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Tracie K. Lindeman
Clerk of Supreme Court

V.

Respondent.

APPELLANT'S APPENDIX VOLUME X PAGES 1923-2071

Counsel for Respondent

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Sara Ruano

From: Reyes, Emmanuel <ReyesE@clarkcountycourts.us>
Sent: Thursday, January 14, 2016 12:01 PM
To: Sara Ruano
Cc: Beryl Ann Sly
Subject: Case no. C286357/exhibit
Attachments: crt 18-01142016115630.pdf

Sara,

Attached is a scanned copy of Court's Exhibit 18 for the above case number. Please let us know if you have any questions.

Thank you.

Emmanuel Reyes
Evidence/Records Technician
Eighth Judicial District Court
Civil/Criminal Division
(702) 671-0797

COURT'S EXHIBITS

CASE NO. C286357

	Date Offered	Objection	Date Admitted
1. STATE'S OPENING POWERPOINT (DISC)	—		4-7-15
2. DEFT'S OPENING POWERPOINT (DISC)	—		4-7-15
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7. Question By Juror #8	—		4-13-15
8. Question By Juror #13	—		4-13-15
9. Question By Juror #10	—		4-13-15
10. Question By Juror #6	—		4-13-15
11. Question By Juror #11	—		4-13-15
12. QUESTION BY JUROR # 8	—		4-14-15
13. QUESTION BY JUROR # 11	—		4-14-15
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25. COMMUNICATION RE: JURY INSTRUCTIONS	—		4-16-15

While the state of mind constituting heat of passion must be the result of a sudden impulse, the the provocation leading to the sudden heat of passion occur over either a long or short period of time and may be the result of an ongoing series of events.

Boykins v. State, 116 Nev. 171, 995 P.2d 474 (2000) holding that the ongoing abuse of "battered women syndrome" is admissible to show state of mind as it realtes to self-defense--by extension ongoing provocation should be able to provide the basis for showing state of mind concerning heat of passion.

Roberts v. State, 102 Nev. 170, 171-2, 717 P.2d 1115, 115-1116 (1986) clearly infers this principle when it recited a lengthy period of provocation leading up to the sudden heat of passion-

Prior to the night of the shooting Roberts was a senior highway maintenance foreman for the Nevada Department of Transportation. He had worked for the department for twenty eight years and had no prior record of criminal activity. For six years he and Loddy had lived together in his home with her two children. Ms. Loddy and her children moved out of that house in September of 1983, although she and Roberts continued to see each other. Loddy's son, Rick, continued to live with Roberts for a month after she moved out. Thereafter, Rick occasionally visited Roberts on weekends.

Roberts testified that he believed that he and Loddy would get back together. With that hope in mind he kept Loddy's car on his insurance policy and continued to pay the premiums. He also gave Loddy money for her February, 1984, car payment and bought clothes for her children after they moved out. Roberts stated that he did these things because, "I felt that they were still my family." Roberts insisted that he continued to love Loddy and that he saw no reason not to help her and the children.

On March 6, 1984, Roberts worked only half a day. He had made arrangements with Loddy to take Rick to Twin Falls, Idaho, to retrieve one of Roberts' pickup trucks. Roberts intended to loan the truck to Rick so that the

1 boy would have transportation. Loddy asked Roberts to stop at a drug store in
2 Twin Falls and buy her some hair rinse. After retrieving the truck and the hair
3 rinse, Roberts and Rick returned home around 4:00 p.m. Loddy agreed to get
4 together with Roberts later that evening. Roberts then drove to a nightclub in
5 Jackpot and "had a couple of drinks." He left that club and went to another
6 where he stayed most of the rest of the evening, leaving once to see if Loddy
7 was home and returning when he could not find her.

8 Roberts drank throughout the evening until the bar closed. The bartender at the
9 club, Charles Sallee, testified that Roberts drank 15-25 drinks between 9:00
10 p.m. and 1:00 a.m. when the bar closed. According to Sallee, Roberts was
11 intoxicated when he left the bar. Sallee testified that Roberts spent the evening
12 drinking and dancing and that he did not appear to be upset. When Sallee
13 closed the bar at 1:00 a.m., he and some of the other patrons agreed to meet
14 Roberts at another bar.

15 Roberts testified that he drove by Loddy's trailer on his way to the other bar.
16 He did not see Loddy's car at her trailer and drove on; however, as he passed
17 Charlie Johnston's trailer he noticed Loddy's car parked there. Roberts stated
18 that the next thing he remembered was Loddy's falling and his yelling for help.
19 He had no other memory of the shooting, but he denied that he ever intended to
20 kill Loddy.

21 Charlie Johnston testified that he and Loddy had spent the evening talking and
22 had then gone to bed. At 1:19 a.m. they heard a knock on the door, and Loddy
23 went to answer it, assuming it was Roberts. As the door opened, Johnston
24 heard a "pop" and saw Loddy fall. He then saw Roberts kneel beside her. As
25 stated above, Johnston left via a backdoor and called the police.

26 When sheriff's deputies arrived at Johnston's trailer, they found Roberts' car in
27 the driveway with the lights on and the engine running. Roberts was sitting in
28 the trailer doorway cradling Loddy in his lap. He was calling for someone to
29 come help. When the deputies approached him Roberts was whining and
30 saying, "Oh my God, I killed her, please kill me. Please put me out of my
31 misery." The deputies found Roberts' gun on the couch where he had tossed it.
32 Roberts was then taken into custody. He had to be strapped to a stretcher to get
33 him to leave Loddy's body.

34 People v. Wharton, 53 Cal.3d 522, 660-661, 809 P.2d 290, 319-320 (Cal.,1991)
35 addressed the same issue when confronted with a defense request for similar
36 instructions:
37
38

1
2 By contrast, the court erred in refusing to instruct the jury, at defendant's
3 request, that legally adequate provocation could occur over a considerable
4 period of time. It was defendant's theory at trial that no single action on the
5 part of the victim provoked the fatal blow but that the book-throwing incident
6 was merely the culmination of his pent-up frustration and anger emanating
7 from his ongoing dysfunctional relationship with the victim. In other words,
8 his defense theory at trial was that he killed after enduring provocative conduct
9 by the victim over a period of weeks.

10 The People argue there was insufficient evidence of this theory to justify the
11 instruction. We disagree; defendant proffered evidence from which reasonable
12 persons could have concluded there was sufficient provocation to reduce
13 murder to manslaughter. (See Wickersham, supra, 32 Cal.3d at p. 324, 185
14 Cal.Rptr. 436, 650 P.2d 311.) Because defendant requested a "pinpoint"
15 instruction on his theory of the case that was neither argumentative nor
16 duplicated in the standard instructions, the trial court erred in failing to deliver
17 it to the jury. (Wright, supra, 45 Cal.3d at p. 1144, 248 Cal.Rptr. 600, 755 P.2d
18 1049.)

19 Juries in California are now commonly instructed in manslaughter cases that
20 "Sufficient provocation may occur over a short or long period of time."

21 In Pennsylvania, the proposition is phrased as "Whether the provocation was
22 sufficient to support the defense of voluntary manslaughter is determined by an
23 objective standard—whether a reasonable man, confronted by the same series of
24 events, would become impassioned to the extent that his mind was incapable of cool
25 reflection." Commonwealth v. Galloway, 336 Pa.Super. 225, 485 A.2d 776, 783
26 (1984).
27
28

The killing done in the heat of passion caused by legally adequate provocation is manslaughter even if there is an intent to kill so long as the intention is not a deliberate intention.

NRS 200.020(1): "Express malice is that *deliberate intentiun....*"

Note that NRS 200.020(2) definies implied malice in such a way that it does not exist in ther presence of provocation.

See also:

State v. Vaughan, 22 Nev. 285, 39 P. 733, 736 (1895):

In murder in the first degree there is intention to kill, accompanied with premeditated malice, except in certain cases in which certain acts are made murder by statute. In murder in the second degree there is intention to kill, accompanied by malice, but without premeditation. In manslaughter there may be intention to kill arising from the sudden transport of passion, but it may, and must in this grade of offense, be unaccompanied by both premeditation and malice.

The crime of attempted murder includes the lesser crime of attempted voluntary manslaughter.

If you are satisfied beyond a reasonable doubt that there was an unlawful attempt to kill, but you have a reasonable doubt whether the crime is attempted murder or attempted voluntary you must give the defendant the benefit of that doubt and return a verdict voluntary.

Both attempted murder and attempted voluntary manslaughter require the state to prove intent to kill. The distinction between the two is that although the intent to kill exists, in attempted voluntary manslaughter there is not deliberation.

Heat of passion and lawful provocation may be considered in determining whether the state has proven deliberation in regards to the charge of attempted murder.

In Nevada, pursuant to State v. Vaughan, 22 Nev. 285, 39 P. 733, 736 (1895):

In murder in the first degree there is intention to kill, accompanied with premeditated malice, except in certain cases in which certain acts are made murder by statute. In murder in the second degree there is intention to kill, accompanied by malice, but without premeditation. *In manslaughter there may be intention to kill arising from the sudden transport of passion*, but it may, and must in this grade of offense, be unaccompanied by both premeditation and malice.

Years later, in Allen v. State, 98 Nev. 354, 647 P.2d 389 (1982) the Nevada Supreme Court went so far as to hold that failure to give an instruction on attempted voluntary manslaughter was reversible error. Eight years after Allen, in Curry v. State, (1990), the court reversed position.

Under Curry, voluntary manslaughter can not be committed with a specific intent because "[o]ne cannot logically specifically intend to act pursuant to a spontaneous,

1 unanticipated and therefore, truly irresistible passion.” Curry, 106 Nev. 317, 792 P.2d at 397
2 (1990). Curry completely ignores the role lack deliberation plays in manslaughter and
3 ignores the line of Nevada cases such as Vaugh, supra, which acknowledge that heat of
4 passion can include the intent to kill as well as the “deliberate intention” language of NRS
5 200.020(1). This minimization of deliberation is of course the very ill which lead to Byford
6 decision and a change in Nevada law.
7

8 The status of Curry in light of Byford is tenuous at best. When Curry was decided, the
9 court noted the position it was adopted put Nevada was in the clear minority of jurisdictions.
10 Curry at 319-320. There are other Nevada cases stating that intent to kill is not inconsistent
11 with the notion of manslaughter, for example, Hymers v. State, 15 Nev. 49, 1880 WL 4260:
12

13 “The unlawful killing must be accompanied with a deliberate and clear intent
14 to take life, in order to constitute murder of the first degree. The intent to kill
15 must be the result of deliberate premeditation. It must be formed upon a
16 preexisting reflection, and not upon a sudden heat of passion sufficient to
preclude the idea of deliberation.”

17 There are no post Byford Nevada cases on point.

18 Curry was examined by the Kasas Supreme Court in State v. Gutierrez, 285 Kan. 332,
19 172 P.3d 18 (2007). In finding its’ reasoning unpersuasive, the court noted:

20 A defendant can form an intent to kill without premeditation, without
21 reflection, on impulse, while enraged or provoked, but, in order to support a
22 conviction of voluntary manslaughter, that essential element of intent must be
23 present. Moreover, if a defendant has formed the necessary intent, it is not
24 logically impossible for him or her to attempt and fail to carry it out, that is, to
engage in an overt act toward the accomplishment of an intentional crime. See
25 State v. Graham, 275 Kan. 831, 836–40, 69 P.3d 563 (2003); State v. Hedges,
26 269 Kan. 895, 905–06, 8 P.3d 1259 (2000). For these reasons, we reject
27 defendant’s argument on this issue. Attempted voluntary manslaughter is a
28 valid crime in Kasas.

As to the charge of attempted murder, if after consideration of all the evidence you have a reasonable doubt as to whether or not the defendant acted in a heat of passion caused by legally adequate provocation, you must return a verdict of not guilty. This is because once evidence of heat of passion has been presented the state has the burden of proving beyond a reasonable doubt that the defendant did not act in a heat of passion caused by legally adequate provocation.

"Legally adequate provocation" has been defined for you elsewhere in these instructions.

Mandatory per *Crawford v. State*, 121 Nev. Adv. Rep. 74 (2005). The court in *Crawford* held that the defense is entitled the foregoing position/theory of the case instruction. This instruction has been re-drafted slightly to address the concerns set forth by the court concerning the need to add language about provocation being "legally adequate".

Alt #1

Given in *Redeker v. State*.

Struck through "defense has presented" because clearly not a requirement-See, for example, *Rosas v. State*, 122 Nev. 1258, 1265-66, 147 P.3d 1101, 1106-07 (2006) holding that a defendant is not required to present a defense, or evidence consistent with such defense, or to admit culpability for a lesser-included offense in order to obtain an instruction on a lesser-included offense---[I understand that voluntary manslaughter is not technically a lesser-included but it is always treated as such in *Crawford* and a slew of other decisions)

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You are not speculates as to other charges which might have been filed against the
defendant and you consideration is limited to the actual charges filed by the state.

If there is evidence of heat of passion caused by legally adequate provocation, the state has the burden of proving beyond a reasonable doubt that either: 1) the defendant was not acting in the heat of passion; or 2) that the passion was not caused by legally adequate provocation. If they have failed to meet this burden, but you find that the state has proven an unlawful killing then you must return a verdict of voluntary manslaughter.

