. If they
19 come back, they're yours, if not they never were. I like this
20 version better. If they don't come back, hunt them and down
21 and kill them. Ha ha ha." Do you think he's been thinking
22 about killing someone at the time that he posts this? Maybe,
23 maybe not. Maybe it's just the rage, the upset and emotion
24 that he's feeling.

25 But then there's more. He tells Tim Henderson,

1 Pastor Tim, "The adulterers continue, breathe to continue in
2 their sins. God is helping me as a testimony. The whore and
3 whoremonger are still alive, and I'm not in prison. No joke
4 intended." I'm not in prison? Do you think he's weighing
5 the consequences of certain actions at the time that he writes
6 that message to Tim two weeks before he kills his estranged
7 wife?

8 What other evidence of deliberation? He tells
9 Herman Allen the same quote about hunting down and killing
10 them a week before he actually does kill Echo and he does
11 shoot Joe. He tells Mike Montalto three hours before he
12 kills, I just want to kill them. This is someone who's
13 deliberating, who's thinking about killing before it's done.

14 And what does he tell Joe immediately after he kills
15 his wife and has shot Joe two, three times? I might as well
16 kill you, 'cause I'm going to prison anyway. All again
17 evidence that he had been thinking about killing at the time
18 that he pulled the trigger. So he deliberated about killing
19 Echo.

20 And what about that last element, premeditation?
21 What does it mean? That he formed the determination to kill.
22 Deliberation, you're told, is determining on a course of
23 action as a result of thought. Did he do that? Troy did
24 premeditate. On July 27th, 2012, he starts calling Echo at
25 2:55 in the morning when he gets up. He has 13 calls between

1 that time and 8:45 a.m., the time that he got off from work.
2 And he had upwards of 50 to 60 by the end of that morning.
3 There's hundreds of text messages to Echo to which Echo barely
4 responds. How do you think that makes him feel?
5 Let's take a look at one. 5:44. What's his
6 attitude then? "You treat me like shit and you expect me to
7 just wait for you, to give you your time. You treat me like
8 shit. Can you expect me to take you back?" And it continues.
9 Look at this one at 6:06 a.m. "I don't think you
10 want a man who's just going to stand around and get walked on
11 all the time. So, you know what, I'm not that man anymore,
12 okay. If you want me, I'm a different man now. I'm not going
13 to be walked all over by you or anyone ever again in my life."
14 What's he thinking about when he's writing this?
15 And then at 9:51. And in the meantime between 6:06
16 and 9:51 he's writing tens -- 30, 40, 50 text messages all
17 along those same lines, calling her names, asking for her
18 back, telling her she's a coward. And then at 9:51 he makes a
19 last-ditch effort, doesn't he, a last-ditch effort to win Echo
20 back. He writes, "Please call me when you can. I want to
21 give you my heart. I love you, Echo, sweetie. Please, please
22 stop seeing him if you want us back. Please. You have to.
23 Please. It will never work if you won't let him go," meaning
24 Joe. "Please, please, I'm begging you for one last time. I'm
25 being totally honest. I can't handle it."

1 And how does Echo respond? Well, she doesn't. She
2 says, "I'm not calling you," at 10:00 o'clock. What do you
3 think that makes the defendant do? What does he write back at
4 10:06? There's a few text messages in between that he's
5 saying the same thing, call me, call me, call me. What does
6 he write at 10:06? He responds to Echo's message that "I'm
7 not calling you." "Get ready for hell." Do you think he's
8 decided upon a course of action at this time? Do you think
9 he's decided to go over there and confront Echo and to kill
10 her?

11 The interesting thing is that at this point, at
12 10:06, Troy goes radio silence for about 15 minutes. Doesn't
13 contact her by cell phone, by calls or text messages. What's
14 he doing during this time? Well, you can deduce that. You
15 can infer what he's doing. You know that from Mike Montalto
16 when the defendant left work at 8:45 he was in his Yesco
17 uniform. He must have gone home; right? Because when he's
18 arrested hours later he's wearing something different. He's
19 wearing a red shirt, black pants. Same red shirt and black
20 pants that Fernando Diaz told you he saw that guy wearing as
21 he was walking down the street, that looks like the defendant,
22 the same red shirt and black pants that Jodey and Jayce told
23 you that their dad was wearing when he came to that door. He
24 went home and he changed out of that Yesco uniform. And
25 there's pictures of that Yesco uniform inside of Herman

1 Allen's house.

2 So that begs the question. From 10:06 to 10:21
3 where he's not calling, he's not texting, what can we infer
4 that he was doing? Herman Allen also told us that every time
5 on Fridays when he would go over -- the defendant would go
6 over to 325 Altimira he would pack clothes. Mr. Coffee
7 pressed him on this issue. He said, every time; there must
8 have been times when he didn't do that. And Herman Allen
9 said, no, every time he packed clothes. We know the defendant
10 didn't pack any clothes on July 27th, 2012. There were no
11 clothes found in that Durango when it was picked up in Yavapai
12 County, Prescott, Arizona. There was no Yesco uniform inside
13 325 Altimira. So he went home, he changed. And what did he
14 do? He didn't bring any clothes with him. He brought a gun.
15 Why's he bringing a gun? Why is he bringing a gun concealed
16 in a backpack? The only item of personal property other than
17 his wallet and keys -- I'm sorry, his wallet and cell phone
18 that's in his pocket is a gun. What do you think he's
19 determined to do at this point? What other possible
20 conclusion could there be except that he went to that house to
21 kill Echo? You can't look at these text messages and his
22 conduct and conclude anything different than that's what his
23 plan was.

24 And what else does he do? He brings an extra
25 magazine, doesn't he? He brings 25 rounds of ammunition.

1 He's not carrying that gun because he's afraid he's going to
2 run into some gang on the bus. He's bringing that gun with
3 that amount of ammunition to get the job done that he intended
4 to do, kill Joe, kill Echo, maybe more. It's 25 rounds. What
5 do you need 25 rounds for?

6 And if you need further evidence, just take a look
7 at the text messages that follow. 10:28, "You're a liar."
8 10:33, "Fuck you." 10:56 Echo writes in all caps, "I don't
9 want to talk to you at all. Not at all." He writes back,
10 "Coward." What else? At 10:57 he says -- he challenges Joe,
11 doesn't he? "I will meet Joe there right now," in caps.
12 11:01, "I'm not giving you any more fucking time to fuck Joe.
13 Fuck you." 11:05, "Fuck you, you fucking piece of shit."
14 11:08, "Whore. Bitch. Cunt. Fuck." He's angry now, isn't
15 he? He's angry and he's got a gun and he's travelling on a
16 bus and he's texting her these messages. What's his plan,
17 what's his purpose, what is he going to do? 11:12 text
18 messages get more revolting. He starts insulting her
19 sexually. "How's your pussy?" 11:12, "Is your jaw sore from
20 sucking cock, bitch?" 11:12 again, "Skank. Slut." 11:26,
21 the last text message Troy sends before he kills, before he
22 murders his wife, "But now you're all pissed off now. You
23 think I'm an asshole again. Or just wait and see." Just wait
24 and see. What is she going to wait and see? What's going to
25 happen? Well, we know what happened. He killed her within 20

1 minutes of sending that text message. He shot her after
2 having an argument in the room, that craft room. Is this
3 evidence of premeditation? Absolutely. Beyond a reasonable
4 doubt he premeditated. And if he premeditated and he
5 deliberated and he wilfully shot Echo with the intent to kill,
6 he committed the crime of first degree murder with use of a
7 deadly weapon beyond a reasonable doubt. No question.

8 And I can't forget Joe Averman. The final count is
9 attempt murder with use of a deadly weapon. That's for Joe.
10 And you're instructed as to what that is, "An attempt murder
11 is similar failure to kill." The defendant intended to kill
12 Joe, but he didn't get it right. His shots didn't kill him.
13 That's all that it is. So did Joe -- did the defendant
14 specifically intend to kill Joe? Yeah. Absolutely. He
15 didn't like Joe. He had a motive to kill him. He expressed
16 that to Joe numerous times over voicemails. Joe was the one
17 that was screwing his wife. When he shot him don't you think
18 that he intended to kill? And but for the fact that the
19 defendant had bad aim Joe's still with us. He shot him two to
20 three times. Lucky for Joe, he's still around. Lucky for us,
21 the defendant can't shoot straight.

22 And that's an important point. Simply because the
23 defendant can't shoot straight or that he changed his mind or
24 that he was interfered with, he was stopped from actually
25 finally killing doesn't mean that he's not guilty of attempt

1 murder. The question is when he pulled the trigger did he
2 have the intent to kill in his head. The answer is yes. Look
3 at all the circumstances. The answer is yes.

4 Look at this instruction that's on the screen. If
5 he abandoned the attempt to kill because of the approach of
6 other persons or because of a change in his intentions due to
7 a stricken conscience or for any other reason doesn't mean
8 he's not guilty of attempt murder. And you heard what the
9 kids told you, that after Joe was shot they went to their dad
10 and they threw things at him and they tried to get him to stop
11 what he was doing. And to his credit, the defendant did. He
12 could have taken Joe's life right then. He could have put a
13 bullet in his brain, and he chose not to. But does he get a
14 pass for that? Absolutely not. Because at the time that he
15 shot Joe he had the intent to kill. So he's guilty of those
16 -- that ground, too.

17 Ladies and gentlemen, you have the luxury of 20/20
18 hindsight, of being able to Monday morning quarterback what
19 happened on July 27th, 2012. You get to look back from
20 today's position and see what he did on July 27th, 2012, and
21 see what he did before. If you do that, if you look back at
22 everything that he did leading up to July 27th, 2012, there's
23 only one conclusion that you can come to, and that conclusion
24 is that the defendant committed the crime of first degree
25 murder, of attempt murder, both with use of a deadly weapon,

1 child abuse, and carrying a concealed weapon. There can be no
2 other conclusion after you've considered all this evidence.
3 He is guilty of these crimes.

4 And on behalf of Ms. Mercer and I we ask you to hold
5 him responsible finally for the actions that he committed and
6 find him guilty. Thank you.

7 THE COURT: Thank you, Mr. Rogan.

8 Mr. Coffee.

9 (Pause in the proceedings)

10 DEFENDANT'S CLOSING ARGUMENT

11 MR. COFFEE: State did a good job in their closing.
12 Doesn't make them right. Have you figured out why he went
13 there with a gun? You've sat through trial for a week -- two
14 weeks. You've given us a lot of time. And we appreciate it.
15 Bear with us a little more. There's a lot of evidence to go
16 through and a lot to put together here. We'll do it as
17 quickly and efficiently as we can.

18 So have you figured out why he goes there with a
19 gun? There's two key points that weren't mentioned by Mr.
20 Rogan. Not seen Joe since Joe moved into his house, point
21 one, all right. And some of the -- some of the texts that Mr.
22 Rogan pointed to a moment ago tell you what's going on, too,
23 I'm going to take action, I'm going to take a stand. Do you
24 remember those texts that you saw just a moment ago? He's
25 going to roust Joe. He's going there to throw Joe out of his

1 house forcefully. He's tired of Joe having been there. We'll
2 go through the texts and explain how that all lays out and why
3 that's the most logical conclusion on the circumstantial
4 evidence here.

5 Before I do I want to make something else clear from
6 Mr. Rogan's argument. He talked about this irresistible
7 desire to take human life and said, you know, it's -- it is
8 this magical thing, this manslaughter, it is this magical
9 thing and nobody in this room has ever felt this emotion and
10 maybe nobody in the courthouse, maybe nobody in Las Vegas, I
11 suppose. The problem is that's not what the instructions say.

12 If you take a look at Instruction Number 15,
13 starting at line 8, let's read what it actually says. "The
14 basic inquiry is whether or not at the time of the killing the
15 reason of the accused was obscured or disturbed by passion,"
16 okay, he was in an emotional state, right, "to such an extent
17 as would cause an ordinary reasonable person of average
18 disposition," notice it doesn't say perfect person, notice it
19 doesn't say there is one reasonable way to act, "an ordinary
20 person of average disposition to act rashly," doesn't say to
21 kill, it doesn't say ordinary person uncontrollable desire to
22 kill, it says "to act rashly and without deliberation and
23 reflection," okay. It is a snap judgment. That is what we
24 are talking about, a snap judgment. Rashly and without
25 deliberation and reflection and from such passion, rather than

1 judgment, right. And we know that's what happened here. You
2 know that's what happened here because despite the talk about
3 27 rounds there are three fired, and as soon as judgment comes
4 back he stops pulling the trigger. You know it. There are
5 three or four rounds fired, and when judgment -- when passion
6 calms down, when he cools and has a moment to reflect he stops
7 firing. That is proof that he was acting in passion, okay.

8 And we don't have to prove this, by the way. If you
9 look at the other instructions, what has to happen is they
10 have to prove beyond a reasonable doubt that what I told you
11 didn't happen, right. That's how it works. In courtrooms in
12 the United States the State has to prove beyond a reasonable
13 doubt someone's guilt. We don't assume guilty.

14 There was a cute little parlor trick a couple
15 minutes ago about stoplights and deliberation. Remember that
16 little discussion? Oh, we all know we thought our way through
17 it, right, stoplight on the way in, deliberation,
18 premeditation, right. You are human beings. Does anybody
19 think that is the way the world works? You've ran stoplights.
20 If you're anything like the rest of us, at some point you've
21 ran stoplights. And when it happens you don't think about the
22 lady with the baby carriage across the street or the policeman
23 down the road on the motorcycle who's going to give you a
24 ticket. You don't weigh the consequences of your insurance,
25 okay. You don't do those things. You just go. You just act.

1 Running a stoplight isn't premeditation and deliberation. It
2 could be, I suppose, if I set up some kind of grand plan and
3 think about things and get everything laid out beforehand and
4 say, you know, I'm going to run it and I hope that guy doesn't
5 give me a ticket and it's worth the 250 bucks and I hope this
6 lady doesn't cross in front of me. But most of the time
7 that's not what happens, that's not the way the world works.
8 It's a parlor trick.

9 Let's talk about what we've got. You know this,
10 you've seen this, Troy and Echo and the kids were happily
11 married. There is one thing in his life, and this is a
12 fundamental flaw in the State's case and the argument that
13 this was planned and premeditated and deliberate. What is the
14 one thing this man wants more than anything? Every witness,
15 his family back. Every witness, Echo's mother, she would stay
16 at my house -- she talks to Nova, the coroner's investigator,
17 right, and says, she'd stay at my house until the problems
18 were worked out. The coroner's investigator comes in and
19 tells you about the conversation. Mom doesn't remember it,
20 but you know that it happened.

21 Tim Henderson, Montalto, Herman Allen, Jayce and
22 Jodey, Nina, Joe Averman himself says Troy White desperately
23 wanted his family back. The State has said we're going to get
24 up here and we'll talk about Echo and call her names. I would
25 not disrespect Mr. White in that light. That's not going to

1 happen. This is a case by and large about Averman. It always
2 has been. Troy wants his kids back. You've heard person
3 after person, including, including Echo's mother, about how
4 much Troy loved those kids, he treated them like his own.

5 Now, you think about this when we're talking about
6 passion and they say, cool, calm, deliberated. That's what
7 Mr. Rogan just told you, cool, calm, deliberated he went there
8 with a plan, he knew what he was doing. You think about this.
9 As much as he loved those kids is that the plan that he went
10 there with, or did something happen to snap him, did something
11 cause him to become enraged? He wouldn't have done it with
12 the kids around the way he treated the kids, the way he loved
13 the kids if he hadn't been acting in passion. It's the only
14 thing that explains it.