"Legally adequate provocation" and "heat of passion" have been defined for you elsewhere in these instructions.

Alt #2

Mandatory per Crawford v. State, 121 Nev. Adv. Rep. 74 (2005). The court in Crawford held that the defense is entitled the foregoing position/theory of the case instruction. This instruction has been re-drafted slightly to address the concerns set forth by the court concerning the need to add language about provocation being "legally adequate".

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Given in Redeker v. State,

Mandatory per Crawford v. State, 121 Nev. Adv. Rep. 74 (2005). The court in Crawford held that the defense is entitled the foregoing position/theory of the case instruction. This instruction has been re-drafted slightly to address the concerns set forth by the court concerning the need to add language about provocation being "legally adequate".

All Murder which is not First Degree Murder is Second Degree Murder. Second Degree Murder is Murder with malice aforethought, but without the added mixture of premeditation and deliberation.

Manslaughter is the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. Manslaughter must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible, or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

1
2 A killing committed in the heat of passion, caused by a provocation sufficient to make
3 the passion irresistible, is Voluntary Manslaughter even if there is an intent to kill, so long as
4 the circumstances in which the killer was placed and the facts that confronted him were such
5 as also would have aroused the irresistible passion of the ordinarily reasonable man if
6 likewise situated.

1
2 The heat of passion which will reduce a Murder to Voluntary Manslaughter must be
3 such a passion as naturally would be aroused in the mind of an ordinarily reasonable person
4 in the same circumstances. A defendant is not permitted to set up his own standard of
5 conduct and to justify or excuse himself because his passions were aroused unless the
6 circumstances in which he was placed and the facts that confronted him were such as also
7 would have aroused the irresistible passion of the ordinarily reasonable man, if likewise
8 situated. The basic inquiry is whether or not, at the time of the killing, the reason of the
9 accused was obscured or disturbed by passion to such an extent as would cause the
10 ordinarily reasonable person of average disposition to act rashly and without deliberation and
11 reflection and from such passion rather than from judgment.
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You are instructed that if you find that the State has established that the defendant has committed First Degree Murder, you shall select First Degree Murder as your verdict.

The crime of First Degree Murder includes the crime of Second Degree Murder. You may find the defendant guilty of Second Degree Murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of First Degree Murder, and

2. All twelve of you are convinced beyond a reasonable doubt that the defendant is guilty of the crime of Second Degree Murder.

If you are convinced beyond a reasonable doubt that the crime of Murder has been committed by the defendant, but you have a reasonable doubt whether such Murder was of the First or of the Second Degree, you must give the defendant the benefit of that doubt and return a verdict of Second Degree Murder.

You are instructed that if you find the State has established that the defendant has committed Second Degree Murder, you shall select Second Degree Murder as your verdict.

The crime of Second Degree Murder may include the crime of Voluntary Manslaughter. You may find the defendant guilty of Voluntary Manslaughter if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of Murder of either the First or Second Degree, and

2. All twelve of you are convinced beyond a reasonable doubt that the defendant is guilty of the crime of Voluntary Manslaughter.

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is Second Degree Murder or Voluntary Manslaughter, you must give the defendant the benefit of that doubt and return a verdict Voluntary Manslaughter.

INSTRUCTION NO. 18

Attempt Murder is the performance of an act or acts which tend, but fail, to kill a human being, when such an act or acts are done with express malice, namely, with the deliberate intention unlawfully to kill. Implied malice is not an element of attempt murder and is not to be considered by you in regards to this charge.

Attempt murder does not require premeditation and deliberation.

1
2 Once a defendant forms the deliberate intention to kill and performs an act or acts
3 which tend, but fail, to kill, he is guilty of attempt murder, regardless of whether he
4 abandoned that attempt because of the approach of other persons, because of a change in his
5 intentions due to a stricken conscience, or for any other reason.
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2 If you are satisfied beyond a reasonable doubt that there was an unlawful attempt to
3 kill but you have a reasonable doubt whether the crime of Attempt Murder was done in the
4 sudden heat of passion, caused by a provocation apparently sufficient to make the
5 provocation irresistible, you must give the defendant the benefit of that doubt and return a
6 verdict of not guilty of Attempt Murder.

7 For you to find the defendant acted in the heat of passion there must be a serious and
8 highly provoking injury inflicted upon the defendant sufficient to excite an irresistible
9 passion in a reasonable person. Heat of passion and lawful provocation may be considered
10 in determining whether state has proven deliberate intent in regards to the charge of Attempt
11 Murder.

1
2 You are instructed that if you find the defendant guilty of First Degree Murder,
3 Second Degree Murder, Voluntary Manslaughter or Attempted Murder, you must also
4 determine whether or not a deadly weapon was used in the commission of this crime.

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

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

Any person who carries a firearm concealed upon his person is guilty of Carrying a Concealed Weapon. "Concealed weapon" means a weapon that is carried upon a person in such a manner as not to be discernable by ordinary observation.

1
2 A "deadly weapon" is any instrument which, if used in the ordinary manner
3 contemplated by its design and construction, will or is likely to cause substantial bodily harm
4 or death; or any weapon, device, instrument, material or substance which, under the
5 circumstances in which it is used, attempted to be used or threatened to be used, is readily
6 capable of causing substantial bodily harm or death.

7 You are instructed that a firearm is a deadly weapon.
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The defendant is guilty of the offense of Child Abuse if the person willfully causes a child who is less than 18 years of age:

(a) to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, or,

(b) to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect.

As used in these instructions:

"Abuse or neglect" means negligent treatment or maltreatment of a child under the age of 18 years, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

"Negligent treatment" or "maltreatment of a child" occurs if a child has been abandoned, is without proper care, control and supervision or lacks subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

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

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

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

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

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

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

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

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

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

6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.
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INSTRUCTION NO. 30

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

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 33

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation

INSTRUCTION NO. 34

In your deliberation as to whether or not the defendant is guilty or not guilty, you may not discuss or consider the subject of punishment. Only if your verdict is First Degree Murder, will you, at a later hearing, decide the issue of penalty or punishment in relation to that charge.

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

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

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

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

7 Playbacks of testimony are time-consuming and are not encouraged unless you deem
8 it a necessity. Should you require a playback, you must carefully describe the testimony to
9 be played back so that the court recorder can arrange her notes. Remember, the court is not
10 at liberty to supplement the evidence.
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2 If it becomes necessary during your deliberations to communicate with me, you may
3 send a note through the marshal, signed by the foreperson you have selected or by one or
4 more members of the jury. No member of the jury should ever attempt to communicate with
5 me except by a signed writing, and I will communicate with any member of the jury on
6 anything concerning the case only in writing, or here in open court.

7 If you send out a question, I will consult with the parties before answering, which
8 may take some time. You may continue your deliberation while waiting for the answer to
9 my question. Remember that you are not to tell anyone, including me, how the jury stands,
10 numerically or otherwise, until after you have reached a verdict or have been discharged. Do
11 not disclose any vote count in any note to the Court.

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

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10 GIVEN:

DISTRICT JUDGE
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FICATION
(STATE)

Lantern Forensic Report

Calls

Hashes MD5: eedf9b4aed602c8a5c2fe6330e62c867
SHA1: bba56d3e159458d63eb6c15cf3b6562e43b32856

Incoming 8

Outgoing 92

Reporting 100 of 100

Source File private/var/mobile/Library/CallHistory/call_history.db

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!	07/30/2012 11:10:21 PDT		(702) 487-3597	00:00:00
!	07/30/2012 10:53:40 PDT		(503) 457-1065	00:00:00
!	07/30/2012 09:48:15 PDT		(602) 490-8834	00:00:00
!	07/29/2012 18:01:26 PDT	Fury	(702) 219-3379	00:00:00
!	07/29/2012 15:09:12 PDT		(702) 285-3297	00:00:00
!	07/29/2012 11:42:32 PDT	Andrea N	(702) 417-0590	00:00:00
!	07/28/2012 22:16:28 PDT	Jo	(702) 469-8563	00:00:00
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!	07/27/2012 21:24:25 PDT	Mom	(702) 738-9167	00:00:00
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!	07/27/2012 19:59:51 PDT	Andrea N	(702) 417-0590	00:00:00
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!	07/27/2012 18:14:58 PDT	Teresa Yurkonis Cell	(702) 713-4785	00:00:00

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













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!	07/27/2012 05:13:23 PDT	Troy	(702) 271-9121	00:00:00
!	07/27/2012 05:12:58 PDT	Troy	(702) 271-9121	00:00:00
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	Time	To/From	Number	Duration
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Lantern Forensic Report

Messages

Troy

    	Time	To/From	Number	Text
	07/27/2012 11:26:16 PDT	Troy	(702) 271- 9121	But now your all pissed off now you think I'm an a***** again or just wait and see Troy
	07/27/2012 11:25:50 PDT	Troy	(702) 271- 9121	Your time should a been spent before you told me you wanted come back and then you just come back in it's all good Troy
	07/27/2012 11:25:25 PDT	Troy	(702) 271- 9121	But you need your time Troy
	07/27/2012 11:25:15 PDT	Troy	(702) 271- 9121	For the record I wouldn't be this way if you just stop and come back to me Troy
	07/27/2012 11:24:59 PDT	Troy	(702) 271- 9121	You know I'm only crazy like this because of what you're doing to me Troy
	07/27/2012 11:24:44 PDT	Troy	(702) 271- 9121	Do you still want back so since you talked about on wednesday Troy
	07/27/2012 11:24:29 PDT	Troy	(702) 271- 9121	So tell me do you love me at all anymore Troy
	07/27/2012 11:12:57 PDT	Troy	(702) 271- 9121	Is ur jaw sore from suckn cock...bitch Troy
	07/27/2012 11:12:31 PDT	Troy	(702) 271- 9121	Hows ur pussy Troy

Lantern Forensic Report

Messages

Troy

	Time	To/From	Number	Text
✓	07/27/2012 11:12:21 PDT	Troy	(702) 271-9121	Skank slut Troy
✓	07/27/2012 11:12:11 PDT	Troy	(702) 271-9121	Fuck u bitch whore Troy
✓	07/27/2012 11:11:45 PDT	Troy	(702) 271-9121	ready for that you f***** Troy
✓	07/27/2012 11:11:35 PDT	Troy	(702) 271-9121	For the record if you ever do it again you should see you should wait until you're done with somebody until you tell the other person that you're
✓	07/27/2012 11:11:24 PDT	Troy	(702) 271-9121	Fuck ul
✓	07/27/2012 11:11:14 PDT	Troy	(702) 271-9121	The only reason I'm crazy is because you make me crazy by making me wait Troy
✓	07/27/2012 11:08:52 PDT	Troy	(702) 271-9121	Whore bitch cunt fuck Troy
✓	07/27/2012 11:08:31 PDT	Troy	(702) 271-9121	Fuck u Troy
✓	07/27/2012 11:07:37 PDT	Troy	(702) 271-9121	Ya Watever troy! If u could of given me time and space for just a few days but FUCK YOU! I dont wanna b with someone like ur crazy ass FUCK U
✓	07/27/2012 11:06:54 PDT	Troy	(702) 271-9121	F*** you you f***** c*** w**** Troy

Time	To/From	Number	Text
07/27/2012 11:06:08 PDT	Troy	(702) 271-9121	F*** you coward Troy
07/27/2012 11:05:36 PDT	Troy	(702) 271-9121	K
07/27/2012 11:05:32 PDT	Troy	(702) 271-9121	You're nothing but a f***** liar you f***** w**** Troy
07/27/2012 11:05:16 PDT	Troy	(702) 271-9121	F*** you you f***** piece of s*** Troy
07/27/2012 11:04:41 PDT	Troy	(702) 271-9121	U to
07/27/2012 11:04:35 PDT	Troy	(702) 271-9121	F*** you go to hell f*** head Troy
07/27/2012 11:04:25 PDT	Troy	(702) 271-9121	Now you're f***** coward even talk to me you f***** w**** Troy
07/27/2012 11:04:05 PDT	Troy	(702) 271-9121	You said you want me back your f***** liar Troy
07/27/2012 11:03:50 PDT	Troy	(702) 271-9121	You think this is gonna settle everything you f***** cheating on you f***** w**** b**** Troy
07/27/2012 11:03:09 PDT	Troy	(702) 271-9121	No fuck u too
07/27/2012 11:02:48 PDT	Troy	(702) 271-9121	You want me to stop bugging you then call me Troy
07/27/2012 11:02:38 PDT	Troy	(702) 271-9121	<P Id stop Troy
07/27/2012 11:02:28 PDT	Troy	(702) 271-9121	<P Or if you would call me and talk to me and explain to me why you're still f***** show when you told me you wanna come back to me everything wou
	Troy		If you would answer your phone for a couple minutes everything would stop Troy

Time	To/From	Number	Text
07/27/2012		(702)	
11:02:07		271-	
PDT		9121	
07/27/2012	Troy	(702)	You're a f***** w**** I'm no good f***** w**** f***
11:01:16		271-	you f*** you f*** all of you you mother f***** Troy
PDT		9121	
07/27/2012	Troy	(702)	I'm not giving you any more f***** time to f*** joe
11:01:01		271-	f*** you Troy
PDT		9121	
07/27/2012	Troy	(702)	Fuckin leave me alone! Dam! I told u give me
11:00:06		271-	fuckin time. Now I want u TO LEAVE ME
PDT		9121	ALONE. I'm not texting anymore or answering
			ANYMORE calls. I can't handle u at all! I learned
			another lesson ok. It will NEVER EVER EVER
			happen again. LEAVE ME ALONE
07/27/2012	Troy	(702)	U want me u want him Troy
10:59:00		271-	
PDT		9121	
07/27/2012	Troy	(702)	U can't make a decision Troy
10:58:37		271-	
PDT		9121	
07/27/2012	Troy	(702)	Cuz you suck. You lead me on Troy
10:58:27		271-	
PDT		9121	
07/27/2012	Troy	(702)	Whatever u gotta do troy! That will b really great
10:58:04		271-	with our kids here!
PDT		9121	
07/27/2012	Troy	(702)	Coward Troy
10:58:02		271-	
PDT		9121	
07/27/2012	Troy	(702)	I'm not a coward Troy
10:57:46		271-	
PDT		9121	
07/27/2012	Troy	(702)	I will meet joe there RIGHT NOW Troy
10:57:36		271-	
PDT		9121	
07/27/2012	Troy	(702)	Coward Troy
10:57:26		271-	
PDT		9121	
07/27/2012	Troy	(702)	Huh? Troy
10:57:16		271-	
PDT		9121	

Time	To/From	Number	Text
07/27/2012 10:57:06 PDT	Troy	(702) 271-9121	Ya ima coward Watever leave me alone
07/27/2012 10:57:05 PDT	Troy	(702) 271-9121	Affraid to face the truth Troy
07/27/2012 10:56:56 PDT	Troy	(702) 271-9121	Coward Troy
07/27/2012 10:56:53 PDT	Troy	(702) 271-9121	I DON'T WANNA TALK TO YOU AT ALLLLL!!!! Not at all!
07/27/2012 10:56:45 PDT	Troy	(702) 271-9121	Chicken shit Troy
07/27/2012 10:56:34 PDT	Troy	(702) 271-9121	Y can't u answer ur phone Troy
07/27/2012 10:56:24 PDT	Troy	(702) 271-9121	WHY R U???? ☹☹☹☹
07/27/2012 10:56:19 PDT	Troy	(702) 271-9121	Why can't you make a decision Troy
07/27/2012 10:55:59 PDT	Troy	(702) 271-9121	Y r u doing this Troy
07/27/2012 10:53:10 PDT	Troy	(702) 271-9121	Leave me alone
07/27/2012 10:52:49 PDT	Troy	(702) 271-9121	I will say it again you are driving me crazy already because you tell me you want me back and then you stay with joe Troy
07/27/2012 10:52:34 PDT	Troy	(702) 271-9121	You f***** telling me you're gonna come back to me and then you don't need your f***** time with chelsea that's f***** driving me crazy b**** Troy
07/27/2012 10:52:13 PDT	Troy	(702) 271-9121	Oh Really well I'm already there Troy
07/27/2012 10:51:22 PDT	Troy	(702) 271-9121	U have driven me crazy STOP

Time	To/From	Number	Text
07/27/2012 10:36:06 PDT	Troy	(702) 271-9121	Ur a liar Troy
07/27/2012 10:35:51 PDT	Troy	(702) 271-9121	U get NO time. U either want to leave him and have all you miss that u told me in the store wed. Or hang onto him. You proved what u want Troy
07/27/2012 10:34:23 PDT	Troy	(702) 271-9121	Thanks for leading me on Troy
07/27/2012 10:34:12 PDT	Troy	(702) 271-9121	Either u want me.or him. Its that simple. But u choose him... Troy
07/27/2012 10:33:42 PDT	Troy	(702) 271-9121	Fuck you then Troy
07/27/2012 10:33:31 PDT	Troy	(702) 271-9121	U say u want to come back. I welcome u. Then u want time to what??? Fuck him somemore Troy
07/27/2012 10:30:07 PDT	Troy	(702) 271-9121	I'm done with ur empty promises. Your empty talk Troy
07/27/2012 10:29:21 PDT	Troy	(702) 271-9121	Fuckin chicken shit Troy
07/27/2012 10:28:53 PDT	Troy	(702) 271-9121	U want him. Well fuck both of you Troy
07/27/2012 10:28:36 PDT	Troy	(702) 271-9121	Your a whore Troy
07/27/2012 10:28:20 PDT	Troy	(702) 271-9121	Your a liar Troy
07/27/2012 10:28:10 PDT	Troy	(702) 271-9121	You say u want me back then you spend another nite with him Troy
07/27/2012 10:27:19 PDT	Troy	(702) 271-9121	LEAVE ME ALONE
07/27/2012 10:27:14 PDT	Troy	(702) 271-9121	Cuz ur a cheater Troy

Time	To/From	Number	Text
07/27/2012 10:26:58 PDT	Troy	(702) 271-9121	Got nuthn to say Troy
07/27/2012 10:26:07 PDT	Troy	(702) 271-9121	I fuckn dare u Troy
07/27/2012 10:25:51 PDT	Troy	(702) 271-9121	Ur sooo afraid to talk to me...coward. and ur fuckin boyfriend. Hv him meet me now Troy
07/27/2012 10:25:00 PDT	Troy	(702) 271-9121	Ur the coward Troy
07/27/2012 10:24:34 PDT	Troy	(702) 271-9121	U will see Troy
07/27/2012 10:24:24 PDT	Troy	(702) 271-9121	You never apologized for calln me a coward Troy
07/27/2012 10:23:53 PDT	Troy	(702) 271-9121	Now who's the coward Troy
07/27/2012 10:23:38 PDT	Troy	(702) 271-9121	Is he there? What to coward to talk Troy
07/27/2012 10:23:02 PDT	Troy	(702) 271-9121	So y did u want to come back Troy
07/27/2012 10:22:31 PDT	Troy	(702) 271-9121	Obviously u don't love me Troy
07/27/2012 10:22:05 PDT	Troy	(702) 271-9121	Wen can u talk Troy
07/27/2012 10:06:13 PDT	Troy	(702) 271-9121	Get ready for hell Troy
07/27/2012 10:06:03 PDT	Troy	(702) 271-9121	Then you don't love me Troy
07/27/2012 10:02:03 PDT	Troy	(702) 271-9121	Call me if you love me Troy

Time	To/From	Number	Text
07/27/2012 10:01:38 PDT	Troy	(702) 271-9121	Call me if you love me Troy
07/27/2012 10:01:27 PDT	Troy	(702) 271-9121	Call me if you love me Troy
07/27/2012 10:01:17 PDT	Troy	(702) 271-9121	Call me if you love me Troy
07/27/2012 10:00:48 PDT	Troy	(702) 271-9121	I'm NOT CALLING U
07/27/2012 10:00:46 PDT	Troy	(702) 271-9121	Call me if you love me Troy
07/27/2012 10:00:36 PDT	Troy	(702) 271-9121	Call me if you laughing Troy
07/27/2012 10:00:26 PDT	Troy	(702) 271-9121	Call me Troy
07/27/2012 09:59:40 PDT	Troy	(702) 271-9121	I f***** dare you to call me call me I dare you you can't handle the truth Troy
07/27/2012 09:59:29 PDT	Troy	(702) 271-9121	you missed everything yeah right your Troy
07/27/2012 09:59:19 PDT	Troy	(702) 271-9121	But no not you you're so f***** selfish that you can't get him out of the f***** house to talk to me to get you say that you love me what you said
07/27/2012 09:59:09 PDT	Troy	(702) 271-9121	<H o not Troy
07/27/2012 09:58:59 PDT	Troy	(702) 271-9121	<H Obviously you're full of s*** you don't care about me you don't love me you know what I would put of everything to be able to talk to you but n
07/27/2012 09:51:54 PDT	Troy	(702) 271-9121	Please call me wen u can. I wanna gv u my heart. I love you echo sweetie. Please please stop seeing him if you want us back. Please you have to. Please. It will never work if you wont let him go...please. please I am begging you. For 1 last time. I'm being totally honest. I can't handle

	Time	To/From	Number	Text
				this anymore. Honestly. I'm asking u to please stop seeing him. Immediately. If u want me back this is it. I can't keep doin this. I'm going insane. I love you soooooo much Troy
✓	07/27/2012 09:41:42 PDT	Troy	(702) 271-9121	I can't talk to u right now!! OMG!!! Pls stop! I shldnt have said a word exactly y I ddnt for so long. Please please stop I'm begging u
✓	07/27/2012 08:58:48 PDT	Troy	(702) 271-9121	will be waiting. But only for this weekend. Come home to me sweetie....come home. My heart is urs if u will stop all ur doing... Troy
✓	07/27/2012 08:58:28 PDT	Troy	(702) 271-9121	u miss. So y are you still with him? Why arnet we together? Why? I think ur not being real to me. Do u really really want it all back? If u do....I
✓	07/27/2012 08:58:17 PDT	Troy	(702) 271-9121	This sucks echo. I'm tired. I want ya back you said u want to come back.....so why the wait? STOP IT. lets get back together. You get all that u say
✓	07/27/2012 08:16:39 PDT	Troy	(702) 271-9121	So when you're ready then call me. Until then we have once again nothing to talk about Troy
✓	07/27/2012 08:16:13 PDT	Troy	(702) 271-9121	have time as you play with my emotions and as you play around with your boyfriend. You either want me back or you don't Troy
✓	07/27/2012 08:16:03 PDT	Troy	(702) 271-9121	Me on the other hand you ask me to stop calling you names I have gay you asked me to take you back I will however I cannot and will not allow you to
✓	07/27/2012 08:15:02 PDT	Troy	(702) 271-9121	<@ ng it Troy
✓	07/27/2012 08:14:51 PDT	Troy	(702) 271-9121	<@ Obviously you don't miss me and obviously you don't love me I don't think you ever love me for a long time and if you do ur certainly not provi
✓	07/27/2012 08:14:26 PDT	Troy	(702) 271-9121	go of him Troy
✓	07/27/2012 08:14:16 PDT	Troy	(702) 271-9121	Do you hate me that much you know you tell me you want to get back together you tell me you miss me and the little things but yet you refuse to let
✓		Troy		Why echo why why would you do this to me again and again and again Troy


Time	To/From	Number	Text
07/27/2012		(702)	
08:13:55		271-	
PDT		9121	
07/27/2012	Troy	(702)	all for you to stay with another man in cheat on
06:12:09		271-	me no 1 calls up somebody andt els those things
PDT		9121	and then stays in the same situation. Troy
07/27/2012	Troy	(702)	You must not miss the things you talked about in
06:11:59		271-	the store that much x o s for you to stay with
PDT		9121	another man and cheat on me you must not miss me at
07/27/2012	Troy	(702)	Too bad you're with him to see otherwise I can
06:10:32		271-	go get you coffee do all those nice things you like
PDT		9121	me to do that too bad Troy
07/27/2012	Troy	(702)	want you let me know so that I can know if I'm
06:07:06		271-	getting back together with you or if I'm moving on
PDT		9121	Troy
07/27/2012	Troy	(702)	want me I'm a different man now I'm not going to
06:07:03		271-	be walked all over by you or anyone ever again
PDT		9121	in my life so when you figure out what it is that you
07/27/2012	Troy	(702)	I don't think you want a man who is going to just
06:06:52		271-	stand around and get walked on all the time so
PDT		9121	you know what I'm not that man any more okay if you
07/27/2012	Troy	(702)	here and wait for you to wait for you for 3 days
06:03:47		271-	why you all you do is see joe and do your hair.
PDT		9121	Troy
07/27/2012	Troy	(702)	And here I am your soccer again deleting every
06:03:37		271-	word you said in the store and then your actions
PDT		9121	actions showing otherwise. And I'm so stupid to sit
07/27/2012	Troy	(702)	Never had anyone anyone in my whole life
06:01:03		271-	treated me the way that you treat me like you
PDT		9121	treat me like s*** every single day you treat me like s*** Troy
07/27/2012	Troy	(702)	cheating on me even now when you expect me
05:44:50		271-	to take you back Troy
PDT		9121	
07/27/2012	Troy	(702)	You treat me like s*** and you expect me to just
05:44:40		271-	wait for you to give you your time you treat me
PDT		9121	like s*** can you expect me to take you back your
	Troy		

Time	To/From	Number	Text
07/27/2012 05:43:08 PDT		(702) 271- 9121	How you treat me is not how a wife treat her husband when she wants to get back together with him Troy
07/27/2012 05:31:47 PDT	Troy	(702) 271- 9121	thank you goodbye Troy
07/27/2012 05:31:37 PDT	Troy	(702) 271- 9121	I love you I just sent you a voicemail I would love for you to listen to it is sincere it isnt mean it isnt angry you need to please listen to it
07/27/2012 05:15:04 PDT	Troy	(702) 271- 9121	best for the kids and since you're not thinking about them only about yourself and joe I have to kiss your ass Troy
07/27/2012 05:14:53 PDT	Troy	(702) 271- 9121	No I'm not coming by the house later I change my mind because I have to kiss your ass all the time you'll end up leaving the house and that's not the
07/27/2012 05:14:07 PDT	Troy	(702) 271- 9121	bottom line case you said that's what you wanted to do Troy
07/27/2012 05:13:57 PDT	Troy	(702) 271- 9121	Whatever you too much of a coward answer your phone so you think it all we have to do is argue argue argue no stop san jo come back to me that's the
07/27/2012 04:29:06 PDT	Troy	(702) 271- 9121	and then I will leave Troy
07/27/2012 04:29:04 PDT	Troy	(702) 271- 9121	my house if I wanna come to my house and see my kids I will so if you're sleeping I will wake you up it doesn't matter I have something to say to you
07/27/2012 04:28:54 PDT	Troy	(702) 271- 9121	I will be coming by the house this morning around 6 or 7 I will text you when I'm on my way I will be coming what do you call the police or not it's
07/27/2012 04:24:40 PDT	Troy	(702) 271- 9121	living right now then you come see me Troy
07/27/2012 04:24:38 PDT	Troy	(702) 271- 9121	me you don't sit there and jerk me around and then go hang out with joe know when you're done with him and you're done with the lifestyle that you're
	Troy		When you're really ready to come back when you really want all those things you said in the store