15 His home. You know, some of us want to move out to
16 the golf course on Southern Highlands and live in a big
17 mansion like people. And for some people houses are simpler.
18 This is an ordinary guy. He's a construction guy. He worked
19 for Unesco. For him that's heaven. For him that's heaven.
20 That's what he wants back, those pictures on the wall, the
21 love that he had with his wife. He met Echo at church. She's
22 23 years old, they're married six months later. There is an
23 age gap of about 14 or 15 years. And, you know, some of the
24 times age gaps are difficult and they cause problems in
25 marriages, particularly when younger women get involved. You

1 can see Tim Henderson's post about that. You can see the
2 pictures, though. Although there was an age gap, they were
3 happy together. And they were happy together for years.
4 Everything's about the kids, everything's about the family.
5 USN3BOYS, the stickers on the back, the new babies. This is a
6 guy loved his wife. He didn't go there to kill her. He went
7 there to roust Joe Averman, who'd moved into his home.

8 And make no mistake. It is Troy White's home. Troy
9 has the keys, he pays the mortgage. With all the -- you know,
10 all these charges that they have stacked -- and that's how
11 this works, right, there are multiple charges and we talk
12 about things. There's no burglary count here. There's no
13 home invasion count here.

14 MR. ROGAN: Objection, Your Honor.

15 THE COURT: Overruled.

16 MR. COFFEE: There is no burglary count here. There
17 is no home invasion count here. And the reason for that is
18 because this is Troy White's home. He had a key, there's no
19 restraining order, there's nothing to prevent him from going
20 into his own home.

21 Sometimes trouble comes when you least expect it.
22 And in this case it was a close friend, Joe Averman, who was
23 waiting in the wings. And we'll talk about timing in a
24 minute, okay. Joe says he provides comfort. The timing is no
25 coincidence here. Joe divorces in April because of a new

1 secret love interest that started in March. Remember that?
2 It started in March, I didn't know who it was, I found out --
3 Dena says she found out in June. It's not revealed to Troy
4 until -- do you think it's a coincidence that the marital
5 problems in what had been a wonderful marriage started in
6 March? Do you think that's a coincidence? They hide it,
7 right. They hide the affair. And it's got to be
8 heartbreaking. And not only is it an affair, it's one of your
9 best friends, okay. This was never Joe's house. You've heard
10 the testimony, well, I stayed there some of the time. Doesn't
11 -- no picture, okay. My typing's not so great some of the
12 times. You know what I mean. There's not a picture of
13 Averman on the wall anyplace, right. He doesn't really have
14 belongings there. According to Jayce, he spent most of his
15 time in Mom's room. You can read the texts. There's a text
16 someplace that talks about getting him out of my house, out of
17 my bed. And that's what Troy White was going to do. He
18 hadn't stood up for himself. He had let this go on.

19 Remember when he moves out of the house, also. When
20 he moves out of the house he doesn't know about the
21 relationship. Mommy and Daddy took us to a meal to tell us
22 they were fighting too much and Daddy was going to stay with
23 Herman Allen for a while. And Averman says, the romantic
24 relationship started a couple weeks later when I move in,
25 right. Wants to look good. Averman has a tendency to do

1 that. He wants to look good. But in fact it started in
2 March, and from March to June if you think they were holding
3 hands, well...

4 Okay. Shortly after he moves in it gets worse. Joe
5 leaves his job at Marshall's, right, Marshall's Retail. He
6 moves into Troy and Echo's bedroom, okay. Another interesting
7 thing, the kids to this day don't know his last name. Why was
8 there such an attempt to make this look like Joe and Echo had
9 this happy home and Troy had moved on and he's just an angry
10 ex? Why was there such an attempt to do that when the facts
11 don't fit? No pictures on the wall, the kids don't know his
12 last name. And, you know, Joe's never there at the same time
13 as Troy. Ever. Remember, I think one of the jurors may have
14 asked that question, right. After he moves into that house
15 he's never there at the same time.

16 Troy's blessing. He said -- Averman got on the
17 stand and said, I thought we had his blessing. I mean, that
18 runs contrary to every fiber of the State's case. But if it's
19 convenient and it looks good, right.... Why adopt that
20 position? There's no other evidence. The pictures, texts,
21 the kids, the other witnesses. Nobody but Averman says, well,
22 you know, we thought we had his blessing and this was just a
23 show, okay. Troy's been made to look like something he's not.
24 There's been an attempt to portray him as a mad dog killer on
25 a mission. And we all know that's not true. You've seen it.

1 You've sat through that. The more distance that can be put
2 between Troy and Echo the less chance you see this for what it
3 is, which is a case of manslaughter. So there's a deliberate
4 attempt to put distance between the two.

5 The problem is those texts, right. Because when we
6 start looking at Wednesday, and we're going to look at a
7 couple of them, we start looking at Wednesday and we start
8 looking at Thursday when Troy says he's done, he's getting
9 texts that say, "Yeah, right," from Echo, right. And she
10 meets him, begs him to contact her during those texts. You'll
11 see those texts, right. Ordinary common sense. You don't
12 need to be a weatherman to know which way the wind blows.

13 The jury system is set up with 12 common people
14 because 12 common people, ordinary people do a better job of
15 making these decisions than a stack of [inaudible], right, or
16 some professionals with some kind of agenda. We during jury
17 selection talked to all of you, and it was an extensive
18 vetting process. We filtered out people who weren't here for
19 the right reasons, and you were chosen. You're going to have
20 to look through everything, okay.

21 There's no place like home. Troy did everything he
22 could to keep his family together. He moved out and stayed on
23 an air mattress, right. He continued to pay bills. He --
24 this is this mad dog person who's left and has -- continues to
25 pay the bills, you know. And, boy, there's another little fib

1 that's been -- well, that's not a nice word. There's another
2 little mistruth that's been lobbied here, that it is Troy's
3 choice to move out. He's got seven mouths to feed. He is
4 taking the bus to work, leaving the car at home for the
5 family, camping on an air mattress, not paying any rent, and
6 he told you it was his choice? Do you think he thought he had
7 a choice?

8 He's trying to do what he can to save his marriage,
9 and in walks Joe. Remember this piece of paper? Take a look.
10 Nevada Power, \$278; Century, \$77; gas company, \$96; Durango,
11 \$455; fuel, \$200; food, \$200; kids, \$200; insurance, \$190;
12 cash to Echo. Food and fuel. He is supporting everyone, and
13 in walks his friend Joe, who shortly after quits his job and
14 moves into his mom's -- you know, into Echo's bedroom.

15 In fact, what Facebook proves? Well, it proves Troy
16 was hurt. Anybody doubt that? It proves he was angry. Of
17 course he was angry. Anyone in his situation would be angry.
18 And it proves he's human. You know, manslaughter and the law
19 of manslaughter exists because we are not automatons, we are
20 not robots that make perfect decisions. We are humans with
21 emotions. Facebook proves that. It proves the Echo -- that
22 Troy love Echo, he loves his kids, and he loved his marriage.

23 Remember what we talked to the detective about,
24 Detective Tate Sanborn. He looked through all those pictures,
25 700 pages of it. You've seen some of the Facebook pictures up

1 there, the two of them happy together, right. What did you
2 see? About a hundred photos maybe, give or take 20? Yeah.
3 Almost all were Troy and Echo or the kids, right. This is the
4 guy who lives for his family. Conversations via texts. Look
5 at the green ones. And this on the 20th. You've got to read
6 them bottom to top, because that's the way it works. But
7 Echo's still in this thing, right. On the 20th at 13:00, I
8 guess that's 1:30, yeah, 1:30 p.m., "Hey, can I call you?
9 I've got something at the house. Can I go real quick and get
10 it?" "Just wait, okay. I'm checking out."

11 "I wish you would stop so we could get along."
12 That's what Troy says. Even with Averman there he wants to
13 get along. "I know why we don't." "Okay. Why?" "Because
14 what I'm doing you hate it." Joe in their house. "Because
15 what I'm doing you hate it," right. And he gets angry and
16 he's increased his vocabulary a bit. But "Don't worry." Look
17 at the last one, 15:22, "Don't worry. I'm fucking gone."
18 Troy. Her response, "Yeah, right." "Yeah, right." She's not
19 done with the relationship despite what people have tried to
20 portray.

21 23rd, all right, "You're destroying me. I hate you
22 for choosing him over me. Troy." She texts smiley face and
23 two people together and then broken hearts. "Do you want to
24 talk to me?" 10:32. This is from her. "Okay. I'm going to
25 leave you alone," right. He says, "I'm done." Eventually she

1 says, "I'm going to leave you alone." Here they are in
2 sequence. You can see them in your version. Takes place over
3 a few-minute period at 10:30 in the morning on the 23rd.

4 And then this starts. Interesting. She sends baby
5 photos to him, starts talking about, I thought you were going
6 to call me after prayer, any chance you would talk to me
7 tomorrow. She sets up the meeting, not him. She does, okay.
8 "I'm hoping from a friendly perspective if at all possible. I
9 know you don't owe me anything. I deserve nothing. But if
10 you would just hear me out one last time. I would meet you
11 somewhere or anything, any chance at all." This is her
12 pulling him back. Now, he said he's done. The State has went
13 through pains to talk about this T.S. Eliot quote, if you love
14 something set it free. It was weeks beforehand, and they say
15 it proves his intention on the day. But he said he's done,
16 and, you know, just when he's out, he's pulled back. And then
17 another picture of the children.

18 And then the kids, the boys want to talk, that was
19 not me, the boys want to talk on the 25th. "I didn't want to
20 hang up mad. I tried to call you. I tried to call back
21 twice." This is at 11:00 o'clock on the 25th, okay. You
22 know, at this point with everything that's went on, the best
23 friend and the affair and all this stuff you'd have every
24 right in the world to walk away, to say, I want you out of my
25 house. He doesn't. What's he post on Facebook? And this is

1 the night before the shooting. "Of course I ultimately want
2 my marriage back for many reasons, but I'm shocked that she
3 does. I was moving, and she had. I was seriously almost
4 over, honestly. [Inaudible] So she expects me to stick and
5 wait till her time's ready to come back. I said I love you
6 and I want you back," okay. This is a man so hopeful. It's
7 not a man that's planning on killing. He is looking at
8 reconciliation. "I love you and want you back. But since
9 you're not telling me why you can't come back now and why you
10 need time," and we know why she needs time, because Joe, who's
11 not working, is living in the house, right. "You can't tell
12 me why you need time or even how much time. I told her
13 [inaudible], I wait forever. I'm going to continue where my
14 life was and move on and if and when," again, future plans,
15 "if and when you decide to come back I'm still here, then
16 great."

17 So what's going on? Well, we know what's going on.
18 And again, it's another indication, circumstantial evidence
19 what he's going to do the house to do is roust Joe, a man who
20 is younger than him, a man who told you multiple times he had
21 no fear of Mr. White, a man who -- you know, I don't remember
22 if we -- there was some talk about the Marines in voir dire,
23 and for some of us the difference between the Marines and the
24 Army National Guard is a world apart, right. But for some
25 folks, if you've never been in the military and if you don't

1 have any training, if you are shown backpacks in the back of a
2 car before weekend bivouacs, military training is military
3 training. He's going to roust Joe. And he takes a gun with
4 you. Do you blame him?

5 It's a bad idea ultimately. It turns out tragically
6 for everybody. And don't think that anybody here thinks
7 anything different, okay. Guns introduce a whole, whole lot
8 of danger into a situation. And taking a gun there was the
9 stupidest thing Mr. White ever did, okay. Talk [inaudible].
10 This is from that last message, and we talked about that a
11 moment ago, okay. The only thing you see in these messages
12 for that time is a plan for the future. How about the MMS
13 messages? "Please call me when you can. I want to get my car
14 keys. I love you, Echo. Love you so much," right. That's at
15 10:00 o'clock the night before the shooting. 10:00 o'clock
16 the night before the shooting.

17 And there are texts from Echo. And these are
18 somewhat interesting. And they happen, oh, between 7:00 and
19 9:00 p.m. the night before the shooting. [Inaudible]. She
20 talks about a country song, and then she says, "Just text,
21 please. Just text. Please please." The deletions. Remember
22 we went through page after page after page after page of the
23 trash cans and the deletions, and we talked to the phone
24 examiner about that. And you were probably wondering why is
25 Mr. Coffee going through this, we've been here all day. Well,

1 it's to make a point. The messages that she is getting and
2 sending to Troy about reconciliation are out of view of Joe
3 Averman, right. They've been deleted. And you have to wonder
4 if Joe's over her shoulder at some point, because she keeps
5 saying, "Just text, please." Just text, please, okay.

6 He came over unexpected -- this is another claim
7 that you'd heard from the State. He came over unexpected, out
8 of the blue, hours early planned time, okay. Now, if
9 anybody's familiar with divorce situations or separations,
10 sometimes there are custody agreements, and those things will
11 lay out things to the second, right. I will pick up the kids
12 at 2:00 o'clock, and if it's 2 minutes before 2:00 or 2
13 minutes after 2:00, somebody's going to get on the phone to a
14 lawyer and be down at Family Court. That's not what this is.
15 This was never that situation. What Herman Allen says is,
16 when he'd leave my house I didn't see him again till the end
17 of the weekend. You remember that, right? Remember Herman
18 Allen said that? I didn't see him again till the weekend.
19 And look at some of the text messages that we see at 5:00 in
20 the morning.

21 Now, the timing. They were at 5:00 in the morning,
22 there's texts at 4:00 in the morning. But we heard from
23 Echo's mother that's not unusual in this household, right.
24 Texts all hours of the day, that's how we communicated, it was
25 part of the conversation, it's not that unusual. And this is

1 a guy that gets up at 3:30 a.m. He got up early that day, by
2 the way. He shows up a couple hours earlier than expected.
3 But he's also at work earlier than expected on the 26th. And
4 he works a full shift. You know, if I'm planning a big murder
5 spree, I think the first thing I would like to do is get up
6 and go to work. Sure. Why not? Get up and go to work, I'll
7 feel better about it. Doesn't make any darn sense.

8 Okay. Look at this one. "I will be coming by the
9 house this morning at 6:00 or 7:00 in the morning." This is
10 the morning of, right. "I will text you when on my way. I
11 will be coming. What you call the police or not, it's my
12 house --" I want to go back to that point, again, right, the
13 rousting. "It's my house. If I want to come by my house and
14 see my kids, I will so. If you're sleeping, I will wake you
15 up. It doesn't matter. I have something to say to you."
16 They know he's coming. He said he may be coming as early as
17 6:00 or 7:00 in the morning, right. And then he changes his
18 mind. "I'm not coming by the house later. I changed my mind.
19 Because I have to kiss your ass all the time. You'll end up
20 leaving the house, and that's not best for the kids. Since
21 you're not thinking about them, only about yourself and Joe, I
22 have to kiss your ass." Okay. Back and forth. And you heard
23 about this up and down from Herman Allen. That's just who
24 White is, okay.

25 5:31, "I love you. I sent you a voicemail." I

1 would love for you to listen to it. It is sincere, it isn't
2 mean, it isn't angry. You need to listen to it, please. And
3 remember we talked with the CSI -- I'm sorry, the detective
4 that analyzed all the phones about voicemails. He retrieved
5 voicemails from the phone. Do you remember that? He
6 retrieved the voicemails at 9:41. And the first one, which is
7 around [inaudible] this is a 59-second voicemail. And there's
8 also shortly around this time a 3-minute phone call. Somebody
9 got on the phone and talked to Troy. Echo got on the phone
10 and talked to Troy, right? It's her phone. That happens at
11 10:00 o'clock in the morning. What happens during that 3-
12 minute phone call? Is there a discussion about him coming
13 over? Don't know. But there's a 3-minute phone call, and
14 we've got some other indication. As to the voicemail, that
15 ended up in the care and custody of the State of Nevada,
16 right? We heard that. I pulled it, I had access to it, I
17 don't remember if I listened to it, but I gave it to the
18 detective. If there's anything worthwhile there --

19 MR. ROGAN: Objection. Negative inference. Can we
20 approach?

21 THE COURT: Sustained. Counsel, approach please.

22 (Bench conference)

23 THE COURT: You can't ask them to speculate about
24 it.

25 What else? I scolded him. Did you hear me scold

1 him?