Time	To/From	Number	Text
07/27/2012 04:24:27 PDT		(702) 271- 9121	that day then you come see me hey can you come see
07/27/2012 03:59:31 PDT	Troy	(702) 271- 9121	<8 ain Troy
07/27/2012 03:59:28 PDT	Troy	(702) 271- 9121	<8 ain Troy
07/27/2012 03:59:25 PDT	Troy	(702) 271- 9121	<8 ain Troy
07/27/2012 03:59:22 PDT	Troy	(702) 271- 9121	<8 ain Troy
07/27/2012 03:59:12 PDT	Troy	(702) 271- 9121	<8 By the way you should be sad instead of mad at me you just destroyed everything who knows maybe someday you can try and put it back together ag
07/27/2012 03:51:12 PDT	Troy	(702) 271- 9121	goodbye Troy
07/27/2012 03:50:30 PDT	Troy	(702) 271- 9121	wanted your marriage back if you would've just come back to me instead of having to have more time with joe Troy
07/27/2012 03:50:19 PDT	Troy	(702) 271- 9121	I think your time set back up I've given you enough time to make a decision you say you want your marriage back but you prove otherwise if you really
07/27/2012 03:39:45 PDT	Troy	(702) 271- 9121	I hope you're happy the other day in the store you said that you were not Troy
07/27/2012 03:34:53 PDT	Troy	(702) 271- 9121	If you love me at all you will call me 1 more time for me to say 1 last thing to you Troy
07/27/2012 03:34:13 PDT	Troy	(702) 271- 9121	STOP STOP STOP
07/27/2012 03:33:47 PDT	Troy	(702) 271- 9121	If you love me at all you will call me 1 more time for me to say 1 last thing to you Troy
	Troy		STOP STOP STOP

Time	To/From	Number	Text
07/27/2012 03:33:13 PDT		(702) 271- 9121	
07/27/2012 03:30:22 PDT	Troy	(702) 271- 9121	If you love me at all you will call me 1 more time for me to say 1 last thing to you Troy
07/26/2012 17:06:55 PDT	Troy	(702) 271- 9121	Goodnight Troy
07/26/2012 17:06:45 PDT	Troy	(702) 271- 9121	Hopefully Troy
07/26/2012 16:44:50 PDT	Troy	(702) 271- 9121	I love you Troy
07/26/2012 16:07:56 PDT	Troy	(702) 271- 9121	I mean can we make it work? I'm thinkn that if were gtn together then it would be fun for you and I to party one last time then hit church and begin
07/26/2012 16:06:24 PDT	Troy	(702) 271- 9121	Hmmmm? Well is it something ur interested in Troy
07/26/2012 16:05:58 PDT	Troy	(702) 271- 9121	Not even for friday Troy
07/26/2012 16:05:05 PDT	Troy	(702) 271- 9121	I can't I'm babysitting for my dad :(sorry! I escape my kids only to deal with more
07/26/2012 16:04:34 PDT	Troy	(702) 271- 9121	Troy
07/26/2012 16:04:31 PDT	Troy	(702) 271- 9121	still want to? We will bs going to church and stuff. Wud you be interested in going out with me this weekend before we start going back to church?
07/26/2012 16:04:22 PDT	Troy	(702) 271- 9121	Hey internet isn't due till 10th. So I hv an idea. I'm not ttrying to pressure you. I was thinkn...oh oh....lol. when we get back together...If u
07/26/2012 14:21:31 PDT	Troy	(702) 271- 9121	U pay Internet?
	Troy		K

		Time	To/From	Number	Text
		07/26/2012		(702)	
		14:20:12		271-	
		PDT		9121	
		07/26/2012	Troy	(702)	yesterday. Its here waiting for you. I love you
		12:41:26		271-	Troy
		PDT		9121	
		07/26/2012	Troy	(702)	I wish u wanted to be together this weekend.
		12:41:16		271-	Goodbye echo until you finally make a decision.
		PDT		9121	Hopefully after today you still want all yu said u did
		07/26/2012	Troy	(702)	that someday you will..bye Troy
		12:39:23		271-	
		PDT		9121	
		07/26/2012	Troy	(702)	This is like torture to have you wife who walked
		12:39:12		271-	out on you so close to coming back and she just
		PDT		9121	wont come back yet so I will leave you alone. So
		07/26/2012	Troy	(702)	Pleaseplsase Troy
		12:36:18		271-	
		PDT		9121	
		07/26/2012	Troy	(702)	Please please please please answer Troy
		12:36:08		271-	
		PDT		9121	
		07/26/2012	Troy	(702)	JUST TEXT PLEASE PLEASE
		12:35:43		271-	
		PDT		9121	
		07/26/2012	Troy	(702)	Just text pls
		12:34:56		271-	
		PDT		9121	
		07/26/2012	Troy	(702)	Have u heard it
		12:27:16		271-	
		PDT		9121	
		07/26/2012	Troy	(702)	You don't know her like I do.. It's a country song
		12:25:15		271-	kinda reminds me of us
		PDT		9121	
		07/26/2012	Troy	(702)	Sorry. Love you. Jus want us back...bye Troy
		12:18:24		271-	
		PDT		9121	
		07/26/2012	Troy	(702)	U can call if ya want Troy
		06:11:04		271-	
		PDT		9121	
			Troy		

	Time	To/From	Number	Text
	07/26/2012 03:00:40 PDT		(702) 271- 9121	http://www.youtube.com/watch? v=tpCaNBhK4S0&feature=youtube_gdata_player Troy
	07/26/2012 00:25:46 PDT	Troy	(702) 271- 9121	What I was going to say is not come on hurry hurry hurry hurry what I was gonna say is you seem like you're so wishy washy in your decisions. Hey I
	07/25/2012 22:06:38 PDT	Troy	(702) 271- 9121	Tried to call I back twice
	07/25/2012 22:05:49 PDT	Troy	(702) 271- 9121	I tried to call u
	07/25/2012 22:04:46 PDT	Troy	(702) 271- 9121	I didn't wanna hang up mad :(
	07/25/2012 21:58:43 PDT	Troy	(702) 271- 9121	Well see Troy
	07/25/2012 21:58:00 PDT	Troy	(702) 271- 9121	Boys wanna talk :(
	07/25/2012 21:57:51 PDT	Troy	(702) 271- 9121	.nvrmd. bye Troy
	07/25/2012 21:57:49 PDT	Troy	(702) 271- 9121	.nvrmd. bye Troy
	07/25/2012 21:57:39 PDT	Troy	(702) 271- 9121	.nvrmd. bye Troy
	07/25/2012 15:21:19 PDT	Multiple Recipients	Multiple	
	07/25/2012 15:17:43 PDT	Multiple Recipients	Multiple	

☐ ☑ ✎ ⌂ ⌕ Time To/From Number Text

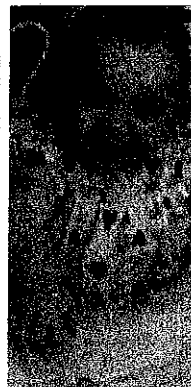


☐ ✎ 07/24/2012 Troy (702) And I'm hoping from a "friendly" perspective if at
21:57:10 271- all possible. I know u don't owe me ANYTHING
PDT 9121 and I deserve NOTHING! But if u would just hear
me out one last time??? I would meet u
somewhere or anything. Any chance at all?

☐ ✎ 07/24/2012 Troy (702) Any chance u would talk to me Tomoro?
21:52:01 271-
PDT 9121

☐ ✎ 07/23/2012 Troy (702) I thought u were callin me after prayer
21:59:22 271-
PDT 9121

☐ ✎ 07/23/2012 Multiple (702) Multiple
18:25:38 Recipients
PDT


































☐ ✎ 07/23/2012 Troy (702) Ok ima leave u alone
10:42:24 271-
PDT 9121


☐ ✎ 07/23/2012 Troy (702) U don't wanna talk to me?
10:32:35 271-
PDT 9121

☐ ✎ 07/23/2012 Troy (702) ♥♥♥♥♥♥♥♥
10:28:17 271-
PDT 9121

☐ ✎ Troy ☹☹

Time	To/From	Number	Text
07/23/2012 10:28:11 PDT		(702) 271- 9121	
07/23/2012 10:15:19 PDT	Troy	(702) 271- 9121	Hey
07/23/2012 04:32:25 PDT	Troy	(702) 271- 9121	I hate you for choosing him over me Troy
07/23/2012 04:23:44 PDT	Troy	(702) 271- 9121	ing destroying me and everything about me Troy
07/23/2012 04:23:42 PDT	Troy	(702) 271- 9121	and every name in the book without anything from you. But no....I'm the asshole! Thanks for nothing. Thanks for fucking him in my bed! Thanks for fuck
07/21/2012 11:31:59 PDT	Troy	(702) 271- 9121	Ya rite
07/20/2012 17:22:32 PDT	Troy	(702) 271- 9121	Don't fucking worry I'm fucking DONE Troy
07/20/2012 17:21:20 PDT	Troy	(702) 271- 9121	Wait...its funny...ya want me to be nice...but all the while ya wanna fuck some other guy. Do ya suck his dick too Troy
07/20/2012 17:20:29 PDT	Troy	(702) 271- 9121	Bye....cheater Troy
07/20/2012 17:20:19 PDT	Troy	(702) 271- 9121	n so I hv inceased my vocabulary Troy
07/20/2012 17:20:09 PDT	Troy	(702) 271- 9121	Now echo...ya know what I always say wen you say that....I say..no! YOU stop it! Fuck! Well not the fhck part. But I'm really tired of being cheated o
07/20/2012 17:17:56 PDT	Troy	(702) 271- 9121	Stop please
07/20/2012 17:15:39 PDT	Troy	(702) 271- 9121	Cuz what I'm doin you hate it
	Troy		Ok. Why Troy

					Time	To/From	Number	Text
					07/20/2012		(702)	
					17:15:22		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	I know why we don't
					17:14:56		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	I really wish you wud stop so we cud get along.
					17:12:27		271-	Do F"l%
					PDT		9121	
					07/20/2012	Troy	(702)	This sucks echo...really! Unbelieveable Troy
					15:28:12		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	Thanks
					15:27:06		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	K
					14:35:29		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	Chkn out Troy
					14:35:26		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	K
					14:34:20		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	Jus wait Troy
					14:34:14		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	I forgot something at the house should I go real
					14:33:16		271-	quick and get it
					PDT		9121	
					07/20/2012	Troy	(702)	Sure Troy
					13:35:32		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	Can I call u
					13:34:19		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	Ya Troy
					13:34:10		271-	
					PDT		9121	
					07/20/2012	Troy	(702)	Hey
					13:33:34		271-	
					PDT		9121	

Time	To/From	Number	Text
07/20/2012 09:45:31 PDT	Troy	(702) 271-9121	18887238010 century link number
07/20/2012 09:40:23 PDT	Troy	(702) 271-9121	I hv never had so much trouble trying to pay a flipprn bill. Calm down....naaaaaaa! This is bullshit Troy
07/20/2012 05:06:53 PDT	Troy	(702) 271-9121	stopping will stop my hate please stop it please get rid of him please get saved let us be happy together. Not together as a couple live together as
07/20/2012 05:06:42 PDT	Troy	(702) 271-9121	So then you say we have to get a divorce a divorce does it matter you moving out of the house won't stop the hate the divorce won't stop the hate. you
07/20/2012 05:05:10 PDT	Troy	(702) 271-9121	single day with joe what you're doing in that house on that bed with him and it rises up in me again and I hate you all over again Troy
07/19/2012 22:31:27 PDT	Troy	(702) 271-9121	Stop
07/19/2012 22:12:49 PDT	Troy	(702) 271-9121	Ou shud send him home right now if u really miss me. And then call me.. Troy
07/19/2012 18:02:18 PDT	Troy	(702) 271-9121	Hey
07/19/2012 18:02:13 PDT	Troy	(702) 271-9121	Hey Troy
07/19/2012 17:56:39 PDT	Troy	(702) 271-9121	Fine
07/19/2012 15:35:19 PDT	Multiple Recipients	Multiple	

	Time	To/From	Number	Text
✓	07/18/2012 13:40:35 PDT	Troy	(702) 271-9121	Freds hair Troy
✓	07/18/2012 13:40:06 PDT	Troy	(702) 271-9121	Lol
✓	07/18/2012 13:39:58 PDT	Troy	(702) 271-9121	Juicy juice is hair no jason's hair crap julie no julie joyce Troy
✓	07/18/2012 13:39:33 PDT	Troy	(702) 271-9121	r looks pretty cool Troy
✓	07/18/2012 13:39:23 PDT	Troy	(702) 271-9121	Lol
✓	07/18/2012 13:39:13 PDT	Troy	(702) 271-9121	I love this microphone thing where you can speak your text and it says that I was going to dance alright hallelujah hey I'm jealous juicy juice is hai
✓	07/18/2012 13:39:10 PDT	Troy	(702) 271-9121	Jayce looks so cute huh
✓	07/18/2012 13:39:02 PDT	Troy	(702) 271-9121	Ya
✓	07/18/2012 13:38:47 PDT	Troy	(702) 271-9121	amount of the check and that they were reimbursing us Troy
✓	07/18/2012 04:27:12 PDT	Troy	(702) 271-9121	I will leave you to your asshole, you leave me to myself Troy
✓	07/17/2012 23:01:34 PDT	Troy	(702) 271-9121	.DONT BOTHER TXTN OR CALLING ME TILL FRIDAY THEN.....WHAT A WASTE! Troy
✓	07/17/2012 23:01:23 PDT	Troy	(702) 271-9121	R GOOD! Cuz all the u tube videos and your sad faces and maybe tears meant nothing to me. Actions show louder than words. I'm pretty sure he's there..
✓	07/17/2012 23:01:13 PDT	Troy	(702) 271-9121	After all that...I hope your alone tonight...if not...we have nothing to talk about tomorrow. I MEAN IT!.....if he spent the night.....then goodbye FO

	Time	To/From	Number	Text
07/17/2012 22:25:48 PDT	Troy	(702) 271-9121	Nite Troy	
07/15/2012 12:12:27 PDT	Troy	(702) 271-9121	Ya if that's ok with u	
07/15/2012 11:59:47 PDT	Troy	(702) 271-9121	And u drive me to church with my stuff Troy	
07/15/2012 11:59:17 PDT	Troy	(702) 271-9121	Whatever yu thnk is best. That's fine then. So let me get tthis straight....you show up at 6. I will be ready and y Troy	
07/15/2012 11:56:49 PDT	Troy	(702) 271-9121	Ill take u if u want	
07/15/2012 11:49:28 PDT	Troy	(702) 271-9121	You tell me. Jus make a decision. So I know what to do. I also need a ride to church then with my stuff. Should I ask herman? Troy	
07/14/2012 15:23:45 PDT	Troy	(702) 271-9121	How's cupcake?? Fussy??	
07/14/2012 15:23:33 PDT	Troy	(702) 271-9121	How r the kids can I talk to then	

Troys Work

Time	To/From	Number	Text
07/24/2012 07:38:31 PDT	Troys Work	4069741	Can I call u
07/23/2012 11:23:40 PDT	Troys Work	4069741	Troy
07/23/2012 10:42:55 PDT	Troys Work	4069741	R u gettin my text or no?

CASE NO. C286357

U:\COURT CLERK\Forms\Exhibits\Court's Exhibit List.doc 1/2/2014

From: Jeffrey Rogan <Jeffrey.Rogan@clarkcountyda.com>

To: betsgonz <betsgonz@aol.com>

Cc: Scott Coffee <coffeesl@ClarkCountyNV.gov>; Elizabeth Mercer <Elizabeth.Mercer@clarkcountyda.com>

Subject: State v. White - Conferred Jury Instructions

Date: Tue, Apr 14, 2015 6:06 pm

Attachments: Conferred Jury Instructions 03.docx (127K)

Good evening,

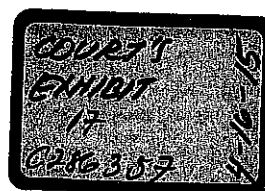
Mr. Coffee and I have met regarding the State's proposed instructions. This document does not include the defendant's special or alternative instructions, which he will send to the Court by email.

In the attached document:

- (1) All instruction or portions of instructions that are agreed upon are in black text.
- (2) We have made several agreed-upon changes to some instructions, which are noted in red.
- (3) Any of these instructions that the defendant disagrees with are noted in light blue, with an argument proffered by the defendant in green. The State's position is noted in dark blue.

Thank you,
-Jeff & Scott

Jeffrey S. Rogan
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, NV 89155-2212
W. (702) 671-2779
F. (702) 477-2997



1 INST

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5 DISTRICT COURT
CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,)

8 Plaintiff,)

CASE NO: C-12-286357-1

9 -vs-)

DEPT NO: XI

10 TROY WHITE,)

11 Defendant.)
12

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

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

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

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

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

In this case, it is charged in an Amended Information that on or about the 27th day of July, 2012, the Defendant committed the offenses of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165), CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350(1)(d)(3)), and CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1)) in the following manner, to-wit: That the Defendant, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided and against the peace and dignity of the State of Nevada,

COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

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

COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

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

COUNT 3 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

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

///

///

1 COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

11 COUNT 5 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

21 COUNT 6 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

22 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
23 wit: JAYCE WHITE, being approximately eight (8) years of age, to suffer unjustifiable
24 physical pain or mental suffering as a result of abuse or neglect, to wit: negligent treatment
25 or maltreatment, and/or cause the said JAYCE WHITE to be placed in a situation where he
26 might have suffered unjustifiable physical pain or mental suffering as a result of abuse or
27 neglect, to wit: negligent treatment or maltreatment, by discharging a firearm inside the
28 child's home within close proximity to the child and/or shooting the child's mother, Echo

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

3 COUNT 7 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

4 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
5 wit: JAZZY WHITE, being approximately six (6) months of age, to suffer unjustifiable
6 physical pain or mental suffering as a result of abuse or neglect, to wit: negligent treatment
7 or maltreatment, and/or cause the said JAZZY WHITE to be placed in a situation where he
8 might have suffered unjustifiable physical pain or mental suffering as a result of abuse or
9 neglect, to wit: negligent treatment or maltreatment, by discharging a firearm inside the
10 child's home within close proximity to the child and/or shooting the child's mother, Echo
11 White, failing to seek assistance for Echo White, and allowing her to die while the said
12 JAZZY WHITE was coming in and out of the room and/or was in the near vicinity.

13 COUNT 8 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

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

26 Each charge and the evidence pertaining to it should be considered separately. The
27 fact that you may find the defendant guilty or not guilty as to one of the offenses charged
28 should not control your verdict as to any other offense charged.

In this case the defendant is accused in an Information alleging an open charge of murder. This charge may include First Degree Murder and Second Degree Murder.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.*

*The defendant is objecting to this sentence and will be proposing an alternative without it.

Defendant's objection:

Byford v. State, 116 Nev. 215, 234-38, 994 P.2d 700, 713-15 (2000) announced a change in state law which directed courts to no longer give what had been known as the Kazalyn instructions defining premeditation.

As the court explained in Nika v. State, 124 Nev. 1272, 1286-7, 198 P.3d 839, 850 (2008): "Until Byford, we had not required separate definitions for "willfulness," "premeditation," and "deliberation" when the jury was instructed on any one of those terms. And the court had approved of the Kazalyn instruction and rejected challenges to that instruction on the grounds that it failed to distinguish between premeditation and deliberation. Byford "abandoned" that precedent..."

Although the malice instructions set forth above were not specifically mentioned, Byford noted at 234 that: "The Kazalyn instruction and some of this court's prior opinions have underemphasized the element of deliberation. The neglect of "deliberate" as an independent element of the mens rea for first-degree murder seems to be a rather recent phenomenon." The same is true of the language objected to here.

Further, in Salagado v. State, 38 Nev. 64, 150 P. 764, 765 (1915), a case cite

1 approvingly in Byford, the court noted "In express malice there is premeditation and
2 deliberation, which are wanting in irresistible passion. As said in Nye v. People, 35 Mich.
3 19, it would be a—"perversion of terms to apply the term 'deliberate' to any act which is
4 done on a sudden impulse.""

5 Additionally, the statutory language seems to say that deliberation is an element of
6 express malice and the language suggests appears to be an artifact from the pre-Byford days
7 when Nevada Court's gave deliberation no independent meaning. NRS 200.020(1) defines
8 'express malice' as 'that deliberate intention unlawfully to take away the life of a fellow
9 creature, which is manifested by external circumstances capable of proof.'

10
11 State's position

12 Byford, by the defendant's own admission, does not concern itself with the definition
13 of malice aforethought. Byford, rather, simply concerns the elements of first degree murder,
14 and requires that the jury be instructed on the separate elements of first degree murder,
15 namely: intent to kill, premeditation, and deliberation. The jury is instructed on those
16 elements in later instructions.

17 Moreover, the sentence is a correct statement of law. Malice is a requirement for both
18 first and second degree murder. Malice itself does not require deliberation. While
19 deliberation is an additional of first degree murder, it is not an element of second degree
20 murder. Deliberation is appropriately defined later in the instructions where the jury is
21 instructed on the elements of first degree murder.

22 In sum, Byford makes clear that malice does not equate deliberation, nor does malice
23 require any deliberation.

24
25 *Crawford v. State*, 121 Nev. 744, 752, 121 P.3d 582, 587 (2005).

26 *Guy v. State*, 108 Nev. 770, 776-77, 839 P.2d 578, 582-83 (1992).

27 *Kazalyn v. State*, 108 Nev. 67, 75-76, 825 P.2d 578, 583 (1992).

28 *Thedford v. State*, 86 Nev. 741, 744, 476 P.2d 25, 27 (1970).

1 *Moser v. State*, 91 Nev. 809, 812, 544 P.2d 424, 426 (1975).
2 *Keys v. State*, 104 Nev. 736, 738, 766 P.2d 270, 271 (1988).
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There are two types of malice; they are:

1. Express malice: Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.
2. Implied malice: Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

First Degree Murder is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements – willfulness, deliberation, and premeditation – must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

Murder of the second degree is all other kinds of murder.

Byford v. State, 116 Nev. 215, 994 P.2d 700, 714 (2000).

1
2 The law does not undertake to measure in units of time the length of the period during
3 which the thought must be pondered before it can ripen into an intent to kill which is truly
4 deliberate and premeditated. The time will vary with different individuals and under varying
5 circumstances.

6 The true test is not the duration of time, but rather the extent of the reflection. A cold,
7 calculated judgment and decision may be arrived at in a short period of time, but a mere
8 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation
9 and premeditation as will fix an unlawful killing as First Degree Murder.

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28 *Byford v. State*, 116 Nev. 215, 994 P.2d 700, 714 (2000).

The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

Defense objection: Duplicative as this is covered by next instruction and the instruction on circumstantial evidence---too much emphasis is being place on the various ways circumstantial evidence may be used.

Moser v. State, 91 Nev. 809, 544 P.2d 424 (1975).

INSTRUCTION NO. _____

A defendant's state of mind does not require the presentation of direct evidence as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party from the circumstances disclosed by the evidence.

Miranda v. State, 101 Nev. 562, 568, 707 P.2d 1121, 1125 (1985).

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation

Jackson v. State, 117 Nev. 116, 17 P.3d998 (2001).

Hutchins v. State, 110 Nev. 103, 113 (1994).

McGuire v. State, 86 Nev. 262, 265 n.2 (1970).

All murder which is not First Degree Murder is Second Degree Murder. Second Degree Murder is murder with malice aforethought, either express or implied, but without the added mixture of premeditation and deliberation.

NRS 200.010; 200.030(2)

You are instructed that if you find that the State has established that the defendant has committed First Degree Murder you shall select First Degree Murder as your verdict. The crime of First Degree Murder includes the crime of Second Degree Murder. You may find the defendant guilty of Second Degree Murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of First Degree Murder, and

2. All twelve of you are convinced beyond a reasonable doubt that the defendant is guilty of the crime of Second Degree Murder.

If you are convinced beyond a reasonable doubt that the crime of Murder has been committed by the defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict of Second Degree Murder.

Green v. State, 119 Nev. 542, 80 P.3d 93 (2003).

Attempt Murder is the performance of an act or acts which tend, but fail, to kill a human being, when such an act or acts are done with express malice, namely, with the deliberate intention unlawfully to kill. Implied malice is not an element of attempt murder and is not to be considered by you in regards to this charge.

Attempt murder does not require premeditation and deliberation.*

*The defendant is objecting to this sentence and will propose an alternative instruction without it.

Defense Objection-this appears contrary to definition of express malice set forth at NRS 200.020(1) which requires "...deliberate intention." See also Byford. V. State, 116 Nev. 215, 994 P.2d 700 (2000) and Nika v. State, 124 Nev. 1272, 198 P.3d 839 (2008) which make clear that deliberation is a distinct from intent post-Byford.

State's position:

By its own definition, attempt murder only requires a deliberate intention to kill, not premeditation and deliberation. As the Supreme Court specifically stated in Keys:

Attempted murder, then, is the attempt to kill a person with express malice, or more completely defined: Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill. This is all there is to it. **There is no need for the prosecution to prove any additional elements, such as, say, premeditation and deliberation.** There are no degrees of attempted murder.

Keys v. State, 104 Nev. 736, 740-741, 766 P.2d 270, 273 (1988) (emphasis added).

NRS 200.010; 200.020; 193.330

Keys v. State, 104 Nev. 736, 766 P.2d 270 (1988).