2 MR. ROGAN: Thanks.

3 THE COURT: 'Bye.

4 (End of bench conference)

5 MR. COFFEE: How about this. Don't infer anything
6 from that phone call, because the State didn't produce it for
7 you. That's the trouble, okay. The State didn't produce the
8 phone call. We know that. The voicemail, okay. And look at
9 the time in here. 9:53, and look at the text right after,
10 "But not, you're so f-ing selfish that you can't get him out
11 of the house to talk to me." Remember I told you we were
12 going to see some evidence that what he wants is him out of
13 the house? "You're so selfish you can't get him out of the
14 house to talk to me to get you to say that you love me
15 [inaudible]." Okay. He wants Averman out of the house.
16 "Either him or me. It's that simple. Thanks for leading me
17 on. You get no time. You either want to leave him and have
18 all you miss that you told me in the store Wednesday or hang
19 onto him." Proof what he wants. It's not threats, okay.

20 "Yeah, whatever, Troy." Look at her plans. This is
21 a pretty good indication of them. "If you could have just
22 given me time and space, just a few days. But fuck you. I
23 don't want to be with somebody like your crazy ass. Fuck
24 you," right. That's what she sends him. Well, again, what's
25 going on in the relationship is there's been a discussion, she

1 said she needed a few days, and at some point he's, no, out,
2 Joe goes, all right. He's tired of living out of a closet.
3 And it's real interesting. If this is a big plan and a big,
4 you know, grant getaway and escape, he leaves all his stuff at
5 Herman Allen's. There was a discussion about clothing and
6 whether or not he took clothing that day. His items are in
7 [inaudible]. You've seen there are things around the house,
8 pictures on the wall, other things. The fact that he doesn't
9 bring clothing is -- doesn't mean much at all.

10 No evidence it was well-thought-out decision. Very
11 interesting. No plan, right. No premeditation. A design
12 distinctly formed by the time of the killing. A design
13 distinctly formed, I'm going to sneak around in the back door
14 and I'm going to -- no. There's not a design distinctly
15 formed here, no premeditation. No premeditation means no
16 first degree murder. That's how this works, okay. No
17 weighing of consequences. They talk about the consequences
18 and jokes about, thank God I'm not in prison. And, you know,
19 he says some hateful things. But does he weigh the
20 consequences? Does he weigh the trauma that's going to happen
21 to his children, those children that he loved? And those
22 children were traumatized. Nobody's going to minimize that.
23 There are some child abuse counts. You do whatever you feel
24 appropriate with those. Nobody's going to minimize the trauma
25 those children went through. But he doesn't weigh the

1 consequences for and against things. And if he doesn't weigh
2 the consequences, there's no deliberation.

3 If you look on the instruction on deliberation, it
4 includes weighing the reasons for and against the action and
5 considering the consequences of the action, period. And the
6 State has to prove that beyond a reasonable doubt. And if
7 he's not done that, if they haven't shown the way, then we're
8 not talking about first degree murder. Because there's no
9 deliberation.

10 In all cases, also from your deliberation
11 instruction, in all cases the determination must not be formed
12 in passion. He is a ball of passion at this point, okay. And
13 we're not talking about reasonable provocation or these other
14 things that apply to manslaughter. Those are a little
15 different. This is a even if you're a hothead passion, okay.
16 It can't be formed in passion, it must be carried out after
17 there's been time for the passion to subside, all right.
18 Passion end, okay. No deliberation. As soon as he cools down
19 enough to weigh the reason, to consider the consequences, he
20 stops. That is a semiautomatic weapon. It is fired by
21 pulling the trigger if there's a round in the chamber. That's
22 it. It's not, you know, some kind of Bruce Lee move to get
23 the thing to work. These are designed to fire. And it keeps
24 firing in semiauto mode.

25 A mere unconsidered rash impulse, rash impulse, is

1 not deliberate even if it includes the intent to kill. Even
2 if for some reason you think that he intended to kill Joe
3 Averman and abandoned it, rather than just he's so out of his
4 head he's just firing shots, right, even if you think he
5 intends to kill, it's not deliberation. It's a rash impulse.
6 That's the way the instruction reads. No deliberation means
7 no first degree murder.

8 Heat of passion also can include the intent to kill.
9 They make it sound like something again that was impossible,
10 that's a fairy tale that exists only the shores of Disneyland
11 someplace. But heat of passion actually can include the
12 intent to kill. The focus is on provocation. It is an
13 ordinary man standard, not a perfect man standard, okay. A
14 perfect man would not have done what Troy White did.
15 Absolutely true. Not every ordinary man would have done what
16 Troy White did. Probably also true. The question is whether
17 any ordinary man confronted with what he was confronted with
18 in his situation any ordinary reasonable person, okay, any
19 one, would have acted the way he did, rashly. That's the
20 question. Act rashly, without deliberation or reflection from
21 such passion, rather than judgment. Again, when we get to
22 judgment, when he gets his facilities, when there's this
23 cooling down period that's talked about in the instructions he
24 stopped.

25 And how fast did it happen? You know, there's a --

1 there's this extension that went on in the State's argument,
2 pointed the gun and then he turned and he pointed it again and
3 he took aim and he wasn't a very good shot. Averman says
4 fast, as fast as he could turn and shoot before I could get
5 across the hall I'm shot twice. Fast. That's what Averman
6 says. That's the truth of the matter. It all happened very
7 quickly.

8 Okay. And we talked about this a moment ago.
9 There's a little bit of a distinction between heat of passion
10 and lack of deliberation. And it is this. Where heat of
11 passion it is judged on an ordinary man perspective. Lack of
12 deliberation, mere unconsidered rash impulse. It is anyone if
13 they're acting in a mere unconsidered rash impulse even if an
14 ordinary person wouldn't get upset and act on a rash impulse
15 in that instance. Does that make sense? It's a little --
16 it's a little different standard. Manslaughter is something
17 that recognizes human frailty, and because of that we don't
18 allow people to set up their own standard, okay. It has to be
19 a normal human, ordinary man standard.

20 Second and first is something different. It has to
21 do with a distinction between deliberation, okay. Even though
22 [unintelligible] provoke applies to the difference between
23 first and second, because [unintelligible] the language in all
24 cases must not be. An ordinary guy, he's a good father, he's
25 a good provider. Would the circumstances cause an ordinary

1 reasonable person to act rashly and without reflection?
2 Remember the question again isn't would every ordinary
3 reasonable person would act rashly or take [inaudible].

4 This is not a pass. You know, there's something a
5 little concerning when the State gets up in closing and says
6 it's an attempt to blame somebody else and this is a pass.
7 Look, the law recognizes heat of passion, law recognizes
8 manslaughter, and as much as the institution of the State of
9 Nevada may want to minimize it in this situation, it is a
10 recognized consideration, period. It just is. And there are
11 consequences for that. Nobody's telling you to give Troy
12 White a pass. That would be inappropriate. That's not what
13 we're talking about. But we're talking about recognition of
14 human frailty, which the law allows.

15 Rash impulse. State's burden [inaudible] went there
16 planning to kill her, that it was festering. That's what they
17 told you in opening. They used that word "festering." But,
18 again, you've seen hopes of reconciliation just a little bit
19 before. He wants Joe out of the house, okay. They haven't
20 proven that their version that he went there to kill them is
21 the only reasonable interpretation. There are many reasons to
22 doubt here. There is missing evidence that might fill in the
23 holes. We talked about voicemails, talked about [inaudible].
24 There are phones that are seized, right. We asked Tate
25 Sanborn about that, did you seize a phone from Troy White;

1 yes. They don't bother to analyze it. You can say all day
2 long it doesn't make a difference and it wouldn't have proven
3 anything. But does it matter to you they didn't bother to
4 analyze that? Because you're stuck relying on things like Joe
5 Averman. And what are Joe Averman's words about taunting
6 messages, for example? I don't remember if I said those
7 words. Is that something you might remember in the course of
8 this, you'd sent 20 messages? Is that something you might
9 remember, is that the sort of thing you -- I'm not sure about
10 that. Look at Troy's phone if you want to pick a fight with
11 me on that point, if you want to disagree with me. Analyze
12 his phone. Analyze Averman's phone. That never happened,
13 because, as the State said, it's not a whodunit. So they did
14 as much as they thought they needed to, okay.

15 It's Echo and Joe's house. Look around. Look at
16 the pictures. Tate Sanborn, same thing, you can tell
17 relationships by pictures on the wall. You heard that answer
18 from him, right. Look around the house. It's not Echo and
19 Joe's house.

20 The gun is proof of a plan. Well, you know, there's
21 a few things with the gun. First off, one of the children
22 said it wasn't unusual for dad to carry a gun when he was
23 going to Herman Allen's and to work. Jodey said it. So I
24 don't know how much that proves. And there's been much made
25 of two clips, okay. Clip pouch. If you store a gun and the

1 clips together, which probably makes sense, right, ordinary
2 folks, you don't need to be a weatherman, the second clip is
3 there. The fact that he brought a second clip and additional
4 ammunition doesn't mean much other than maybe they were stored
5 together, right. You pick up, the thing is one unit. Doesn't
6 mean that he's going there planning to unload 27 rounds. In
7 fact, the facts are contrary to him unloading 27 rounds, as we
8 have heard. Three shots fired, maybe four. Semiautomatic
9 click and fire.

10 The children were home. We've talked about that
11 already.

12 Getting a divorce. When there was talk about
13 divorce and he wouldn't get the paperworks and everything
14 else. But that's not was going on. He was hopeful. And
15 you've seen, just give me a few days, we'll get back together,
16 right. Let her die. But he called 911. He did call 911, and
17 there were problems. Initially Averman didn't remember what
18 he had said to the officers, and I think eventually the excuse
19 was, I was on pain medication so maybe what I told them at the
20 hospital, I don't know. But there was confusion about 911.
21 He tried to call. His phone wouldn't work. And he asked for
22 medical. And that's some kind of damning statement from this
23 perspective, I guess, that he asked for medical instead of
24 police. Somebody's been shot, okay. We don't know if the
25 call was dropped or not. Again, we heard about phone

1 problems.

2 Had foresight after the shooting. Really? He had
3 foresight after the shooting? As soon as he realizes what has
4 happened, as soon as he comes to his senses, as soon as he
5 cools down he tries to move his kids into another room because
6 he doesn't want them to see the horrible thing that's
7 happened. That's not foresight, all right. That's not
8 planning.

9 The guy down the street, Mr. Diaz, the tool man,
10 remember, and he says, I'm suspicious of everybody because
11 I've got tools in my front yard. Remember him? He says, he
12 says, not knowing Troy, I've never seen him before, there was
13 a change in demeanor, there was a change in how Troy was
14 acting from when he went into the house to when he left the
15 house. He was upset and confused. Herman Allen, who's known
16 him for years, he was upset and confused. Joe Averman, upset,
17 confused, irrational. After the shooting irrational.
18 Averman' word. And yet the State says calm, cool and
19 collected after the shooting. I don't remember any witnesses
20 that say calm, cool and collected after the shooting. Not a
21 single one. So why make the claim?

22 Okay. What does Averman say about when he arrives?
23 Oh, boy. He didn't want to do it at first, but finally he
24 admitted nothing out of the ordinary, nothing out of the
25 ordinary particularly. And there's a telling little comment

1 when he comes in with the kids. Remember that? Remember
2 that, when he comes in the door with the keys? Mommy, Mommy,
3 Daddy's here. That's what happens. Mommy, Daddy's here,
4 okay. He doesn't come in guns blazing. He agrees to talk --
5 now, how must that have felt? According to Averman, he has to
6 give Troy permission or he asks for Joe's permission to go
7 talk to his wife. That must have been a wonderful thing for
8 Mr. White. As provoking as that is, he doesn't pull out the
9 gun, and he doesn't shoot. He just says, Joe, please can I
10 talk to her for a little while. And they go in the back
11 bedroom.

12 And what do they do in the back bedroom? Do they
13 start yelling immediately? No. They talk, right. Averman
14 says it, the kids say it. It starts as a talk, and it
15 escalates. It escalates. Remember the question to Averman?
16 Safe bet conversation was about you. Oh, I don't know. I
17 don't know. Do you know based on the circumstantial evidence?
18 Do you know? Of course you do. The conversation is about
19 Averman. And this whole he went there to kill Echo is
20 ridiculous. Averman's the subject of his ire. Echo as a
21 target makes no sense. He wanted to be back together with
22 her. You've seen the texts. And this bumper sticker,
23 remember? There was this question, have you ever heard that
24 quote before, Detective; I think I may have seen it on a
25 bumper sticker someplace, right, the hunt it down and kill it

1 quote from weeks before.

2 MR. ROGAN: I'm just going to object at this point.

3 That -- none of that stuff is in evidence that was just on

4 that last slide.

5 THE COURT: Overruled. Counsel approach, please.

6 (Bench conference)

7 THE COURT: Mr. Rogan, illustrative or demonstrative

8 portions of quotes that were given, they're just

9 illustrations.

10 MS. MERCER: The photos?

11 THE COURT: They're not photos. They're

12 illustrative.

13 MR. ROGAN: [Inaudible].

14 MR. COFFEE: No.

15 THE COURT: These are things I've seen my kids do.

16 MR. COFFEE: Yeah. It's just -- it's demonstrative.

17 THE COURT: Okay. All right.

18 (End of bench conference)

19 MR. COFFEE: And none of these were admitted into

20 evidence. These are just demonstrative aids. But Detective

21 Sanborn had said, seen it on a bumper sticker. And there are

22 bumper stickers out there that say the same. You don't

23 convict people of murder for writing a quote from a bumper

24 sticker. It doesn't prove intent to kill, okay.

25 The photos prove nothing. There was a question from

1 Mr. Rogan to his detective. Well, photos on the wall don't
2 prove anything. Yeah, they do. They prove relationships.
3 And you know that. You know that. That's common sense.
4 And remember I said the State's had this case for
5 two years and quite a few months, almost three years. Defense
6 has had the case for a long time. Soon you are going to be
7 the people that decide the facts. Not me, not the two fine
8 attorneys sitting at counsel table. It's not Detective
9 Sanborn. Ordinary people. How the jury system works. So
10 what happened? Troy shows up early and he's got a gun with
11 him, he's going to roust Joe Averman. And he's calm enough to
12 tell Echo as much. He takes her into the back room, and they
13 talk. And it starts as a talk, but at some point it
14 escalates. We know that. That is beyond dispute. At some
15 point she says, no, Troy, don't. And the State has I think
16 taken that to mean that he's going to shoot her and is
17 thinking about things. He's going to throw Joe out of the
18 house. I'm done with your boyfriend, I'm done with my house.
19 Circumstantial evidence all points that direction, right. And
20 Echo tries to stop him. Don't believe it? Remember what
21 Averman said shortly afterwards. And we went through it and
22 this is in the record verbatim. "I don't know if maybe she
23 saw he was going for the gun. I don't know what she tried to
24 do. It looked -- 'cause it just kind of at that point like he
25 pushed her back a little and then he shot her, okay. Like I

1 don't know if she was trying to like wrestle the gun or
2 something. Like I said, as soon as I opened the door I just
3 seen him like kind of push back and shoot her." She gets
4 stuck in the middle. She's going out that door, protective of
5 Averman, and she gets stuck between the two of them. And he
6 is coming out of the room. What does he say coming out of his
7 bedroom? Everything that has happened for the past two months
8 comes rushing back to his head, and he sees red. When this
9 man has been with his children who's laid with his wife comes
10 walking out of the bedroom he goes after him. And Echo tries
11 to stop him. She gets between the two. He pulls her back and
12 he's in such a rage he fires a shot at her and then fires two
13 more at Averman. By the time he realizes what's happened it
14 is too late to do anything. Prove me wrong, State. That is
15 the most likely set of events, the most likely scenario of
16 what happened.