INSTRUCTION NO. _____

Once a defendant forms the deliberate intention to kill and performs an act or acts which tend, but fail, to kill, he is guilty of attempt murder, regardless of whether he abandoned that attempt because of the approach of other persons, because of a change in his intentions due to a stricken conscience, or for any other reason.

Stewart v. State, 85 Nev. 388, 455 P.2d 914 (1969).

1
2 You are instructed that if you find the defendant guilty of First Degree Murder,
3 Second Degree Murder, or Attempted Murder, you must also determine whether or not a
4 deadly weapon was used in the commission of this crime.

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

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

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INSTRUCTION NO. _____

Any person who carries a firearm concealed upon his person is guilty of Carrying a Concealed Weapon. "Concealed weapon" means a weapon that is carried upon a person in such a manner as not to be discernable by ordinary observation.

NRS 202.350(1)(d)(3)

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

You are instructed that a firearm is a deadly weapon. "Firearm" includes:

- ~~1. Any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.~~
- ~~2. Any device used to mark the clothing of a person with paint or any other substance; and~~
- ~~3. Any device from which a metallic projectile, including any ball bearing or pellet, may be expelled by means of spring, gas, air or other force.~~

NRS 62A.130; 193.165(5)(c); 202.265; 202.253(2).

Zgombic v. State, 106 Nev. 571 (1990).

Clem v. State, 104 Nev. 351 (1988).

Barnhart v. State, 122 Nev. 301, 130 P.3d 650 (2006).

The defendant is guilty of the offense of Child Abuse if the person willfully causes a child who is less than 18 years of age:

(a) to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, or,

(b) to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect.

Defense objects pursuant to Clay v. Eight Jud. Dist. Ct., 305 P.3d 898, 129 Nev. Adv. Op. 48 (2013) which seems to say that actual injury is required to prove felony child abuse. The language here seems to conflate NRS 200.508(1) and NRS 200.508(2)---the very problem set forth in Clay. No suggest alternative as the statute is virtual non-sense and fails to give meaningful distinction between abuse pursuant to NRS 200.508(1) and endangerment pursuant to NRS 200.508(2)

INSTRUCTION NO. _____

As used in these instructions:

“Abuse or neglect” means negligent treatment or maltreatment of a child under the age of 18 years, under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.

“Negligent treatment” or “maltreatment of a child” occurs if a child has been abandoned, is without proper care, control and supervision or lacks subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

“Physical injury” means:

1. Permanent or temporary disfigurement; or
2. Impairment of any bodily function or organ of the body.

“Mental injury” means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.

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

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

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

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

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

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

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

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

1
2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

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

1
2 It is a constitutional right of a defendant in a criminal trial that he may not be
3 compelled to testify. Thus, the decision as to whether he should testify is left to the
4 defendant on the advice and counsel of his attorney. You must not draw any inference of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter
6 into your deliberations in any way.
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A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. _____

In your deliberation as to whether or not the defendant is guilty or not guilty, you may not discuss or consider the subject of punishment. ~~as that is a matter which lies solely with the court.~~ Only if your verdict is First Degree Murder, will you, at a later hearing, decide the issue of penalty or punishment in relation to that charge.

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

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

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

1
2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of, and after notice to, the district attorney and the
6 defendant and his counsel.

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

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 -vs-)

10 TROY WHITE,)

11 Defendant.)

CASE NO: C-12-286357-1

DEPT NO: XI

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant TROY WHITE, as
15 follows:
16

17 COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON

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

- 19 ☐ Guilty of First Degree Murder with Use of a Deadly Weapon
20 ☐ Guilty of First Degree Murder
21 ☐ Guilty of Second Degree Murder with Use of a Deadly Weapon
22 ☐ Guilty of Second Degree Murder
23 ☐ Not Guilty

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COUNT 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

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

COUNT 3 – CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON

(please check the appropriate box, select only one)

- ☐ Guilty of Carrying a Concealed Firearm
- ☐ Not Guilty

**COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT
(JODEY WHITE)**

**COUNT 5 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT
(JESSE WHITE)**

**COUNT 6 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT
(JAYCE WHITE)**

**COUNT 7 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT
(JAZZY WHITE)**

**COUNT 8 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT
(JETT WHITE)**

DATED this _____ day of April, 2015

FOREPERSON

Kutinac, Daniel

From: Scott Coffee <coffeesl@ClarkCountyNV.gov>
Sent: Wednesday, April 15, 2015 6:22 AM
To: Elizabeth Gonzalez; Jeffrey Rogan
Cc: Elizabeth Mercer; Kutinac, Daniel
Subject: RE: Updated specials---
Attachments: Specials-updated.doc

From: Elizabeth Gonzalez [betsgonz@aol.com]
Sent: Tuesday, April 14, 2015 9:17 PM
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Thanks

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To: Jeffrey Rogan; betsgonz@aol.com
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Scott Coffee

PS

Sorry for the confusion

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Subject: RE: State v. White - Conferred Jury Instructions

Here are the defendant's proposed---

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Specials-state objects to all

Scott Coffee



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Sent: Tuesday, April 14, 2015 6:06 PM

To: betsgonz@aol.com

Cc: Scott Coffee; Elizabeth Mercer

Subject: State v. White - Conferred Jury Instructions

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Thank you,

-Jeff & Scott

Jeffrey S. Rogan
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, NV 89155-2212
W. (702) 671-2779
F. (702) 477-2997

1 boy would have transportation. Loddy asked Roberts to stop at a drug store in
2 Twin Falls and buy her some hair rinse. After retrieving the truck and the hair
3 rinse, Roberts and Rick returned home around 4:00 p.m. Loddy agreed to get
4 together with Roberts later that evening. Roberts then drove to a nightclub in
5 Jackpot and "had a couple of drinks." He left that club and went to another
6 where he stayed most of the rest of the evening, leaving once to see if Loddy
7 was home and returning when he could not find her.

8 Roberts drank throughout the evening until the bar closed. The bartender at the
9 club, Charles Sallee, testified that Roberts drank 15-25 drinks between 9:00
10 p.m. and 1:00 a.m. when the bar closed. According to Sallee, Roberts was
11 intoxicated when he left the bar. Sallee testified that Roberts spent the evening
12 drinking and dancing and that he did not appear to be upset. When Sallee
13 closed the bar at 1:00 a.m., he and some of the other patrons agreed to meet
14 Roberts at another bar.

15 Roberts testified that he drove by Loddy's trailer on his way to the other bar.
16 He did not see Loddy's car at her trailer and drove on; however, as he passed
17 Charlie Johnston's trailer he noticed Loddy's car parked there. Roberts stated
18 that the next thing he remembered was Loddy's falling and his yelling for help.
19 He had no other memory of the shooting, but he denied that he ever intended to
20 kill Loddy.

21 Charlie Johnston testified that he and Loddy had spent the evening talking and
22 had then gone to bed. At 1:19 a.m. they heard a knock on the door, and Loddy
23 went to answer it, assuming it was Roberts. As the door opened, Johnston
24 heard a "pop" and saw Loddy fall. He then saw Roberts kneel beside her. As
25 stated above, Johnston left via a backdoor and called the police.

26 When sheriff's deputies arrived at Johnston's trailer, they found Roberts' car in
27 the driveway with the lights on and the engine running. Roberts was sitting in
28 the trailer doorway cradling Loddy in his lap. He was calling for someone to
come help. When the deputies approached him Roberts was whining and
saying, "Oh my God, I killed her, please kill me. Please put me out of my
misery." The deputies found Roberts' gun on the couch where he had tossed it.
Roberts was then taken into custody. He had to be strapped to a stretcher to get
him to leave Loddy's body.

29 People v. Wharton, 53 Cal.3d 522, 660-661, 809 P.2d 290, 319-320 (Cal.,1991)
30 addressed the same issue when confronted with a defense request for similar
31 instructions:
32
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34

1 By contrast, the court erred in refusing to instruct the jury, at defendant's
2 request, that legally adequate provocation could occur over a considerable
3 period of time. It was defendant's theory at trial that no single action on the
4 part of the victim provoked the fatal blow but that the book-throwing incident
5 was merely the culmination of his pent-up frustration and anger emanating
6 from his ongoing dysfunctional relationship with the victim. In other words,
7 his defense theory at trial was that he killed after enduring provocative conduct
8 by the victim over a period of weeks.

9 The People argue there was insufficient evidence of this theory to justify the
10 instruction. We disagree; defendant proffered evidence from which reasonable
11 persons could have concluded there was sufficient provocation to reduce
12 murder to manslaughter. (See *Wickersham*, supra, 32 Cal.3d at p. 324, 185
13 Cal.Rptr. 436, 650 P.2d 311.) Because defendant requested a "pinpoint"
14 instruction on his theory of the case that was neither argumentative nor
15 duplicated in the standard instructions, the trial court erred in failing to deliver
16 it to the jury. (Wright, supra, 45 Cal.3d at p. 1144, 248 Cal.Rptr. 600, 755 P.2d
17 1049.)

18 Juries in California are now commonly instructed in manslaughter cases that
19 "Sufficient provocation may occur over a short or long period of time."

20 In Pennsylvania, the proposition is phrased as "Whether the provocation was
21 sufficient to support the defense of voluntary manslaughter is determined by an
22 objective standard—whether a reasonable man, confronted by the same series of
23 events, would become impassioned to the extent that his mind was incapable of cool
24 reflection." *Commonwealth v. Galloway*, 336 Pa.Super. 225, 485 A.2d 776, 783
25 (1984).
26
27
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The killing done in the heat of passion caused by legally adequate provocation is manslaughter even if there is an intent to kill so long as the intention is not a deliberate intention.

NRS 200.020(1): "Express malice is that *deliberate intention*...."

Note that NRS 200.020(2) defines implied malice in such a way that it does not exist in the presence of provocation.

See also:

State v. Vaughan, 22 Nev. 285, 39 P. 733, 736 (1895):

In murder in the first degree there is intention to kill, accompanied with premeditated malice, except in certain cases in which certain acts are made murder by statute. In murder in the second degree there is intention to kill, accompanied by malice, but without premeditation. In manslaughter there may be intention to kill arising from the sudden transport of passion, but it may, and must in this grade of offense, be unaccompanied by both premeditation and malice.

The crime of attempted murder includes the lesser crime of attempted voluntary manslaughter.

If you are satisfied beyond a reasonable doubt that there was an unlawful attempt to kill, but you have a reasonable doubt whether the crime is attempted murder or attempted voluntary you must give the defendant the benefit of that doubt and return a verdict voluntary.

Both attempted murder and attempted voluntary manslaughter require the state to prove intent to kill. The distinction between the two is that although the intent to kill exists, in attempted voluntary manslaughter there is not deliberation.

Heat of passion and lawful provocation may be considered in determining whether the state has proven deliberation in regards to the charge of attempted murder.

In Nevada, pursuant to State v. Vaughan, 22 Nev. 285, 39 P. 733, 736 (1895):

In murder in the first degree there is intention to kill, accompanied with premeditated malice, except in certain cases in which certain acts are made murder by statute. In murder in the second degree there is intention to kill, accompanied by malice, but without premeditation. *In manslaughter there may be intention to kill arising from the sudden transport of passion*, but it may, and must in this grade of offense, be unaccompanied by both premeditation and malice.

Years later, in Allen v. State, 98 Nev. 354, 647 P.2d 389 (1982) the Nevada Supreme Court went so far as to hold that failure to give an instruction on attempted voluntary manslaughter was reversible error. Eight years after Allen, in Curry v. State, (1990), the court reversed position.

Under Curry, voluntary manslaughter can not be committed with a specific intent because "[o]ne cannot logically specifically intend to act pursuant to a spontaneous,

1 unanticipated and therefore, truly irresistible passion.” Curry, 106 Nev. 317, 792 P.2d at 397
2 (1990). Curry completely ignores the role lack deliberation plays in manslaughter and
3 ignores the line of Nevada cases such as Vaugh, supra, which acknowledge that heat of
4 passion can include the intent to kill as well as the “deliberate intention” language of NRS
5 200.020(1). This minimization of deliberation is of course the very ill which lead to Byford
6 decision and a change in Nevada law.
7

8 The status of Curry in light of Byford is tenuous at best. When Curry was decided, the
9 court noted the position it was adopted put Nevada was in the clear minority of jurisdictions.
10 Curry at 319-320. There are other Nevada cases stating that intent to kill is not inconsistent
11 with the notion of manslaughter, for example, Hymers v. State, 15 Nev. 49, 1880 WL 4260:
12

13 “The unlawful killing must be accompanied with a deliberate and clear intent
14 to take life, in order to constitute murder of the first degree. The intent to kill
15 must be the result of deliberate premeditation. It must be formed upon a
16 preexisting reflection, and not upon a sudden heat of passion sufficient to
preclude the idea of deliberation.”