17 The provoking event here, the injury -- and remember
18 you've got these Supplemental Instructions 15B. The highly
19 provoking injury need not be physical, it doesn't have to be a
20 physical assault, okay. It can be a mental injury. It can be
21 a mental assault, a callous insult. And normally words aren't
22 enough to do it, okay. I call you a bad name, I don't get to
23 -- you don't get to pull out a gun and shoot me. But you've
24 the history that they do. When Averman decides to interject
25 himself into the conversation and he sees Averman coming out

1 the door that is a highly provoking injury, that is a injury
2 of the most highly provoking type. And remember the way these
3 instructions were. The State has to prove beyond a reasonable
4 doubt that I am wrong about that. That's the way the
5 instructions are laid out.

6 It's the first time he's seen Joe since the
7 betrayal. Remember that. They stayed separated. They'd
8 never been in the house together. That adds to it. It's not
9 a situation where they'd worked out their differences. They'd
10 never seen each other, okay. The aftermath, the cleanup, the
11 tragedy is beyond words. What happened to the children is
12 horrible. What happened to Echo is horrible. He's not asking
13 for a pass for that. But he is asking for recognition of
14 human frailty. When you read the instructions you've got a
15 highly provoking injury, it's a sudden quarrel, he went into
16 the house quietly. He went into the house quietly. It is a
17 sudden quarrel. Who would not be provoked by Averman coming
18 out of the bedroom in your own house to interject himself?
19 Who wouldn't be provoked by that? It is manslaughter.

20 Now, if for some reason -- well, you can read the
21 rest of the instruction.

22 Attempt murder is a little interesting, okay.
23 Attempt murder requires express malice, and that is the
24 deliberate intentional to kill, all right. If the shots are
25 fired at Averman in the heat of passion and he meets the other

1 qualifications for heat of passion, because of the way it's
2 charged, there's no lesser charge like attempt voluntary
3 manslaughter. That's just not a -- that's just not a crime.
4 It is not guilty on the attempt murder. The State makes the
5 charging decisions in a case. He's not been charged with
6 battery with use of a deadly weapon, for example, for shooting
7 Averman. He's not been charged with battery substantial
8 bodily harm, and that is not something for you to contemplate.
9 You are confined to the instructions. If you think he had the
10 deliberate intent to kill Averman -- well, the deliberate
11 intention would make it attempt murder. But again, if it's in
12 the heat of passion and otherwise qualified it is a not guilty
13 on the attempt murder.

14 So please do what you were selected to do. Do your
15 duty. Consider everything. Return a verdict of manslaughter.
16 We appreciate your time and patience.

17 THE COURT: Ladies and gentlemen, we're going to
18 take a short recess before we hear the final closing argument.
19 During this recess you're admonished not to talk or converse
20 among yourselves or with anyone else on any subject connected
21 with this trial, or read, watch, or listen to any report of or
22 commentary on the trial or any person connected with this
23 trial by any medium of information, including, without
24 limitation, social media, texts, newspapers, television, the
25 Internet, and radio, or form or express any opinion on any

1 subject connected with the trial until the case is finally
2 submitted to you.

3 We'll see you in a few minutes outside Courtroom
4 14A.

5 (Jury recessed at 2:55 p.m.)

6 THE COURT: Counsel, we have a couple of objections
7 during the defense closing argument. Is there any additional
8 record anyone believes needs to be made?

9 MR. ROGAN: Just with regard to the negative
10 inference about the voicemails, Your Honor. The other two
11 objections, after hearing the remainder of Mr. Coffee's
12 argument, I understood where he was going, and it was not
13 objectionable. And so I agree with those two.

14 The one was the negative inference regarding the
15 voicemails. That was completely improper under --

16 MS. MERCER: Glover.

17 MR. ROGAN: -- Glover -- thank you, Ms. Mercer --
18 from 2009 that you can't infer from evidence that's not
19 admitted that it would have been detrimental to the State's
20 case. And for that reason we objected. It was sustained
21 rather quickly, and I thank the Court for that.

22 THE COURT: And I think Mr. Coffee rephrased it so
23 that the jurors were clear that they weren't supposed to make
24 a negative inference on the voicemails.

25 MR. ROGAN: He did.

1 THE COURT: Anything else? I didn't feel I need to
2 give a curative instruction given what he said he was going to
3 do when he went up.

4 MR. ROGAN: And the State didn't ask for one.

5 THE COURT: Okay. Anything else?

6 MR. COFFEE: No.

7 THE COURT: All right. Does anybody remember who
8 gave me these papers?

9 All right. We'll be in recess for a short period of
10 time while the jurors get ready for the last part. Because we
11 may have a penalty phase, I'm going to sequester --

12 (Court recessed at 2:56 p.m., until 3:06 p.m.)

13 (Jury is present)

14 THE COURT: Counsel stipulate to the presence of the
15 jury?

16 MS. MERCER: Yes, Your Honor.

17 MR. COFFEE: Yes, ma'am.

18 THE COURT: You may be seated.
19 Your final argument.

20 STATE'S REBUTTAL

21 MS. MERCER: Thank you, Your Honor.

22 Ladies and gentlemen, this case is not about
23 passion. This case is about possession. This case is about
24 this man's inability to let this 29-year-old mother of five
25 children go. He treated her like a dog treats a fire hydrant.

1 You're mine, and you're always going to be mine.

2 The defense made some interesting, very creative
3 arguments about the text messages and that they would show
4 that he intended to kick Joe out of the house. Fortunately
5 for you, you have their entire conversation. It's State's
6 Exhibit 85. And what will become abundantly clear to you from
7 this entire conversation is that at about approximately 8:30,
8 9:00 a.m. the defendant realized Echo was never coming back.
9 Was she confused? Probably so. They'd been married for five
10 years. They had five kids together. She had not worked
11 during the entire marriage. The idea of leaving someone and
12 being a single mom of five children was probably frightening,
13 and she probably still had feelings for him at some point.
14 But that [unintelligible] happened over and over again in the
15 weeks leading up this murder. It was not a highly provoking
16 injury to defendant on this day.

17 The reason the defendant went to that house is
18 because she wouldn't take him back. 10:35:51 a.m. on July
19 27th, 2012, "You get no time. You either want to leave him
20 and have all that you miss that you told me in the store that
21 Wednesday or -- you prove what you wanted. I will say it
22 again. You are driving me crazy," this is 10:52 already,
23 "because you tell me you want me back and then you stay with
24 Joe." 10:52 again. "You fucking telling me you're going to
25 come back to me and [inaudible] need your fucking time with

1 Chelsea. That's fucking driving me crazy." 10:58, "'Cause
2 you suck. You lead me on. You can't make a decision. You
3 want me, you want him." The text messages proceed in that
4 fashion.

5 And then at 11:24:59 a.m., "You know I'm only crazy
6 like this because of what you're doing to me. For the record,
7 I wouldn't be this way if you would just stop and come back to
8 me. You should have spent your time before you told me you
9 wanted me back, and then you could just come back and it's all
10 good. But now you're all pissed off again and now you think
11 I'm an asshole again or just wait and see."

12 This is a crime about possession, not passion. He
13 wanted her to come back right then and there. And when she
14 wouldn't he killed her. And when he murdered her he murdered
15 her with premeditation, deliberation, and wilfulness, just as
16 my co-counsel already went through. I'm not going to go
17 through it again.

18 Defense counsel showed you a photo at the very end
19 of his slides that was clearly meant to rouse your passions
20 and make you angry at Echo and feel sympathy for his client.
21 I'll just take the opportunity to remind you of Instruction 32
22 that says, "A verdict may never be influenced by sympathy or
23 prejudice or public opinion." In other words, the decision
24 that you have to make today, the decision about whether this
25 woman was murdered or whether she was killed in the heat of

1 passion is dictated by your head and not your heart.

2 Now let's talk about all the evidence that directly
3 contradicts defense counsel's statement that the defendant
4 went over to that house to roust Joe out of it. The first
5 thing the defendant does when he goes to that house is ask to
6 talk to Echo. Not Joe. Echo. Because he's pissed that she
7 won't come back to him right then and there. He doesn't say
8 to Mike Montalto two hours before -- three hours before the
9 murder, I'm going to go over there and kick this guy out of my
10 house. What he says to him is, I just want to kill them.

11 Then at 4:28 a.m. he sends a text message to her
12 that says, "I have something to say to you." Not to Joe. He
13 doesn't say, I'm coming over to kick Joe out of the house. He
14 says, "I have something to say to you." Because he's angry
15 with her.

16 The defense counsel would have you believe that they
17 were a happily married couple, but they wouldn't have been
18 separated if their marriage was all that great. And a family
19 man doesn't say the kind of things the defendant was saying in
20 those text messages to his wife, this woman that he allegedly
21 loved so much. And it doesn't negate the fact that he hated
22 them. Throughout those text messages he repeatedly says, I
23 hate you, I hate you're doing. Not, I'm mad at Joe. Not, I
24 want Joe out of the house. I hate you.

25 They would also have you believe that he wouldn't

1 have done all this if there hadn't been the heat of passion
2 and that the -- that if he'd been planning this murder spree
3 he would have done a better job. Well, there is another
4 alternative to the defense counsel's theory. The other
5 alternative is that he went over there and never intended on
6 anybody leaving that house. Twenty-five rounds of ammunition.
7 They would also have you believe that the defendant
8 acquiesced to this because he was -- this alternative living
9 really kind of arrangement with Joe and Echo because he was so
10 hopeful about repairing the marriage and that was the only
11 reason. That he was just doing it to appease Echo. But then
12 when you look through the Facebook messages that have been
13 admitted into evidence you'll see that there are comments that
14 the defendant makes about the fact that they're not divorced
15 yet because of the cost of the divorce itself. That's why he
16 was allowing Echo and Joe to stay in that home. He knew that
17 he would have to pay child support, and he knew that he would
18 have to support Echo in another home. It was cheaper. And
19 you can see that throughout the text messages, too. He says,
20 "I've never had so much trouble paying a simple bill. Let's
21 just live together."
22 A few very simple reasons why this is not the heat
23 of passion and voluntary manslaughter. Because malice -- the
24 presence of malice means that it can't be manslaughter.
25 There's an instruction in your packet that tells you -- it's

1 Instruction Number 13. It tells you that voluntary
2 manslaughter is an unlawful killing of another without malice.
3 Instruction Number 5 then tells you that an unlawful
4 killing with malice is murder. When the defendant killed Echo
5 Lucas White he was full of malice towards her. Full of it.
6 This was not a heat of passion killing. He was full of
7 malice. There are two types of -- the instructions also tell
8 you that malice aforethought is an intentional doing of a
9 wrongful act without adequate provocation. And I'll come back
10 to that later. With malice aforethought. And it says that
11 malice aforethought can arise from anger," which he was
12 clearly full of, hatred, which he voiced for you in text
13 message over and over again, I hate you, I hate what you're
14 doing to me, you're fucking destroying me, "revenge," this was
15 clearly revenge, because she wouldn't come back to him right
16 then and there, "ill will, spite, or a grudge."
17 Both types of malice exist in this case. There is
18 express malice and implied malice. Express malice is the
19 deliberate intention to kill. And the evidence of that
20 express malice is the defendant's repeated comments to his
21 friend and on his Facebook, if you love someone and you let
22 them go, well, I like this version better, hunt them down and
23 kill them. That's on July 9th, 2012. That's 16 days before
24 the murder. And then he says, "God is really helping as a
25 testimony to the whoring and whoremonger are still alive and

1 I'm not in prison. No joke intended." Mind you this is a
2 private message that he sent his friend and he's expressing
3 this malice towards his wife that he allegedly loves so much.
4 And he says, "No joke intended." That's on July 14th, 13 days
5 before the murder.

6 Then he repeats that same thing to Herman Allen
7 approximately seven days before the murder. And then just
8 three hours before the murder he tells Mike Montalto, I just
9 want to kill them. And how does Mike Montalto respond? Think
10 about your kids, don't say stuff like that, you need to be
11 around to care for them. But it didn't stop him. He weighed
12 the consequences and he disregarded the consequences, going
13 back to what my co-counsel addressed earlier.

14 Then at 10:06, "Get ready for hell." He's not
15 saying, get ready for me to come kick Joe out. He's saying,
16 "Get ready for hell," because I'm going to come kill you and
17 kill Joe. And then 11:26, "Just wait and see." Just wait and
18 see what? He's not saying, just wait and see, I'm going to
19 come kick Joe out of the house and you're going to be mine
20 again. There's also implied malice. The circumstances of the
21 killing showed a [unintelligible] and malignant heart. You
22 have dozens of texts in which he says he hates her, that she
23 can make all this hate go away if she'll just leave him and
24 get back with the defendant.

25 He also made derogatory comments to the children.

1 This loving father is telling his nine-year-old son that
2 Mommy's fornicating in their bed. Remember Jodey runs across
3 the start to the neighbor and says, my dad just shot my mom
4 because she's cheating on him. This loving father? A loving
5 father tells an eight- and nine-year-old child that? You have
6 literally pages full of hateful, hateful, hateful text
7 messages to this woman.

8 The defendant was angry with her when he went to
9 that house. He was jealous that she had chosen Joe over him.
10 You heard witnesses say, yes, he was a jealous possessive man.
11 Mike Montalto told you the defendant would drop his wife off
12 down the street -- or have his wife drop him off down the
13 street so that co-workers wouldn't see her because she was
14 such a cute gal. You also heard from Amber Gaines that he was
15 jealous and threatening. He refused to move on, and he
16 refused to let her move on. He was humiliated. We know that
17 from the message to Tim Henderson. "I'm humiliated. Please
18 don't share this with anyone else." And he acted out of
19 revenge because she wouldn't leave Joe.

20 And what does he do? He takes that firearm to have
21 a conversation with his wife, this wife that he wants to get
22 back together with? He takes a loaded firearm into his house
23 with his five children there when he's so full of hatred that
24 he's been sending her literally over a hundred text messages
25 telling her how much he hates her and what a big whore she is.

1 And he shoots her in the chest.

2 Then what's he do? He prevents Joe from calling
3 911. He took Joe's phone. That, oh my phone's not working
4 thing, that was said to appease the children, who were saying,
5 please call an ambulance, Mommy's dying. He said that to shut
6 them up. You heard him on the phone with 911. Be quiet.
7 Stop it. If he really wanted to call for help he would have
8 taken the phone that he just grabbed from Joe and called 911.
9 He didn't. He doesn't call 911 until he realizes that his
10 oldest son has run out of the house and across the street and
11 is calling the police already. The son's call came in at
12 11:50 a.m. His call doesn't come in until almost 11:54 a.m.
13 You heard Jayce testify that when Jodey ran out of the house
14 barefoot, practically naked, wearing nothing but his boxer
15 shorts, the defendant chased after him. The defendant chased
16 after Jodey and said, Jodey, Jodey, come back. That's why he
17 called the police or called medical, I should say. At that
18 point she was probably already dead.

19 Then what does he do? He leaves the children, this
20 loving father of five, this family man sitting here, who
21 allegedly acted out of this heat of passion, leaves his five
22 children -- well, technically not Jodey, because Jodey's
23 escaped, but four of them in the home with their dead mother.
24 Because there's malice, it's not manslaughter. It's that
25 simple.

1 But it's also not voluntary manslaughter, because
2 there was no sudden heat of passion. This was something that
3 the defendant had been dealing with for two and a half months.
4 This relationship was not new to him. This is not a man who
5 has no idea his wife's cheating on him, walks in the house and
6 finds them in bed. He knew about it, he approved of the
7 living arrangement however weird it was because it saved him
8 money. That's not sudden heat of passion. They'd been
9 separated for months, he'd known about Joe since early June,
10 Joe moved in in late June. His text messages will show you
11 that he knew when Joe was over at that house. This wasn't a
12 secret then. And he wasn't surprised to find Joe at that
13 house that morning. That's also abundantly clear from the
14 text messages leading up to the murder. "I know Joe's there.
15 Why won't you just send him away so we can talk." He knew
16 what he was going to find when he went to that house.

17 And there'd been repeated talk about getting back
18 together. This was not the first time that Echo said, hey, I
19 love you, I want to work things out. There were ups and downs
20 throughout the separation. And you can see that from the text
21 messages. There are texts from 7/17, 7/19, 7/23, 7/24, and
22 7/26, and then the Facebook message to Lisa Piggot [phonetic]
23 on 7/27, which is technically I think 7/26, because it's UTC
24 time. But all of those text messages from those days will
25 show you that there had been conversations about getting back

1 together.

2 Another reason it's not voluntary manslaughter is
3 that this was not a serious and highly provoking injury
4 sufficient to excite an irresistible passion in a reasonable
5 person. It's an ordinary reasonable person. It's not the
6 defendant. It's what would a normal reasonable person do
7 under the circumstances.

8 If the fact that Echo was trying to get back to him,
9 back together with him were supposedly this serious and highly
10 provoking injury, then why didn't he kill her before when
11 she'd done the same thing? Because it's not a serious and
12 highly provoking injury. And he'd had time to cool. This had
13 been going on for two and a half months. This wasn't
14 something that just all of a sudden happened. He knew that
15 Joe was going to be at that house.

16 As for the conversation that took place in that
17 bedroom, it wasn't about moving Joe out of the house, it was
18 about the defendant wanting her back and her not being willing
19 to go back. Jodey told you that he heard -- the only things
20 he heard from that conversation were, no, Troy, please don't,
21 fine, I'll stop seeing Joe. There's no conversation about
22 moving Joe out of the house. That is the extent of the
23 conversation that we know occurred in that room. That is not
24 a serious and highly provoking injury sufficient to excite
25 irresistible passion in a reasonable person. An ordinary

1 person under those circumstances does not shoot and kill his
2 wife and then turn and shoot another person two times in front
3 of the five children.

4 Relationships go bad every day. People get their
5 hearts broken. People get cheated on. People get left to
6 raise children by themselves. But they don't respond by going
7 out and killing someone. They might send hateful messages and
8 they might send hateful voicemails, but you don't shoot and
9 kill the person you supposedly love.

10 And a reasonable person who knows that his estranged
11 wife is seeing someone for over a month and a half doesn't go
12 to the home where his wife and five children are and gun them
13 down in front of their children. He's not allowed to set up
14 his own standard of conduct. In other words, he's not allowed
15 to create the situation that he created by going to that house
16 when he was so angry because she wouldn't come back to him and
17 then say, it's just heat of passion. He created that
18 situation. He did not need to be at that house. He was not
19 supposed to be at that house. He wasn't supposed to be at
20 that house until 3:00 or 4:00 that afternoon. He doesn't get
21 the benefit of having created that situation.

22 And there was a sufficient interval to cool down.
23 There were two and a half months to cool down. At any given
24 point he could have said, you know what, Echo, I'm tired of
25 your crap, I'm moving on, I'm done with you. But he didn't.

1 Even if you're only looking at July 27th, he had plenty of
2 time to cool down. He had nine hours to cool down from the
3 time that he realized she was not coming back to him. And if
4 you want to narrow it down even further, he had an hour-long
5 bus ride to cool down, an hour-long bus ride. But he doesn't.
6 He doesn't cool down. Instead, he goes to that house armed
7 with a weapon and murders his wife and attempts to murder Joe
8 Averman in front of the five children.

9 The instruction tell you that, "Thus, the killing
10 shall be attributed to deliberate revenge and determined by
11 you to be murder." This was murder. This was murder with
12 wilfulness, premeditation, and deliberation. This was first
13 degree murder with use of a deadly weapon, and the State is
14 going to ask that you find the defendant guilty of first
15 degree murder with use of a deadly weapon as to this 29-year-
16 old mother of five children, Echo Lucas White, who was gunned
17 down in front of those five children on July 27th of 2012.

18 We're also going to ask that you return a verdict of
19 guilty as to Joe Averman, the attempt murder with use of a
20 deadly weapon. The defendant absolutely intended to kill Joe
21 Averman when he shot at him. The only thing that stopped him
22 was those kids.

23 And obviously we're going to ask that you find him
24 guilty of the five counts of child abuse and the carrying
25 concealed weapon.

1 THE COURT: Thank you.

2 Ladies and gentlemen, we have a very high-tech way
3 in Department 11 of selecting alternate jurors. I have a
4 coffee can. I have 14 poker chips with numbers written on it.
5 And we drew two. The two numbers that we drew were Number 9
6 and Number 14. So, Mr. Jones and Ms. Cloutier, if you would
7 remain in the room with me for a little bit as I have the
8 officer take charge of the other jurors.

9 Would you swear the officer, please.

10 THE CLERK: Yes, Your Honor.

11 (Officer sworn)

12 (Jury retired to deliberate at 3:34 p.m.)

13 THE COURT: Could you please swear the officer to
14 take custody of the alternates.

15 THE CLERK: Yes, Your Honor.

16 (Officer sworn)

17 THE COURT: Now, Ms. Rose, are you taking them to
18 the deliberation room, or are you taking them to the front
19 conference room?

20 MS. ROSE: The other jury deliberation room.

21 THE COURT: So if you would follow the officer,
22 please. Take your items with you. We may have to have you
23 come back in to begin deliberations with the other group.

24 (Alternate jurors recessed at 3:34 p.m.)

25 THE COURT: Mr. Coffee, did you have an opportunity

1 to review the State's clean laptop computer to make a
2 determination as to whether it is clean and whether the wi-fi
3 has been disabled on it?

4 MR. COFFEE: I think they're in the process of
5 deleting a PowerPoint right now. Right?

6 MS. MERCER: No. We're just ejecting the thumb
7 drive.

8 (Pause in the proceedings)

9 MR. COFFEE: The best I can tell from my limited
10 examination.

11 THE COURT: Do you have someone who is more
12 technically adept than you that can give me a higher level of
13 comfort?

14 MR. COFFEE: I'm actually fairly technically adept.
15 I build my own computers and things. But without going
16 through file by file --

17 THE COURT: So then when you -- why are you giving
18 me a limitation, then, on your review?

19 MR. ROGAN: Judge, I can affirm that there's --

20 MR. COFFEE: Because we're not going through all the
21 folders and everything, it's almost impossible to tell.

22 THE COURT: Well, that's true. But are there icons
23 on -- are there menu choices, anything like that?

24 MR. COFFEE: No, no, no.

25 MR. ROGAN: No.

1 THE COURT: All we've got on there is a Windows
2 Media Player so if they want to put the 911 calls in there to
3 listen to them, they're there.
4 MR. COFFEE: That's it.
5 THE COURT: Right?
6 MR. ROGAN: That's right.
7 MR. COFFEE: Yeah.
8 MS. MERCER: Well, there's other programs, but the
9 programs won't do anything for them.
10 THE COURT: Is it passworded?
11 MS. MERCER: Yes. But it's a very simple password
12 that we'll write down on a stickie.
13 THE COURT: Thank you.
14 MR. COFFEE: I hope the password doesn't start with
15 a J.
16 MR. ROGAN: It does not.
17 THE COURT: You know, I didn't finish with the other
18 people. They're coming back tomorrow morning before you guys
19 may come back.
20 So take that. They're going to bring you the laptop
21 computer in just a minute, Kevin.
22 All right. So let's talk about Item Number 2 after
23 you give the clean laptop to the clerk so she can then give it
24 to the marshal.
25 I haven't yet received any jury instructions for a

1 penalty phase from anyone.

2 MR. ROGAN: That's correct, Your Honor.

3 THE COURT: Where are they?

4 MR. COFFEE: They're pretty --

5 MS. MERCER: They're stock.

6 MR. COFFEE: Yeah. I was going to say that they're

7 pretty -- I've only done a few penalty phases on non-capital

8 cases, and they're pretty short. It's essentially a long

9 sentencing hearing. I mean, I don't think we're going to have

10 a lot of dispute on penalty phase instructions.

11 MS. MERCER: We can send them to you right now, Your

12 Honor.

13 THE COURT: That'd be lovely. The issue was I don't

14 have them.

15 Come on up. The clerks had another question for

16 you. And that's because we're paranoid in this department.

17 Do you have your exhibits for use in the sentencing hearing --

18 or the penalty phase if we should get there?

19 MR. COFFEE: We can use what we used from the trial

20 phase; right?

21 THE COURT: Absolutely. Those are all in evidence

22 already. So there are not at this point additional exhibits

23 you anticipate using?

24 MS. MERCER: If there is, it'll probably be one

25 more.

1 THE COURT: Okay. When you come to have the verdict
2 read, whether that's tonight or tomorrow, and remember we have
3 one juror who has to leave at 4:45, so when you come bring
4 that additional exhibit so the clerk can mark it. You're
5 going to email me and Mr. Coffee potential jury instructions
6 for penalty phase. And the reason I ask this is I'm going to
7 be ready just in case. Regardless of what the decision is, if
8 I'm ready, then we're going to roll into it. If we're not --
9 if, you know, it's a second degree or voluntary manslaughter
10 or not guilty, we won't worry about it. But I'd rather be
11 prepared than not be prepared.

12 MR. COFFEE: I have a preliminary hearing on Jerry
13 Howard that's got a ton of media coverage and whatnot. We are
14 waiving the preliminary hearing, but I'm going to be stuck
15 until probably 9:30 or 10:00 o'clock tomorrow.

16 THE COURT: That's okay. I have to see the folks
17 from Sands versus Jacobs again tomorrow morning at 8:30,
18 because I didn't finish with them, and I told them I wasn't
19 going to talk to them anymore when they started bringing up
20 new issues. Because I went through everything that was on
21 calendar today, even though it took longer. But then other
22 issues, it's like, yeah, no, you're not raising all the other
23 stuff, we'll talk about that tomorrow.

24 If the jury's still deliberating, I'll have them
25 come in at 9:00 or 9:30, Mr. Coffee, and then you come when

1 you're ready or don't come and we'll call you.

2 MR. COFFEE: Fine. I will be here -- I should be
3 done by then.

4 (Pause in the proceedings)

5 THE COURT: Mr. Coffee, will you work with the D.A.
6 to go through the pouches to make sure there's nothing
7 incriminating in there.

8 Okay. The plan is to let the jurors go at 4:45 so
9 that our one juror can meet the commitments that we agreed he
10 would be able to do if we selected him. So we will do that.
11 And if they haven't reached a verdict, I will send them home,
12 I will have the two alternates return and be sequestered, and
13 hopefully things will work out. But please send me those jury
14 instructions so I can do some work on them in the back
15 hallway. Have a nice evening. We'll be in touch.

16 MR. COFFEE: All right. The Court will let us
17 know when they send them? I've got children to pick up is
18 my only --

19 THE COURT: What?

20 MR. COFFEE: I've got children to pick up before
21 6:00. So the Court will let us know when we send them at
22 4:45?

23 THE COURT: They will be going home at 4:45 because
24 you have one juror who has to leave.

25 MR. COFFEE: No. I understand that. But, you know,

1 sometimes they get motivated and want to work through or
2 something.

3 THE COURT: Oh. We will email you to let you know
4 we have let them go home.

5 MR. COFFEE: Perfect. That's what I was asking.

6 THE COURT: And what time they decided to come back.

7 MR. COFFEE: Perfect. Perfect.

8 THE COURT: Were there any more questions for me
9 while I have on my thinking cap?

10 All right. Thank you.

11 (Court recessed at 3:44 p.m., until the following day,

12 Friday, April 17, 2015, at 11:02 a.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

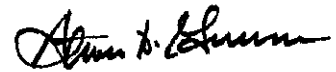
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FLORENCE HOYT
Las Vegas, Nevada 89146


FLORENCE M. HOYT, TRANSCRIBER

10/15/15

DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

TROY RICHARD WHITE

Defendant

CASE NO. C-286357

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

JURY TRIAL - DAY 8

FRIDAY, APRIL 17, 2015

APPEARANCES:

FOR THE STATE:

ELIZABETH MERCER
JEFFREY S. ROGAN
Deputy District Attorneys

FOR THE DEFENDANTS:

SCOTT L. COFFEE
DAVID LOPEZ-NEGRETE
Deputy Public Defenders

COURT RECORDER:

DEBRA WINN
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, FRIDAY, APRIL 17, 2015, 11:05 A.M.
2 (Court was called to order)
3 (Jury is present)
4 THE COURT: Good morning, ladies and gentlemen.
5 Counsel, you can be seated.
6 Ms. Clerk, if you could please take roll of the
7 jurors and the alternate jurors.
8 THE CLERK: Yes, Your Honor.
9 (Jury roll called)
10 THE COURT: We received your note. We have found
11 the portion of the testimony that you wanted replayed, and
12 we're going to now hope when we hit "play" that everything
13 works.
14 (Playback of testimony of Michael Montalto)
15 THE COURT: Ladies and gentlemen, does that complete
16 the portion of the testimony of Mr. Montalto that you wished
17 us to play?
18 JURORS: Yes.
19 THE COURT: All right. Hold on a second.
20 Counsel, can you approach, please.
21 (Bench conference)
22 THE COURT: One of the jurors has asked for Mr.
23 Averman's testimony to be played. Because it's rather long,
24 I'm going to send them to lunch before we do that, and then
25 I'm going to -- there's also a question from Ricky Gulati that

1 we're going to address now.

2 (End of bench conference)

3 THE COURT: Mr. Gulati, you had a question. You're
4 writing it down. Sweet.

5 JUROR NUMBER 6: Yes.

6 THE COURT: Counsel, come back.

7 (Bench conference)

8 THE COURT: You know that my practice is to mark as
9 Court's exhibits the questions we get and then separately mark
10 their answers -- if you want to look at them, they're there --
11 as well as all the jury questions that have been submitted
12 during the course of the trial.

13 "Can you take it back to 4:18 and play it over
14 again."

15 (End of bench conference)

16 THE COURT: So we're going to replay the portion
17 that's about 4:18 to about 4:21.

18 (Portion of Michael Montalto's testimony replayed)

19 THE COURT: Ladies and gentlemen, does that complete
20 the portions of the testimony of Mr. Montalto that you wanted
21 to see?

22 JURORS: Yes.

23 THE COURT: We've also received a request to see Mr.
24 Averman's testimony. Because that testimony is rather long,
25 I'm going to have you go to lunch, and then when you come back

1 if you can give me any more definition as to the portion of
2 Mr. Averman's testimony you would like to see, then I can try
3 and narrow it down. Otherwise, we can play the whole thing
4 for you.

5 All right. So at this time I'm going to let --
6 Dan, wasn't your table downstairs ready?

7 MR. KUTINAC: Yes, Your Honor.

8 THE COURT: Okay. So if all of you, including the
9 alternates, would go with the marshal, who will escort you to
10 lunch. And then we'll see you after lunch.

11 (Jurors recessed at 11:30 a.m.)

12 THE COURT: So we'll wait and see. They're going
13 downstairs to lunch. So maybe if we could meet back here at
14 1:30.