17 There are no post Byford Nevada cases on point.

18 Curry was examined by the Kasas Supreme Court in State v. Gutierrez, 285 Kan. 332,
19 172 P.3d 18 (2007). In finding its’ reasoning unpersuasive, the court noted:

20 A defendant can form an intent to kill without premeditation, without
21 reflection, on impulse, while enraged or provoked, but, in order to support a
22 conviction of voluntary manslaughter, that essential element of intent must be
23 present. Moreover, if a defendant has formed the necessary intent, it is not
24 logically impossible for him or her to attempt and fail to carry it out, that is, to
25 engage in an overt act toward the accomplishment of an intentional crime. See
26 State v. Graham, 275 Kan. 831, 836–40, 69 P.3d 563 (2003); State v. Hedges,
27 269 Kan. 895, 905–06, 8 P.3d 1259 (2000). For these reasons, we reject
28 defendant's argument on this issue. Attempted voluntary manslaughter is a
valid crime in Kasas.

Kutinac, Daniel

From: Scott Coffee <coffeesl@ClarkCountyNV.gov>
Sent: Wednesday, April 15, 2015 6:50 AM
To: Elizabeth Gonzalez; Jeffrey Rogan
Cc: Elizabeth Mercer; Kutinac, Daniel
Subject: RE: Updated specials---
Attachments: Specials-updated final.doc

And now with the attachment...

Scott

From: Scott Coffee
Sent: Wednesday, April 15, 2015 6:49 AM
To: Elizabeth Gonzalez; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac
Subject: RE: Updated specials---

Realized minor language issue on final special, corrected and added one citation....Forward this copy as it is what I expect to file. Shouldn't be anything else

Scott

From: Elizabeth Gonzalez [betsgonz@aol.com]
Sent: Tuesday, April 14, 2015 9:17 PM
To: Scott Coffee; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac
Subject: RE: Updated specials---

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Sent: Tuesday, April 14, 2015 6:41 PM
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Here are the defendant's proposed---



Voluntary--- State objects to factual basis but we agree on language. Assuming we give instructions on Voluntary, the state is objecting to the transition instruction.

Specials-state objects to all

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Cc: Scott Coffee; Elizabeth Mercer

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Thank you,
-Jeff & Scott

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While the state of mind constituting heat of passion must be the result of a sudden impulse, the the provocation leading to the sudden heat of passion occur over either a long or short period of time and may be the result of an ongoing series of events.

Boykins v. State, 116 Nev. 171, 995 P.2d 474 (2000) holding that the ongoing abuse of "battered women syndrome" is admissible to show state of mind as it relates to self-defense--by extension ongoing provocation should be able to provide the basis for showing state of mind concerning heat of passion.

Roberts v. State, 102 Nev. 170, 171-2, 717 P.2d 1115, 115-1116 (1986) clearly infers this principle when it recited a lengthy period of provocation leading up to the sudden heat of passion-

Prior to the night of the shooting Roberts was a senior highway maintenance foreman for the Nevada Department of Transportation. He had worked for the department for twenty eight years and had no prior record of criminal activity. For six years he and Loddy had lived together in his home with her two children. Ms. Loddy and her children moved out of that house in September of 1983, although she and Roberts continued to see each other. Loddy's son, Rick, continued to live with Roberts for a month after she moved out. Thereafter, Rick occasionally visited Roberts on weekends.

Roberts testified that he believed that he and Loddy would get back together. With that hope in mind he kept Loddy's car on his insurance policy and continued to pay the premiums. He also gave Loddy money for her February, 1984, car payment and bought clothes for her children after they moved out. Roberts stated that he did these things because, "I felt that they were still my family." Roberts insisted that he continued to love Loddy and that he saw no reason not to help her and the children.

On March 6, 1984, Roberts worked only half a day. He had made arrangements with Loddy to take Rick to Twin Falls, Idaho, to retrieve one of Roberts' pickup trucks. Roberts intended to loan the truck to Rick so that the

The killing done in the heat of passion caused by legally adequate provocation is manslaughter even if there is an intent to kill so long as the intention is not a deliberate intention.

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State v. Ah Mook, 12 Nev. 369, 1877 WL 4365 (1877)

It requires something more than a bare intent to kill to make a killing murder in any degree. In all cases of voluntary manslaughter, such as defendant contended this was, there is an intent to kill. But it is supposed in such cases that the slayer is incapable of exercising his reasoning faculties on account of the predominance of passion, and it is therefore said that there is no deliberation and no malice aforethought. In order that the intent to kill may constitute express malice, it must be formed in a mind free from irresistible passion and capable of reason. If, instead of this, the intent to kill is the result of a mere blind impulse of passion, the killing cannot be murder in the first degree, and will not even be murder in the second degree unless the passion was caused by an insufficient provocation or a reasonable cooling time had elapsed before the killing

1 172 P.3d 18 (2007). In finding its' reasoning unpersuasive, the court noted:

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Kutinac, Daniel

From: Elizabeth Gonzalez <betsgonz@aol.com>
Sent: Wednesday, April 15, 2015 8:19 AM
To: Coffee, Scott; Jeffrey Rogan
Cc: Elizabeth Mercer; Kutinac, Daniel; Rose, Laura
Subject: RE: Updated specials---

These do not appear to include a definition for the proposed instruction for the definition of "legally adequate provocation". If you want one please send it as soon as possible.

From: Scott Coffee
Sent: 4/15/2015 6:22 AM
To: Elizabeth Gonzalez; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac
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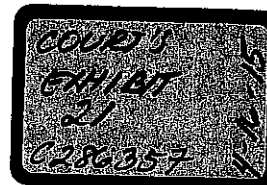
PS

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Cc: Scott Coffee; Elizabeth Mercer

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Kutinac, Daniel

From: Scott Coffee <coffeesl@ClarkCountyNV.gov>
Sent: Wednesday, April 15, 2015 10:32 AM
To: Elizabeth Gonzalez; Jeffrey Rogan
Cc: Elizabeth Mercer; Kutinac, Daniel; Rose, Laura
Subject: RE: Updated specials---

It's not clearly labeled, but I think the second tendered instruction in our voluntary packet (pg 3 of 9 Language from Ricci) covers this---it should probably be labeled or a line added between first and second sentence (or perhaps second and third) "For there to be legally adequate provocation..."

Scott

From: Elizabeth Gonzalez [betsgonz@aol.com]
Sent: Wednesday, April 15, 2015 8:19 AM
To: Scott Coffee; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac; John Gutke
Subject: RE: Updated specials---

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Sent: 4/14/2015 7:49 PM
To: Jeffrey Rogan; betsgonz@aol.com
Cc: Elizabeth Mercer
Subject: Updated specials---

I just realized I sent a set of special which had two additional "work in progress" instructions attached at the end. I've delete those last two---here is the correct version.

Scott Coffee

PS



Sorry for the confusion

From: Scott Coffee
Sent: Tuesday, April 14, 2015 6:41 PM
To: Jeffrey Rogan; betsgonz@aol.com
Cc: Elizabeth Mercer
Subject: RE: State v. White - Conferred Jury Instructions

Here are the defendant's proposed---

Voluntary--- State objects to factual basis but we agree on language. Assuming we give instructions on Voluntary, the state is objecting to the transition instruction.

Specials-state objects to all

Scott Coffee

From: Jeffrey Rogan [<mailto:Jeffrey.Rogan@clarkcountyda.com>]
Sent: Tuesday, April 14, 2015 6:06 PM
To: betsgonz@aol.com
Cc: Scott Coffee; Elizabeth Mercer
Subject: State v. White - Conferred Jury Instructions

Good evening,

Mr. Coffee and I have met regarding the State's proposed instructions. This document does not include the defendant's special or alternative instructions, which he will send to the Court by email.

In the attached document:

- (1) All instruction or portions of instructions that are agreed upon are in black text.
- (2) We have made several agreed-upon changes to some instructions, which are noted in red.
- (3) Any of these instructions that the defendant disagrees with are noted in light blue, with an argument proffered by the defendant in green. The State's position is noted in dark blue.

Thank you,
-Jeff & Scott

Jeffrey S. Rogan
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, NV 89155-2212
W. (702) 671-2779
F. (702) 477-2997

Kutinac, Daniel

From: Elizabeth Gonzalez <betsgonz@aol.com>
Sent: Wednesday, April 15, 2015 11:38 AM
To: Coffee, Scott; Jeffrey Rogan
Cc: Elizabeth Mercer; Kutinac, Daniel; Rose, Laura
Subject: RE: Updated specials---

The referenced instruction is unclear as your other proposed instructions reference a specific definition. Care to revise?
Also do you have a proposed form of verdict?

From: Scott Coffee
Sent: 4/15/2015 10:32 AM
To: Elizabeth Gonzalez; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac; John Gutke
Subject: RE: Updated specials---

It's not clearly labeled, but I think the second tendered instruction in our voluntary packet (pg 3 of 9 Language from Ricci) covers this---it should probably be labeled or a line added between first and second sentence (or perhaps second and third) "For there to be legally adequate provocation..."

Scott

From: Elizabeth Gonzalez [betsgonz@aol.com]
Sent: Wednesday, April 15, 2015 8:19 AM
To: Scott Coffee; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac; John Gutke
Subject: RE: Updated specials---

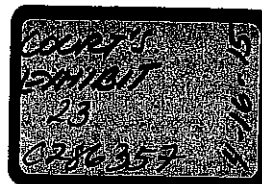
These do not appear to include a definition for the proposed instruction for the definition of "legally adequate provocation". If you want one please send it as soon as possible.

From: Scott Coffee
Sent: 4/15/2015 6:22 AM
To: Elizabeth Gonzalez; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac
Subject: RE: Updated specials---

From: Elizabeth Gonzalez [betsgonz@aol.com]
Sent: Tuesday, April 14, 2015 9:17 PM
To: Scott Coffee; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac
Subject: RE: Updated specials---

Thanks

From: Scott Coffee
Sent: 4/14/2015 7:49 PM
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Chief Deputy District Attorney

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Las Vegas, NV 89155-2212
W. (702) 671-2779
F. (702) 477-2997

Kutinac, Daniel

From: Scott Coffee <coffee1@ClarkCountyNV.gov>
Sent: Wednesday, April 15, 2015 1:11 PM
To: 'Elizabeth Gonzalez'; Jeffrey Rogan
Cc: Elizabeth Mercer; Kutinac, Daniel; Rose, Laura
Subject: RE: Updated specials---
Attachments: defendant's Preposed verdict form.docx; Voluntary-defendant proposed with added lang concerning legally ad provocation.doc

Sorry for slow reply...I was at lunch. Attached is a revision to Vol. Man. Instruction which makes clearer what we are referring to as legally adequate provocation. I've made a note at to where the language was added.

Also attached are proposed verdict forms...

Scott

From: Elizabeth Gonzalez [mailto:betsgonz@aol.com]
Sent: Wednesday, April 15, 2015 11:38 AM
To: Scott Coffee; Jeffrey Rogan
Cc: Elizabeth Mercer; Daniel Kutinac; John Gutke
Subject: RE: Updated specials---

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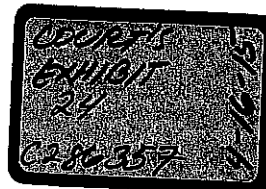
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These do not appear to include a definition for the proposed instruction for the definition of "legally adequate provocation". If you want one please send it as soon as possible.

From: Scott Coffee
Sent: 4/15/2015 6:22 AM
To: Elizabeth Gonzalez; Jeffrey Rogan



1 **VER**

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,

7 Plaintiff,

8 -vs-

9 TROY WHITE,

10 Defendant.
11

CASE NO: C-12-286357-1

DEPT NO: XI

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant TROY WHITE, as
15 follows:

16 **COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON**

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

- 18 ☐ Guilty of First Degree Murder with Use of a Deadly Weapon
19 ☐ Guilty of First Degree Murder
20 ☐ Guilty of Second Degree Murder with Use of a Deadly Weapon
21 ☐ Guilty of Second Degree Murder
22 ☐ Guilty of Voluntary Manslaughter of a Deadly Weapon
23 ☐ Guilty of Voluntary Manslaughter
24 ☐ Not Guilty
25

26 ///

27 ///

Voluntary Manslaughter is the unlawful killing of a human being, without malice aforethought and without deliberation or premeditation. It is a killing upon a sudden quarrel or heat of passion, caused by a provocation sufficient to make the passion irresistible.

For there to be legally adequate provocation for Voluntary Manslaughter there must either be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. The serious and highly provoking injury which causes the sudden heat of passion can occur without direct physical contact and need not be the result of direct physical assault on the defendant.

For the sudden, violent impulse of passion to be irresistible resulting in a killing, which is Voluntary Manslaughter, there must not have been an interval between the assault or provocation and the killing sufficient for the voice of reason and humanity to be heard; for, if there should appear to have been sufficient time for a cool head to prevail and the voice of reason to be heard, the killing shall be attributed to deliberate revenge and determined by you to be murder.

Whether the interval between the provocation and the killing is sufficient for the passions of a reasonable person to cool is not measured exclusively by any precise time. What constitutes a sufficient cooling-off period also depends upon the magnitude of the provocation and the degree to which passions are aroused. The law leaves this determination to the jury under the facts and circumstances of the case.

First three paragraphs are from the statutory definition of Voluntary Manslaughter (NRS 200.020; NRS 200.040 and NRS 200.050) and incorporate the statutory limitations on voluntary manslaughter (NRS 200.060)

Added per court's inquiry the first sentence to the second paragraph making clear what was being defined as "legally adequate provocation"

If there some is evidence of heat of passion caused by legally adequate provocation, the state has the burden of proving beyond a reasonable doubt that either: 1) the defendant was not acting in the heat of passion when he killed; or 2) that the passion was not caused by legally adequate provocation. If they have failed to meet this burden, but you find that the state has proven an unlawful killing then your must return a verdict of voluntary manslaughter.