15 MR. COFFEE: Done deal.

16 MR. ROGAN: Your Honor, which juror number was it
17 that requested that? Was that Number 6 again?

18 THE COURT: No. That was Number 13, Ms. Avitia.

19 MR. COFFEE: Oh. That's Averman?

20 THE COURT: No -- yes, the Averman one.

21 The foreman submitted the request on Mr. Montalto.

22 Number 6 is Ricky Gulati wanted that portion played
23 again.

24 Okay. So we'll see you guys later. I'm going to do
25 my conference call now. See you at 1:30. I'm hoping they

1 will narrow it when they come back from lunch.

2 (Court recessed 11:32 a.m., until 1:28 p.m.)

3 (Jury is present)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 Counsel stipulate the presence of the jury?

6 MS. MERCER: Yes, Your Honor.

7 MR. COFFEE: Yes, Your Honor.

8 THE COURT: Ladies and gentlemen, has the jury

9 reached a verdict?

10 JUROR NUMBER 11: Yes.

11 THE COURT: Has the jury selected a foreman?

12 JUROR NUMBER 11: Yes.

13 THE COURT: Sir, you have the verdict forms?

14 JUROR NUMBER 11: Yes, I do.

15 THE COURT: Could you hand them to the marshal,

16 please. Thank you, Mr. Schulman.

17 The clerk will now read the verdict of the jury out

18 loud.

19 THE CLERK: Yes, Your Honor.

20 "District Court, Clark County, Nevada. The State of

21 Nevada, plaintiff, versus Troy White, defendant. Case Number

22 C-286357, Department Number 11. Verdict.

23 "We, the jury in the above-entitled case, find the

24 defendant Troy White as follows.

25 "Count 1, murder with use of a deadly weapon.

1 Guilty of second degree murder with use of a deadly weapon.

2 "Count 2, attempt murder with use of a deadly
3 weapon. Guilty of attempt murder with use of a deadly weapon.

4 "Count 3, carrying a concealed firearm or other
5 deadly weapon. Guilty of carrying a concealed firearm.

6 "Count 4, child abuse, neglect, or endangerment as
7 to Jodey White. Guilty of child abuse, neglect, or
8 endangerment.

9 "Count 5, child abuse, neglect, or endangerment as
10 to Jesse White. Guilty of child abuse, neglect, or
11 endangerment.

12 "Count 6, child abuse, neglect, or endangerment as
13 to Jayce White. Guilty of child abuse, neglect, or
14 endangerment.

15 "Count 7, child abuse, neglect, or endangerment as
16 to Jazzy White. Guilty of child abuse, neglect, or
17 endangerment.

18 "Count 8, child abuse, neglect, or endangerment as
19 to Jett White. Guilty of child abuse, neglect, or
20 endangerment.

21 "Dated this 17th day of April 2015 by Mr. Jeffrey
22 Schulman, Foreperson."

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

25 JURORS: It is.

1 THE COURT: Do either of the parties wish to have
2 the jury polled?

3 MR. ROGAN: Not the State, Your Honor.

4 MR. COFFEE: No, Judge.

5 THE COURT: Thank you.

6 The clerk will now record the verdict in the minutes
7 of the court.

8 Ladies and gentlemen, you are now completed with
9 your jury service, and you are going to be discharged as
10 jurors. I want to thank you both for the time and attention
11 that you paid during this case, which was long and required a
12 lot of thought on yourselves, and also the dedication that you
13 showed in being here with us every day. So the service that
14 you've provided is what makes our system work. We truly
15 appreciate it. Thank you so much.

16 At this time you can talk to anybody you want to
17 about the case. Sometimes for some of the lawyers it's
18 helpful to find out things they did that you thought were
19 effective and things they did that weren't effective. It's
20 part of the learning process for lawyers just like it is for
21 everybody else as they go through their profession. So if you
22 want to talk to them, you are free to. There's a spot down on
23 the third floor while you're getting your vouchers and
24 processing out where they'll be able to talk to you if you
25 want to. However, if somebody should persist in wanting to

1 talk to you after you've told them you don't want to talk to
2 them, let the marshal know, and he'll help get you to your
3 car.

4 So thank you very much. And for those alternates
5 who didn't get to participate in the deliberations, thank you.
6 Because you were here just for the same amount of time as the
7 other jurors, and we truly appreciate you. Without having you
8 here it wouldn't work.

9 So thank you. And due to you our system works. I'm
10 going to come around and shake your hands, and then we'll let
11 you go down to the third floor and process out.

12 (Jurors discharged)

13 MR. COFFEE: ...on the first degree count, according
14 to Mr. Lopez-Negrete.

15 THE COURT: Well, we're going to look real quick.
16 Dulce, if you'd look.

17 Okay. So he's going to be -- remain incarcerated
18 pending his sentencing on no bail.

19 Sir, part of the process, since it's a second
20 degree, is we have to have a presentence investigation report
21 prepared. They tell us they do that on a 50-day time frame
22 currently. So we're going to set your sentencing in 50 days.
23 If counsel either side would like to provide a sentencing
24 memorandum in conjunction with the sentencing, I would be
25 happy to read it prior to sentencing.

1 So we're going to give you a sentencing date now.

2 Your file will be referred to P&P for a PSI.

3 THE CLERK: It'll be June 1 at 9:00 a.m.

4 THE COURT: Okay. And, counsel, I want to
5 compliment all of you on the good job you did. Everybody was
6 well prepared, the exhibits were very well organized, and the
7 trial flowed very well. So thank you very much for your
8 attention, your professionalism, and the hard work you put in.
9 Thank you.

10 MS. MERCER: Thank you, Your Honor.

11 MR. ROGAN: Thank you. Thanks to the Court's staff,
12 as well.

13 THE PROCEEDINGS CONCLUDED AT 1:35 P.M.

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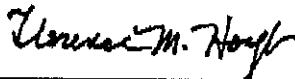
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

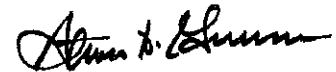
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146


FLORENCE M. HOYT, TRANSCRIBER

10/15/15

DATE



CLERK OF THE COURT

1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

11 **TROY RICHARD WHITE,**

12 **Defendant.**

CASE#: C286357-1

DEPT. XI

13
14
15 **BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE**
16 **WEDNESDAY, JUNE 23, 2015**

17 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
18 **TELEPHONIC CONFERENCE**

19 **APPEARANCES:**

20 **For the State:**

ELIZABETH A. MERCER, ESQ.
Deputy District Attorney

21 **For the Defendant:**

SCOTT L. COFFEE, ESQ.
Deputy Public Defender

22
23
24
25 **RECORDED BY: JILL HAWKINS, COURT RECORDER**

1 WEDNESDAY, JUNE 23, 2015 AT 11:38 A.M.

2
3 [All counsel appearing telephonically]

4 THE COURT: All right. Two things. Is that Mr. Coffee and Ms. Mercer on the
5 phone? Dulce wants to know.

6 MS. MERCER: It is.

7 MR. COFFEE: It is.

8 THE COURT: Good. I'm so glad I was able to guess correctly.

9 So, two things. Ms. Mercer called and asked if we were going to do
10 Troy White at a different time or trail it to the end of the calendar. Is it okay with you,
11 Mr. Coffee, if we trail it towards the end of the calendar?

12 MR. COFFEE: Oh, sure, no problem at all.

13 THE COURT: So, let's plan for 9:45. But I'm going to leave it on the calendar
14 where it is so the jail brings him because otherwise they try and bring him separate
15 and then I got to wait for him to get back.

16 MS. MERCER: Okay.

17 MR. COFFEE: No problem.

18 THE COURT: Okay. Second issue. I understand from my law clerk that Ms.
19 Mercer has submitted some documents for in camera examination.

20 MR. COFFEE: Right.

21 MS. MERCER: Correct.

22 THE COURT: I do not review documents in camera unless I've issued an
23 order for me to do that for a specific purpose. So, why'd you send me documents?

24 MS. MERCER: Well because I believed that they were relevant to the
25 charges pertaining to the children. They're the CPS records.

1 THE COURT: I already got a conviction. So, if we you want me to review
2 those documents, we need to make arrangements for Mr. Coffee to have an
3 opportunity to review them too because I won't review them unless he gets a chance
4 to review them.

5 MS. MERCER: He's already received the complete packet of the CPS
6 records prior to trial.

7 THE COURT: Is that true, Mr. Coffee?

8 MR. COFFEE: Your Honor, without seeing what you were given I've got no
9 idea. I had no idea they were being reviewed by the Court.

10 THE COURT: I haven't reviewed them. I haven't even opened the envelope.

11 MR. COFFEE: What do we got specifically, Liz?

12 MS. MERCER: It's --

13 MR. COFFEE: I don't doubt that I've got them. I'm just --

14 MS. MERCER: It's the PDF file of CPS records that we provided to you
15 previously.

16 MR. COFFEE: How long is it?

17 MS. MERCER: I think it's like 300 something pages. I only provided her the
18 documents pertaining to the children in the case though.

19 MR. COFFEE: Okay. How much --

20 MS. MERCER: Which was probably, I would guess, 250 pages.

21 THE COURT: Laura is holding in front of me. It's about three inches thick.

22 MR. COFFEE: Oh, my goodness.

23 THE COURT: And usually what I do when I review CPS records is I make a
24 determination -- are they redacted or unredacted, Ms. Mercer?

25 MS. MERCER: They're unredacted.

1 THE COURT: I make a determination as to whether given the current
2 presentation they need to be produced to the other side. I then usually issue a
3 limiting order on how they can be used based on the confidential nature of those
4 records, and in a case like this where I have a sentencing and I've already had
5 issues, I would of course make sure that everybody has a chance to review
6 whatever it is I look at so if a record needs to be made about the records, that we
7 have the ability to do so. So, I wasn't sure we'd done any of that which is why we're
8 having this discussion.

9 MR. COFFEE: And I'm, to be honest, I'm not going to say I'm at an impasse
10 but I'm in a little bit of an impasse without having seen the records. Now I will also
11 say in terms of timing though I know the State had provided a sentencing memo and
12 we were supposed to have a danger psych or a risk to re-offend psych, but I just got
13 back today. The jail had been on lockdown all last week. We called and yelled at
14 the doctor and got him in on Monday. It was faxed this morning to me. But those
15 items were coming the Court's way also. But just way of -- so you know that they're
16 coming.

17 THE COURT: All right. So, you're sending over some more stuff before the
18 sentencing.

19 MR. COFFEE: I'm sending over some more stuff before the sentencing and
20 I'm hoping to have it done here very shortly.

21 THE COURT: But the issue I'm having, and I'm happy to do whatever you
22 guys think is appropriate, but I am uncomfortable reviewing documents that are in a
23 sealed condition in camera without a good record about what I'm reviewing and the
24 fact that defense counsel hasn't had an opportunity to challenge or not challenge the
25 review.

1 MS. MERCER: Well, I mean, I haven't done anything to alter the records. I
2 just took out the records -- the records that you have are the records that pertain to
3 the five children alleged in the child abuse counts in this case. So, Mr. Coffee
4 should be able to discern pretty quickly which records I'm referring to.

5 THE COURT: Are they Bates numbered, Ms. Mercer?

6 MS. MERCER: I'm sorry?

7 THE COURT: Are they Bates numbered?

8 MS. MERCER: No, they're not.

9 THE COURT: I'm not looking at them then.

10 Here's the issue. I will not be able to make a record of what it is that
11 I've looked at. If you gave them to me in a Bates number fashion from the original
12 set and I was able to adequately discern which records they were, it might be a
13 different situation. But I'm not going to go and look at what you have as a selection
14 of records without a better record being made.

15 MS. MERCER: Okay. Well then --

16 THE COURT: Not that you can't argue about them and what they contain
17 because if they were in fact disclosed to Mr. Coffee as part of the discovery that's
18 not an issue for me. My concern is that I don't know where these records came
19 from. They don't appear from what I've heard so far to be something I previously
20 reviewed and entered an order on, and whenever I do that, the documents are
21 Bates numbered by me when I do the review if the parties haven't previously Bates
22 numbered. So, I am constantly hand writing numbers on the bottom of DCFS
23 records when I review them.

24 MR. COFFEE: The only other concern that I've got, Liz, off the top of my
25 head and it's no such much -- I don't doubt that you gave us this stuff, not a question

1 about that. But I'd hate for this -- I don't know if the CPS records should necessarily
2 end up in common circulation, if that makes sense.

3 MS. MERCER: They don't -- I provided them in the envelope that said that
4 they were not to be filed with Court; that we were just going to ask that they be
5 made according to this.

6 MR. COFFEE: Okay. Because that was the only other concern is who knows
7 who is going to be digging around in this thing at some point. And for a variety of
8 privacy reasons from your prospective, I would think they may not want to be out
9 there.

10 THE COURT: Well they can't be released unless I issue an order and I
11 haven't issued an order, at least I can't see that I've issued an order. I just looked
12 through all of my hearings and I always do a minute order when I do an in camera
13 view. And so I don't see that I've issued the order in this case. So, I don't know.
14 Do you know anything, Ms. Mercer, about an order from the Court, the District Court
15 on those?

16 MS. MERCER: I don't believe we -- I don't believe there was an order.
17 Another deputy in our office was able to get them from our juvenile division.

18 THE COURT: Okay. Well I have a process that I use with DCFS records and
19 it's always the same process. I issue an order saying that they should be produced
20 and I'm going to do an in camera review. I then do an in camera review. I make a
21 determination as to whether they should be produced or not. And then I have a
22 limiting order that I use that nobody else uses about the restriction on the use of the
23 documents given their confidential nature. I haven't done any of that in this case.

24 MS. MERCER: Okay.

25 THE COURT: So, I'm not saying you can't argue what's in those records. I'll

1 let you do whatever you want, but I'm not going to look at a sealed envelope of
2 DCFS records when I haven't followed my normal procedure for how I handle what
3 are very confidential records that require a Court order for them to be used for
4 another purpose.

5 MR. COFFEE: And we can probably work through this. It might be best if I
6 could talk with Ms. Mercer for a few minutes just concerning a possible way to work
7 through it because I think everybody wants to go forward if we can.

8 THE COURT: Okay. I'm not saying we can't go forward. I'm just not going to
9 look at them unless I have a higher level of comfort.

10 MR. COFFEE: No, I know. But if Ms. Mercer and I are allowed to talk for a
11 minute we can probably get on the same page so we don't have to delay stuff.

12 THE COURT: Then how about I go on hold and you guys talk to each other
13 and then I picked up in about five minutes.

14 MR. COFFEE: That would be perfect.

15 THE COURT: Okay. Lara, push hold.

16 [Pause in proceedings at 11:46 a.m.]

17 [Proceedings resumed at 11:57 a.m.]

18 THE COURT: Did you guys come up with anything?

19 MS. MERCER: We did. I apologize, Your Honor, for not knowing your
20 practice and procedures when it came to the DCFS records. But I think that the
21 parties are in agreement if the Court is willing to, we would like to continue the
22 matter for a month so that I can get a Bate stamp copy to you and to Mr. Coffee and
23 then we can make a record about what's contained in them.

24 THE COURT: Sure. How about we do this. Mr. Coffee, are you agreeable to
25 that?

1 MR. COFFEE: Yeah, that's fine. I've actually got -- something came up in the
2 sentencing memo that I probably need to investigate anyway. It will give me the
3 opportunity to that so --

4 THE COURT: All right. So, we'll go ahead and we'll continue the sentencing
5 which is scheduled for tomorrow until -- how do you guys feel about July 22nd?

6 MS. MERCER: That would be perfect, Your Honor.

7 THE COURT: Does that work, Mr. Coffee?

8 MR. COFFEE: That's perfect. I do have a prelim scheduled that day.

9 THE COURT: Would you rather go the Monday of that week, July 20th?

10 MR. COFFEE: That would be better for me. Would that work for you, Liz?

11 MS. MERCER: I'm just double checking my calendar real quick; yes, that's
12 good for me.

13 THE COURT: Okay.

14 MR. COFFEE: Yeah. July 20th let's plan for. Do we need to have a status
15 check on these records and things beforehand?

16 THE COURT: No. Here's what's going to happen.

17 MR. COFFEE: Okay.

18 THE COURT: So, we're continuing the sentencing to July 20th. I'm setting a
19 status check on the records for -- how long you need, Ms. Mercer?

20 MS. MERCER: I can probably have that to you by Monday at the latest.

21 THE COURT: Okay. So, I will set a status check on July 3rd, which is a
22 holiday on my chambers calendar.

23 MS. MERCER: Okay.

24 THE COURT: So, Dulce is going to pretend it's on July 2nd even though it's
25 not a Friday. So, what it will say is my chambers calendar I'll say that something

1 happened. Please don't come. Mr. Sweetin came the other day for a chambers
2 calendar and didn't want to leave. So, I'm going to review them in camera and I'm
3 going to issue a minute. I may get to them faster. It depends when Ms. Mercer gets
4 here.

5 MR. COFFEE: Okay.

6 THE COURT: And then my practice is my minute order will notify you to
7 come pick up your Bates numbered copy --

8 MR. COFFEE: Okay.

9 THE COURT: -- that has been ordered to be released. Sometimes I don't
10 release them all, Mr. Coffee.

11 MR. COFFEE: Okay.

12 THE COURT: And there will be a receipt that you have to sign that limits the
13 use of those records unless you get an additional order.

14 MR. COFFEE: Okay.

15 THE COURT: I don't think you need an additional order in this case since
16 you're only going to use them for argument at sentencing. But if you are going to
17 give them to an expert or something, I typically require an ex parte motion to release
18 them to the expert.

19 MR. COFFEE: Okay. No problem. As close as I got to an expert on this is
20 my dad.

21 THE COURT: Okay. Anything else?

22 MS. MERCER: No, I think that's it. Sorry about that, Your Honor.

23 THE COURT: It's all right. It's just I got a process I got to go through and
24 because of the nature of those records and I need to make sure I follow it.

25 MS. MERCER: Okay.

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THE COURT: All righty.

MR. COFFEE: Thank you, guys. I'll call you back in a minute, Liz.

THE COURT: Bye.

MS. MERCER: Thank.

MR. COFFEE: Goodbye.

MS. MERCER: Goodbye.

[Proceedings concluded at 12:00 a.m.]

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


PATRICIA SLATTERY
Court Transcriber


CLERK OF THE COURT

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 TROY RICHARD WHITE,

12 Defendant.

CASE#: C286357-1

DEPT. XI

13
14
15 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
16 MONDAY, JULY 20, 2015

17
18 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
19 **SENTENCING**

20 APPEARANCES:

21 For the State:

ELIZABETH A. MERCER, ESQ.

JEFFREY S. ROGAN, ESQ.

Deputy District Attorneys

22 For the Defendant:

SCOTT L. COFFEE, ESQ.

DAVID LOPEZ-NEGRETE, ESQ.

Deputy Public Defenders

23
24
25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 MONDAY, JULY 20, 2015 AT 9:37 A.M.

2
3 THE COURT: Now can we go to Troy White. Good morning, Mr. White, how
4 are you today?

5 THE DEFENDANT: I'm fine.

6 MS. MERCER: And, Your Honor, may the parties approach quickly?

7 THE COURT: Sure.

8 [Bench conference --- not transcribed]

9 MS. MERCER: She's indicating that she'd give consent, Your Honor.

10 THE COURT: Okay. Ms. Gaines, I understand that you are giving consent
11 for any video to include Jayce's face today.

12 SPEAKER AMBER GAINES: Absolutely.

13 THE COURT: All right. I just wanted to ask because I don't know if you
14 remember, during the trial I ordered that the faces be blurred because the adoption
15 hadn't occurred yet.

16 SPEAKER AMBER GAINES: I appreciate that. Thank you so much.

17 THE COURT: All right. Anything else, counsel?

18 MS. MERCER: No, Your Honor.

19 THE COURT: This is the time set for entry of judgment imposition of
20 sentence. Is there any legal cause or reason why judgment should not be
21 pronounced against you at this time?

22 MR. COFFEE: Judge, the only legal cause or reason is the typographical
23 errors that we mentioned at the bench in the Pre-Sentence Investigation Report.
24 Parole and Probation has been contacted. They're in the process of doing a
25 supplemental PSI. I don't see anything that's going to affect the sentencing

1 decision, but we'd ask that the Court accept the supplemental PSI before a JOC is
2 signed. The parties are in agreement as to what the mistakes in the current PSI are.
3 They have to do -- they're on page four -- and it has to do with number four, carrying
4 a concealed weapon that says second offense. Actually there is no prior conviction
5 for that.

6 The second mistake in the PSI has to do with number five, and that has
7 to do with -- it says with criminal gang and there's no criminal gang alleged or no
8 criminal gang involvement in Mr. White's past. I think the Court was aware of that
9 and the context of the document makes it pretty clear. I don't think tht it was going
10 to affect the Court's decision this morning, but we do expect that it could affect
11 housing situations at the prison and we wanted to make sure it was on the record
12 that we've asked to have that corrected and contacted the appropriate party.

13 THE COURT: There's no objection from the State to those corrections.

14 MS. MERCER: No, Your Honor.

15 THE COURT: So, based upon the representations and the lack of objection,
16 the PSI is ordered to be amended to modify the offenses shown on page four to
17 correctly reflect the charges and on page five to modify the mention of the gang
18 issue. Anything else?

19 MR. COFFEE: No, Judge.

20 MS. MERCER: No, Your Honor.

21 THE COURT: Mr. Coffee, please prepare an order and send it over so P and
22 P will be directed prior to my rendition of sentence to modify the PSI. Anything else,
23 any other legal reason?

24 MR. COFFEE: No, Judge.

25 MS. MERCER: No, Your Honor.

1 THE COURT: Sir, by virtue of the jury's verdict, I adjudge you guilty of count
2 one, guilty of second degree murder with use of a deadly weapon; count two, guilty
3 of attempt murder with use of a deadly weapon; count three, guilty of carrying a
4 concealed firearm; count four, guilty of child abuse, neglect or endangerment related
5 to Jodey White; count five, guilty of child abuse, neglect or endangerment related to
6 Jesse White; count six, guilty of child abuse, neglect or endangerment related to
7 Jayce White; count seven, guilty of child abuse, neglect or endangerment related to
8 Jazzy White, and count eight, child abuse, neglect or endangerment as to Jett
9 White.

10 Sir, have you had an opportunity to review the Pre-Sentence
11 Investigation Report and discuss it with your counsel dated May 26th?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: And do you understand that this morning I've ordered that
14 certain modifications being made to that document. Are there any other errors that
15 you noted in reviewing that document with your counsel?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Okay. Is there anything you'd like to tell me before I hear from
18 the attorneys?

19 THE DEFENDANT: Yes, Your Honor. I'd like to say that I'm sorry for my
20 actions on July 27, 2012 for shooting my wife. I think about her every day and miss
21 her every day; for shooting Joseph Averman. I'm sorry also for the emotional and
22 mental problems I have caused my children because of my actions. I'm sorry that I
23 even took a gun there that day. I know that I feel -- I know that sorry is not enough.
24 I'm sorry for my wife's family and her friends and the grief that I've caused them and
25 the heartache that I've caused them. I wish there was something I could do or say

1 to take it away and change everything that I've done. That's all I'd like to say. Thank
2 you.

3 THE COURT: Thank you, sir. In addition, sir, your counsel and the State had
4 both provided sentencing memorandums as well as some letters in support and a
5 statement from at least one of the victims. Did you get a chance to review those as
6 well?

7 THE DEFENDANT: No; but we've talked over them.

8 THE COURT: Okay. So, you've reviewed the contents with your counsel?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. Thank you. State's position.

11 MS. MERCER: Thank you, Your Honor. And, Your Honor, I know that the
12 Court has reviewed the sentencing memorandum which we filed back in June. So,
13 I'll keep my arguments brief.

14 The State in its sentencing memorandum took the position that the
15 recommendation of the Department of Probation and Parole should be followed by
16 the Court, and the State still stands by that position. The Department of Probation
17 and Parole recommended a total of 39 years to life when you added it all up. Based
18 upon the facts of this case as well as the Defendant's prior history of violence, that
19 sentencing is reasonable.

20 This was not the Defendant's first time acting violently towards a
21 significant other. During the course of the State's preparation for this trial, we spoke
22 to a number of witnesses that were noticed by the defense, colleagues of the
23 Defendant. One of those people who attended church with him advised us that she
24 heard testimony from him about how he was previously violent with another ex-wife
25 and in fact held a knife to her at some point.

1 In addition, we learned that he was violent with Echo Lucas White at
2 least three times prior to taking a firearm with him on a bus, riding a bus for an hour
3 and a half, and then murdering her in front of her five children. The most recent of
4 those events occurred a month prior and when the Defendant acted violently toward
5 her, he also told her I'm going to kill you. And then a month and three days later
6 she's murdered in front of her five children. He then left those five children to watch
7 their mother dying, initially refused to call for help and any effort whatsoever to save
8 her life. He also shot and wounded Joseph Averman two times and didn't seek for
9 him until Jodey escaped from the house and he knew that the police were going to
10 be coming.

11 When he shot and killed Echo Lucas White, he took from those who
12 loved her a mother, a daughter, a sister, an only daughter at that, and a friend to
13 many. In speaking to those her loved her you can tell that she was a bright light in
14 their world and that their worlds were very dimmed -- I'm sorry, Your Honor. Mr.
15 Rogan is going to step in.

16 THE COURT: Okay.

17 MR. ROGAN: Your Honor, as Ms. Mercer was saying, their whole family has
18 been affected by this crime, and you can see them all here today, tears in their eyes
19 crying over what this man has done. And although he has apologized today, an
20 apology is meaningless to them because they don't have their daughter and their
21 sister and their mother any longer. And, in fact, of her children only three are here
22 today because the other two are so distraught over what this man did that they could
23 not even come to Court and face him and speak to this Court about how his actions
24 affected them and their lives.

25 One of these children is, in fact, in such emotional distraught -- has

1 experienced such emotional distress that he has had difficulty at home and is now in
2 a group home through the Department of Family Services because and solely
3 because of the actions of this man. It is going to take years of therapy for him to
4 recover. That is the one child that was there that day and saw his father murder his
5 mother.

6 Your Honor, this is the second time this year that I have had to be in a
7 sentencing where a father has killed a mother, a father has killed his wife. It's too
8 many. This community has experienced this too many times and we need to send
9 that message to this community that these actions of people like the Defendant are
10 not going to be forgotten and that they're going to be treated appropriately by
11 prosecutors, by the police, and by the Courts.

12 It's not often that we see a recommendation like we see in the PSI here
13 today essentially asking for the maximum possible punishment under the counts that
14 the Defendant was convicted. We think that it's appropriate given the number of
15 victims to this crime that each of these cases be run consecutive, each of these
16 counts be run consecutively as we've indicated in our sentencing memorandum for
17 a total of 39 years to life in prison. There nothing in the law that prohibits this
18 although the sentencing memorandum of the defense seems to suggest otherwise.
19 NRS 200.508 does not prohibit consecutive sentences if it's in fact authorized by
20 law. And we think that that is an appropriate punishment for the victims who are
21 here today and for the community at large that this man serve that significant period
22 of incarceration. Thank you.

23 THE COURT: Thank you, Mr. Rogan. Mr. Coffee.

24 MR. COFFEE: The State says we think the PSI is reasonable. I don't know
25 how reason plays in a case like that.

1 This is an anomaly for what, from what I've been able to tell, was a
2 decent man most of his life who acted with the worst judgment possible in the most
3 violent way possible and took the life of his wife. If there were a way to bring her
4 back, if throwing a rope over something in this courthouse and videotaping would
5 resurrect her somehow, I couldn't argue against it, but it won't. And while Mr. Rogan
6 would like to send a message to the community, and I understand that, the problem
7 is in these emotional situations there's a limited amount of control that sending a
8 message is going to have. The Court's just not going to be able to give a harsh
9 sentence to Mr. White and stop these sorts of crimes. Whatever the Court decides
10 today is going to be a harsh sentence. There's no question about that; whatever the
11 Court imposes.

12 The Pre-Sentence Investigation Report and the jury, despite the notes
13 and the emails and the texts, saw fit to convict Mr. White of second degree murder
14 as opposed to first. It is always troubled me, and we include it in the sentencing
15 memorandum, that there is a certain dependence on the manner in which the State
16 charges that defines where they're at with sentencing. The child abuse and neglect
17 in this particular case is exactly on point.

18 There's a recent case named *Johnson* in the Nevada Supreme Court
19 that talks about legislative intent with concurrent and consecutive time. And if you
20 look at 200.508 it talks about the act or omission that results in the abuse and
21 neglect, and here the act or omission from beginning of trial from prelim all the way
22 through has been the killing of Echo White. And I think the devastation that was
23 caused may certainly call for something towards the long end of the sentence on the
24 second degree murder. We don't take issue with that. We'd ask the Court to follow
25 the recommendation of parole and probation as to that count. And I believe the

1 recommendation is around 16 years, give or take.

2 The act of shooting Joseph Averman is an independent action we'd ask
3 the Court to give consecutive time if the Court thinks that is appropriate as to Mr.
4 Averman. It may well be given the facts of the case. Given the fact that Mr. White
5 turned himself in, that he's got no record, the other things that weighed in his favor, I
6 would ask the Court to consider perhaps four to ten and a consecutive four to ten for
7 Mr. Averman, understanding that it would run consecutive to the underlying
8 sentence for Ms. White. But those are the two primary people that were hurt.

9 Now I understand that the family was devastated. Please do not take
10 this as me saying there aren't mothers and children who were affected by this. All
11 the family members they absolutely loved Echo. She was vivacious. I don't think
12 anybody loved Echo -- and that's the dilemma of this case -- I don't think anybody
13 loved her more than Mr. White at least at some point. And I don't know what went
14 on his head to go there with a gun that night. Mr. White has been repentant since I
15 have represented him. It's been three years, four years at this point. He regularly
16 breaks down if I show him pictures. I don't think he's acting in apologizing for the
17 Court.

18 You've got a evaluation from Greg Porter, Dr. Greg Porter, concerning
19 whether or not he's a future threat for child abuse and neglect. Given the facts of
20 this case, I think it's pretty obvious that that was going to come back as a low risk,
21 but the law requires that we do that and it did it. It did come back as a low risk.

22 I think the spirit of 200.508 is for concurrent time for the child abuse
23 counts and I think it can be taken into consideration with the verdict that the jury
24 returned with the second degree murder and with the attempt murder of Joseph
25 Averman. We laid out law from a number of other states. Nevada doesn't have

1 some strict guidelines concerning concurrent time. Of the other states that have
2 looked at it when they're talking about concurrent time, have all come to the
3 conclusion that a lot of it depends on if it's part and parcel with the underlying
4 offense, and here it certainly is. The fact that the children were home makes it
5 worse. I don't deny that. But I think that, again, it calls for a longer sentence on the
6 second degree murder with perhaps a consecutive sentence for Mr. Averman.
7 There's nothing I can do or say that will change anything that Mr. White did that day
8 and nothing he can do. But I think the recommendation of parole and probation at
9 39 years with consecutive time for everything essentially gives him a life without
10 parole at his age. How old are you right now, Troy?

11 THE DEFENDANT: Forty-seven.

12 MR. COFFEE: Forty-seven. Maybe with health care maybe it's not life
13 without but it's pretty close. He's going to have a life tail I expect regardless of what
14 the Court does. If the Court sentenced him someplace in the 20 to 25 year range
15 he's going to be 70 before he's even eligible for parole. I think that's appropriate. I
16 think the Court could do that taking into consideration everything that's been done
17 and that's what we're going to ask the Court to do.

18 THE COURT: Okay. Thank you.

19 MS. MERCER: And, Your Honor, there are --

20 THE COURT: Hold on a second. Mr. White, is there anything else you'd like
21 to say before I hear from the victim speakers?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Thank you. All right.

24 MS. MERCER: There are four witnesses, Your Honor, four people who would
25 like to give a victim impact statement, and the first one is Amber Gaines.

1 THE COURT: Okay. Ms. Gaines, if you would come to the podium, please.
2 We have to swear you in.

3 **AMBER GAINES**

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

5 THE VICTIM IMPACT SPEAKER: State your name, spelling your first and
6 last for the record.

7 THE VICTIM IMPACT SPEAKER: Amber Gaines, A-M-B-E-R GA-I-N-E-S.

8 THE COURT: Ma'am, first I'd like to tell you that I am as well sorry for your
9 loss.

10 THE VICTIM IMPACT SPEAKER: I know. Thank you.

11 THE COURT: If you would tell me how this incident has affected you and
12 your family.

13 THE VICTIM IMPACT SPEAKER: I'm going to try to do this without crying;
14 okay. My name is Amber Gaines. My daughter was Echo. Words cannot express
15 the pain and anguish our family has endured. His decision to take my daughter's life
16 with no regard is unimaginable. The loss is Echo is beyond words. No more
17 birthdays, no more family gatherings or laughter; the hugs and opportunity to say I
18 love you are forever gone. I'm sorry.

19 THE COURT: It's okay, ma'am.

20 THE VICTIM IMPACT SPEAKER: Our family is forever broken, of course.
21 On July 27th of 2012 my beautiful child was shot to death. I'm trying to share the
22 word how Echo's murder has impacted my grandchildren and myself and my family.
23 He took my rest and he took my peace. I have lost faith and trust in people. I have
24 trouble finding joy in the simple pleasures of being happy. Life was so much fun
25 when she was in it. It doesn't seem right anymore and nothing seems right. The

1 despair is so overwhelming that it takes my breath away at times. Echo was loving,
2 fun, kind, and her heart as big the world. Her murderer, Troy, took a daughter, a
3 best friend, a mother. I watch her children struggle on a daily basis since the loss of
4 their mommy. Their world has been shattered like no other. We are now painfully
5 aware that there are such horrible violence and evil men in this world.

6 As I read this it still seems so unbelievable that some monster would
7 take my child of God away from us all. Echo was my only child. She was my gift.
8 He took her away. He played God. The children will always carry despair of murder
9 with them. The man they once called dad is now the very scary guy in the closet.
10 We miss Echo so terribly bad. It's a feeling that cannot even be described. I was
11 so -- I wish so badly I could have taken that bullet for her so she could be with her
12 beautiful children and watch them grow. She had a thirst for life, a contagious
13 personality, and everyone who came in contact with Echo became a friend.

14 She was the most precious gift in my life. I miss her smile, her silly
15 ways. I miss how she was always say to me, cheer up, Charlie, when I was feeling
16 down. We shared the same heartbeat for nine months but really for 29 years. She
17 was life, my angel, my best friend, my Echo, my daughter; the love she had for me,
18 her children, her friends, how strong she was.

19 I just want to everyone to know what a wonderful person Echo was.
20 The emotional and physical damage this has caused our family is nothing less than
21 nightmare. My beautiful child is gone by his --- of him. Her five children, Jodey,
22 Jayce, Jesse, Jett, and Jazzy have lost their reasons of being.

23 She wanted so badly to become a grandmother one day. We used to
24 tease one another about what a cool granny she would be. Echo will never get to
25 be that grandmother nor will she ever get to see her babies grow into adults. Echo

1 is a name we use in our home on a daily basis and always will keep her memory
2 alive. As for now, we have just memories and hopes of seeing her again in God's
3 time. Thank you.

4 THE COURT: Thank you. Ms. Mercer, any questions for Ms. Gaines?

5 MS. MERCER: No, Your Honor.

6 THE COURT: Ms. Gaines, wait a minute. Mr. Coffee, any questions for Ms.
7 Gaines?

8 MR. COFFEE: No; thank you, Ms. Gaines.

9 THE COURT: Your next speaker.

10 MS. MERCER: It's Michael Gaines, Your Honor. And for the record, he's
11 Amber's -- I mean -- Echo's step-father.

12 MS. MERCER: And, Your Honor, Ms. Gaines has just indicated that he's also
13 going to read Jesse's statement to the Court, if that's okay.

14 THE COURT: Mr. Gaines, if you'd come forward to the podium and be
15 Sworn, please

16 **MICHAEL GAINES**

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

18 THE COURT CLERK: Please state your full name, spell your first and last.

19 THE VICTIM IMPACT SPEAKER: Michael Gaines. I'm the father now of
20 Jayce and Jesse and the grandfather of the other children.

21 THE COURT: And, sir, again, sorry for your loss. If you could tell us how this
22 has impacted -- I understand you're going to read Jesse's statement as well.

23 THE VICTIM IMPACT SPEAKER: I will. I have Jesse's here.

24 My mommy was great mom. She did everything for me. She was
25 teaching me to tie my shoes. She would just -- she was just with me and my brother

1 all day. I still have nightmares of the day he shot her. She tried to talk but all I
2 heard was gurgling and the sound of air coming from the bullet hole in her. I wish
3 Troy would have died and my mommy was still alive. Every day I think about her
4 short life. Life has been full of doubt. When I think of her I can't think of anything
5 wrong with her. I miss her more than anything even now. I hope to see her again
6 one day. My love for her is a bond that can never be broken. I love her to the moon
7 and back and she could always say that to me too. I miss all the games we played
8 and the Rock Band. We had the whole set. What happened that day I will never
9 forget and I will never call him dad again forever ruining my life. I will always be
10 haunted by what he did that day. I love you, Mommy, to the moon and back. Love,
11 Jesse.

12 THE COURT: Thank you, sir. Sir, is there anything else you'd like to tell us
13 or how this impacted you and the family?

14 THE VICTIM IMPACT SPEAKER: This impacted everybody in the family, I
15 mean, tremendously. The oldest, Jodey, witnessed the shooting. He's the one that
16 ran out the house and called for the police. When I was doing my impact statement,
17 he ended up going to Monte Vista Mental for anger problems, and he's been
18 through five foster homes. But me and him talked one day and he was telling me
19 what had happened, and he was crying, and he swore that he could have stopped
20 him. He said I could have done something. He said I could have got a knife, I could
21 have stopped him. And he was crying. And I took him by the shoulders and looked
22 him right in the eye and I said, look, there was another man in the house that was
23 shot too, and I said you were nine years old, there's nothing you could do. He still
24 thinks that he could have done something to save his mom, and to me, that was one
25 of the hardest things. That's something that's never going to leave him.

1 The other kids are affected bad too, but he is going to have a problem
2 the rest of his life. I mean, we really tried to get him on the right track and try to put
3 some light into his life, but it's just dark and he can't seem to snap out of what
4 happened that day.

5 THE COURT: Thank you, sir.

6 THE VICTIM IMPACT SPEAKER: I mean, you see how it's affected my wife.
7 She'll never be the same person she was when I married her 20 years ago. The
8 boys, just it's a horrible thing, and we're all doing our best just to make sure the boys
9 can have a good life.

10 THE COURT: Thank you, sir.

11 THE VICTIM IMPACT SPEAKER: I know there's no bringing her back. What
12 he did was one of the most horrible acts, and it didn't just affect these five kids but
13 there's two more kids back there for their mother too, and they have to live with that
14 as well. There's other grandparents. There's so many people that it's messed their
15 lives up bad. That's all I have to say.

16 THE COURT: Ms. Mercer, Any questions for Mr. Gaines?

17 MS. MERCER: No, Your Honor.

18 THE COURT: Mr. Coffee?

19 MR. COFFEE: No; thank you, sir.

20 THE COURT: Your next speaker.

21 MS. MERCER: Your Honor, the next speaker is Trish Lucas and she was
22 Echo's step-mother.

23 | **TRISH LUCAS**

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

25 THE COURT CLERK: Please state your full name, spelling first and last.

1 THE VICTIM IMPACT SPEAKER: Trish Lucas, T-R-I-S-H L-U-C-A-S.

2 THE COURT: And ma'am, again, I'm sorry for your loss. If you could tell us
3 how this has affected you and your family.

4 THE VICTIM IMPACT SPEAKER: I met Echo in 1998 and a couple of years
5 after that, I married her dad and became her bonus momma she called me. In our
6 family, there's no steps and there's no exes. Words cannot express the pain that
7 Don and I have felt since July 27th when Echo was taken from us.

8 We adopted Echo's two oldest children she had at a very, very young
9 age. Echo struggled with that for a while and eventually was grateful that she was
10 able to keep a relationship with Sidney and Caleb and that they were still in the
11 family. When Echo was killed, we watched both our children struggle with emotions
12 no child should ever have to struggle with. We've had a lot of therapy and my son
13 starting acting out in school and at home. My daughter has had to go to therapy
14 trying to stay strong for her daddy because he's never been the same since losing
15 Echo.

16 Echo was his heart; he's broken now. He's not the same. That day
17 when he lost Echo he lost a part of himself, my kids lost a part of their father, the
18 babies lost a part of their grandfather. That day that he lost her we took home all
19 five kids with no clothes, no diapers, no shoes, just whatever they had on that day
20 when Jodey ran out of the house to call the police to try to save his mom's life. It
21 was the worst day of my life.

22 Since then Don has adopted the two babies and we're just trying to
23 have them strive and live a happy life and remind them who their mommy is every
24 single day. Jazzy was only six months old when her mommy was taken from her. It
25 breaks my heart because we're sitting at the dinner table and she's talking to her

1 cousin and she says I don't have a mommy. And we reminded her who mommy is;
2 her mommy is in heaven, her mommy is here with us, but she'll never -- her mommy
3 will never be able to see her get married, pick out a wedding dress.

4 My kids were just getting to know Echo because she was staying with
5 her dad on the weekends. She was going through a divorce and she's staying with
6 her dad on the weekends and we were just getting a very good relationship with her
7 and were just taken from her -- she was taken from them again just like when they
8 were little, and it's not fair. Echo once told me that she would have a million children
9 if she could because that's what she knew she was good at, being a mom. Troy
10 took her from all the children, mine included. I just ask that you give him the
11 maximum sentence for all of the charges that he's convicted of.

12 THE COURT: Thank you, ma'am. Ms. Mercer, any questions?

13 MS. MERCER: No, Your Honor.

14 MR. COFFEE: No, Judge.

15 THE COURT: Thank you, ma'am. Next speaker.

16 MS. MERCER: Your Honor, the next speaker is Jayce Gaines. I'm not sure if
17 he can reach the microphone.

18 THE COURT: I'm going to have him stand on the side. Jayce, if you could
19 come up here. Kevin, pull out the flap and put the microphone there, please.

20 MS. MERCER: Your Honor, is it okay if Ms. Gaines stands next to him?

21 THE COURT: It is.

22 THE VICTIM IMPACT SPEAKER: When my mommy died --

23 THE COURT: Hold on, Jayce, we're going to swear you in. Remember when
24 you sat in the witness stand and we swore you in.

25 **JAYCE GAINES**

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

2 THE VICTIM IMPACT SPEAKER: When my mommy died, the world turned
3 up. There were no more days of fun. I cannot see the world without her and my
4 family was helping me cope with her death, but I still don't have my mommy. I
5 remember times when we would finger paint and go the park and play hide and
6 seek. I remember her bake us biscuits with warm peanut butter at 2 a.m. in the
7 morning because she loved us. I miss all that so much. The death of my mom has
8 totaled my life that I could never be fixed -- that I thought could never be fixed. As
9 time goes on my Gigi and Pappa we talk about my mommy and all the fun times we
10 had. I miss you, Mommy. Love, Jayce. And I hope you can hear me.

11 THE COURT: Thank you, sir, and I'm sorry for your loss. Any questions for
12 Jayce, Mr. Coffee?

13 MR. COFFEE: No, thank you.

14 THE COURT: Thank you, sir. Any additional speakers?

15 Mr. White, in accordance with the laws of the state of Nevada, I now
16 sentence you on count one to a term of life with possibility of parole after ten years,
17 plus an enhancement for use of a deadly weapon of 76 to 192 months.

18 On count two, I sentence you to a period of 76 to 192 months plus an
19 enhancement of 76 to 192 months for use of a deadly weapon; that count to run
20 consecutive to count one.

21 On count three, I sentence you to a period of 19 to 48 months; that count to
22 run concurrent to counts one and two.

23 On count four, I sentence you to a period of 24 to 60 months; that count to run
24 consecutive to counts one and two.

25 On count five, I sentence you to a period of 24 to 60 months; that count to run

1 concurrent to all other counts.

2 On count six, I sentence you to a period of 24 to 60 months; that count to run
3 concurrent to all other counts.

4 On count seven, I sentence you to a period of 24 to 60 months; that count to
5 run concurrent to all other counts.

6 On count eight, I sentence you to 24 to 60 months; that count to run
7 concurrent to all other counts.

8 By my calculation, the aggregate sentence is a 31 to life; does anyone
9 disagree with that math?

10 MS. MERCER: No, Your Honor.

11 MR. COFFEE: Court's indulgence.

12 THE COURT: While Mr. Coffee's doing that math, sir, in addition you have to
13 pay an administrative assessment of \$25, a \$3.00 DNA administrative assessment,
14 extradition costs of \$335.50, DNA testing costs of \$150 and submit yourself to DNA
15 testing, a \$250 defense assessment. Credit for time served should be about 1,050
16 days according to my calculation.

17 MS. MERCER: Court's indulgence.

18 MR. COFFEE: Judge, I --

19 MS. MERCER: I think it's a little bit more than that.

20 MR. COFFEE: I think it's actually a little bit --

21 MR. NEGRETE: We calculated 1,088 from the date of the offense which is
22 July 27th until today.

23 MR. COFFEE: Enhancement for the deadly weapon was 76 also.

24 THE COURT: Seventy-six and 192 on both one and two.

25 MR. COFFEE: Okay. I should be quicker at math. I apologize, Judge.

1 THE COURT: I did it ahead of time which is what I'm asking you to confirm.

2 MR. COFFEE: Okay.

3 THE COURT: So, you're asking for credit for the time he was in the Arizona
4 custody as well?

5 UNKNOWN SPEAKER: Correct.

6 THE COURT: All right.

7 MS. MERCER: Your Honor, I calculated it at 1,075 but I'll submit it to the
8 Court.

9 THE COURT: 1,088 days credit.

10 Mr. Coffee, have we done the math yet?

11 MR. COFFEE: I am almost there. I'm going to assume that the Court is
12 correct now that we've -- Court's indulgence. It's easier to correct it now.

13 THE COURT: It's okay. Math is important and it's not something most
14 lawyers are good at. Take your time.

15 MR. COFFEE: We believe it's 34 to life, Judge.

16 THE COURT: Thirty-four. Okay. The aggregate sentence, sir, is 34 to life.
17 Counsel may have made a mistake but that's our best estimate of doing the math.
18 It would be included specifically in your Judgment of Conviction as well.

19 MR. COFFEE: And if the math is wrong I'll talk with Mr. Rogan and I'll get a
20 calculator that's smarter than me and we'll correct it with the Judgment of
21 Conviction.

22 MS. MERCER: Thank you, Your Honor.

23 THE COURT: Anything else?

24 MR. COFFEE: No.

25 MS. MERCER: No.

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THE COURT: All right. Have a nice day.

[Proceedings concluded at 10:17 a.m.]

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


PATRICIA SLATTERY
Court Transcriber

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