“Legally adequate provocation” and “heat of passion” have been defined for you elsewhere in these instructions.

As to the burden being on the state once the record implies heat of passion, see Crawford v. State, 121 Nev. Adv. Rep. 74 (2005). Additionally, Crawford held that the defense is entitled a position/theory of the case instruction upon the state’s burden. The version submitted here has been re-drafted slightly to address the concerns set forth by the court concerning the need to add language about provocation being “legally adequate”.

Kutinac, Daniel

From: Jeffrey Rogan <Jeffrey.Rogan@clarkcountyda.com>
Sent: Wednesday, April 15, 2015 3:49 PM
To: Coffee, Scott; 'Elizabeth Gonzalez'
Cc: Elizabeth Mercer; Kutinac, Daniel; Rose, Laura
Subject: RE: Updated specials---
Attachments: State's Comments on Defendant's Updated Specials (3).doc

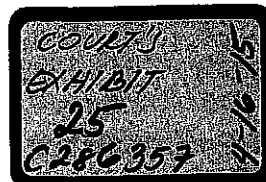
Good afternoon,

Attached are the State's comments and objections to the defendant's updated special jury instructions.

Thank you,

-Jeff Rogan

Jeffrey S. Rogan
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, NV 89155-2212
W. (702) 671-2779
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1
2 While the state of mind constituting heat of passion must be the result of a sudden
3 impulse, the provocation leading to the sudden heat of passion occur over either a long or
4 short period of time and may be the result of an ongoing series of events.

5
6 This defense instruction has no basis in statute or case law. Indeed, none of the cases
7 cited by the defense support the giving of this instruction. The Roberts case does not in any
8 way address the time frame that provocation can occur, the case merely holds that the court
9 was wrong not to give a defense requested instruction on manslaughter and contains no
10 discussion whatsoever about provocation and a time period that relates to provocation.

11 Likewise, the Pennsylvania case of Galloway also does not discuss a time frame as it
12 relates to provocation. The use of the phrase "series of events" as used in Galloway
13 discusses the circumstances of the crime in the context of a discussion about the reasonable
14 person standard – there is no discussion of provocation. It is misleading and inaccurate for
15 the defense to state that the case is discussing a time frame for the provocation to have
16 occurred. Further, the addition of the word "ongoing" to the phrase "series of events" in the
17 defense instruction changes the whole meaning of the phrase "series of events" as used in the
18 Pennsylvania case.

19 The Boykins case relates to self defense and is irrelevant to the instructions on
20 voluntary manslaughter.

21 Additionally, the instruction is confusing and misleading as to the law in Nevada.
22 The jury is already properly instructed consistent with NRS 200.040, 200.050 and 200.060
23 that the heat of passion must be sudden and irresistible and that there can be no cooling off
24 period between the provocation and the killing. The defense instruction confuses and
25 misleads the jury into disregarding the instructions about the suddenness of the heat of
26 passion required for voluntary manslaughter.

27 Further, if the Court is going to look to outside jurisdictions, the Kentucky
28 Supreme Court has also noted that, "The requirement that the provocation be 'adequate' also

1 includes the requirement that it be 'uninterrupted.'" Fields v. Commonwealth, 44 S.W.3d
2 355, 359-360 (Ky. 2001).

3 NRS 200.060 states, "When killing punished as murder. The killing must be the
4 result of that sudden, violent impulse of passion supposed to be irresistible; for, if there
5 should appear to have been an interval between the assault or provocation given and the
6 killing, sufficient for the voice of reason and humanity to be heard, the killing shall be
7 attributed to deliberate revenge and punished as murder." See also, Allen v. State, 98 Nev.
8 354, 356-357 (Nev. 1982)(emphasis added)

9 Voluntary manslaughter is defined by NRS 200.050 and NRS 200.060. It
10 consists of a killing which is the result of a sudden, violent and irresistible
11 impulse of passion. The law requires that the irresistible impulse of passion be
12 caused by a serious and highly provoking injury, or attempted injury, sufficient
13 to excite such passion in a reasonable person. If there is an interval between
14 the provocation and the killing sufficient for the passion to cool and the voice
15 of reason to be heard, the killing will be punished as murder. NRS 200.060;
16 see Jackson v. State, 84 Nev. 203, 438 P.2d 795 (1968).

17 Whether the interval between the provocation and the killing is sufficient for
18 the passions of a reasonable person to cool is not measured exclusively by any
19 precise time. What constitutes a sufficient cooling-off period also depends
20 upon the magnitude of the provocation and the degree to which passions are
21 aroused. People v. Hudson, 390 N.E.2d 5 (Ill.App. 1979).

22 [357] In Jackson, cited above, the killing followed a fist-fight occasioned by
23 the defendant's objection to the victim dating the defendant's former wife.
24 After being knocked to the ground, the defendant retrieved a rifle from his
25 automobile, loaded it, and returned to shoot the victim. In light of all the
26 circumstances the district court correctly concluded that the interval between
27 the provocation and the killing provided no basis for finding that the defendant
28 was acting under an irresistible impulse. In the instant case, however, the
provocation suffered by Mary is significantly more egregious than the
provocation in Jackson. Moreover, a jury might well find that Mary,
awakening to find herself traumatized by a severe beating, experienced no
lapse of time in a way allowing her sense of outrage to cool and permitting
reason to prevail. Thus, we cannot say, as a matter of law, that she was not
acting under the compulsion of an irresistible impulse of passion when she shot
Roger...

1 As to Defendant's citation to Roberts v. State, 102 Nev. 170, 171-172 (1986), his
2 reliance on that case is erroneous as the facts of the case make clear that the defendant had
3 no knowledge that his girlfriend was seeing someone else until he saw her car in the
4 driveway of another man's home and shot and killed her moments later. As such, there was
5 no such provocation occurring over a period of time. Furthermore, the language of Roberts
6 does not support Defendant's contention that provocation may occur over a period of time.
7 According to the Roberts Court, "The crime of voluntary manslaughter is defined and
8 described in NRS 200.040, NRS 200.050 and NRS 200.060... It appears that there is some
9 evidence in this case to support a jury finding that the crime of manslaughter had been
10 committed. Indeed, the trial judge himself observed that the jury could have inferred that the
11 defendant was acting in the heat of passion. **That there is evidence [174] to support a**
12 **finding of the "sudden" nature of the passion cannot be gainsaid. NRS 200.040 requires**
13 **that the "sudden heat of passion" be caused by "a provocation apparently sufficient to**
14 **make the passion irresistible.**" NRS 200.050 additionally defines sufficient provocation in
15 terms of a "serious and highly provoking injury inflicted upon the person killing." Roberts
16 v. State, 102 Nev. 170, 173-174 (Nev. 1986)

17 Furthermore, the California Penal Code definition of Voluntary Manslaughter differs
18 vastly from the Nevada Revised Statutes definitions pertaining to Manslaughter. The
19 California Penal Code merely provides, "Manslaughter is the unlawful killing of a human
20 being without malice. It is of three kinds: (a) Voluntary--upon a sudden quarrel or heat of
21 passion..." Cal Pen Code § 192.

22 In contrast, the Nevada legislature has set forth much more detailed legislation
23 defining Voluntary Manslaughter and in those definitions has required that it be "sudden" as
24 opposed to occurring over a period of time.

25 **NRS 200.040 "Manslaughter" defined.**

26 1. Manslaughter is the unlawful killing of a human being, without malice express or
27 implied, and without any mixture of deliberation.

28 ///

1 2. Manslaughter must be voluntary, upon a sudden heat of passion, caused by a
2 provocation apparently sufficient to make the passion irresistible, or involuntary, in the
3 commission of an unlawful act, or a lawful act without due caution or circumspection.

4 3. Manslaughter does not include vehicular manslaughter as described in NRS
5 484B.657.

6
7 **NRS 200.050 "Voluntary manslaughter" defined.**

8 1. In cases of voluntary manslaughter, there must be a serious and highly provoking
9 injury inflicted upon the person killing, sufficient to excite an irresistible passion in a
10 reasonable person, or an attempt by the person killed to commit a serious personal injury on
11 the person killing.

12 2. Voluntary manslaughter does not include vehicular manslaughter as described in
13 NRS 484B.657.

14
15 **NRS 200.060 When killing punished as murder. The killing must be the result of**
16 **that sudden, violent impulse of passion supposed to be irresistible; for, if there should**
17 **appear to have been an interval between the assault or provocation given and the**
18 **killing, sufficient for the voice of reason and humanity to be heard, the killing shall be**
19 **attributed to deliberate revenge and punished as murder.**

20
21 The Pennsylvania case cited to be defense doesn't assist their argument either. As the
22 Court merely stated that "Whether the provocation was sufficient to support the defense of
23 voluntary manslaughter is determined by an objective standard—whether a reasonable man,
24 confronted by the same series of events, would become impassioned to the extent that his
25 mind was incapable of cool reflection." Commonwealth v. Galloway, 336 Pa.Super. 225,
26 485 A.2d 776, 783 (1984)." Series of events doesn't imply that the provocation occurred
27 over a period of time. Furthermore, their statute, like Nevada's requires that the provocation
28 be "sudden" as opposed to having occurred over a period of time. See, 18 Pa.C.S. § 2503

1 ((a) General rule. -- A person who kills an individual without lawful justification commits
2 voluntary manslaughter if at the time of the killing he **is acting under a sudden and intense**
3 **passion** resulting from serious provocation by:(1) the individual killed; or (2) another
4 whom the actor endeavors to kill, but he negligently or accidentally causes the death of the
5 individual killed.”).

1
2 The crime of attempted murder includes the lesser crime of attempted voluntary
3 manslaughter.

4 If you are satisfied beyond a reasonable doubt that there was an unlawful attempt to
5 kill, but you have a reasonable doubt whether the crime is attempted murder or attempted
6 voluntary you must give the defendant the benefit of that doubt and return a verdict
7 voluntary.

8 In both attempted murder and attempted voluntary manslaughter there may exist the
9 intent to kill. The distinction between the two is that although the intent to kill exists, in
10 attempted voluntary manslaughter there is not deliberation.

11 Heat of passion and lawful provocation may be considered in determining whether the
12 state has proven deliberation in regards to the charge of attempted murder.

13
14 Defendant is not entitled to an instruction on attempt voluntary manslaughter.
15 Defendant's argument is essentially a request for this Court to overrule the law of the
16 Nevada Supreme Court. As Defendant notes, the Nevada Supreme Court has specifically
17 held that there is no crime of attempted voluntary manslaughter in the case of Curry v. State,
18 106 Nev. 317 (1990), holding that, "attempted voluntary manslaughter cannot exist in this
19 jurisdiction as a crime." Id. at 320. Defense lays out the various reasons why the Nevada
20 Supreme Court was wrong when it made this conclusion, but whether defense believes the
21 Court was right or wrong, the current state of the law is that attempted voluntary
22 manslaughter is not a crime and that ruling is binding on this court. Therefore, an instruction
23 on attempted voluntary manslaughter cannot be given.

24

25

26

27

28

Kutinac, Daniel

From: Scott Coffee <coffeesl@ClarkCountyNV.gov>
Sent: Wednesday, April 15, 2015 4:16 PM
To: Jeffrey Rogan; 'Elizabeth Gonzalez'
Cc: Elizabeth Mercer; Kutinac, Daniel; Rose, Laura
Subject: RE: Updated specials---

As to the second special we are fine with the state's proposed alternative.

Scott

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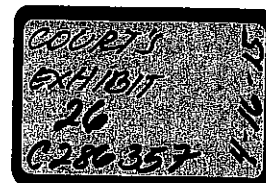
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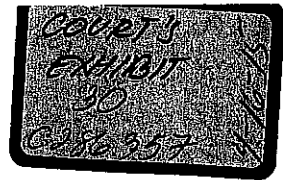
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1 INST

2
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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,
8 Plaintiff,

9 -vs-

10 TROY WHITE,
11 Defendant.
12

CASE NO: C-12-286357-1

DEPT NO: XI

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

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

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
22
23
24
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26
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28

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

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

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

In this case, it is charged in an Amended Information that on or about the 27th day of July, 2012, the Defendant committed the offenses of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165), CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350(1)(d)(3)), and CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1)) in the following manner, to-wit: That the Defendant, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided and against the peace and dignity of the State of Nevada,

COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

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

COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

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

COUNT 3 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

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

///

///

1 COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

11 COUNT 5 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

21 COUNT 6 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

22 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
23 wit: JAYCE WHITE, being approximately eight (8) years of age, to suffer unjustifiable
24 physical pain or mental suffering as a result of abuse or neglect, to wit: negligent treatment
25 or maltreatment, and/or cause the said JAYCE WHITE to be placed in a situation where he
26 might have suffered unjustifiable physical pain or mental suffering as a result of abuse or
27 neglect, to wit: negligent treatment or maltreatment, by discharging a firearm inside the
28 child's home within close proximity to the child and/or shooting the child's mother, Echo

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

3 COUNT 7 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

4 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
5 wit: JAZZY WHITE, being approximately six (6) months of age, to suffer unjustifiable
6 physical pain or mental suffering as a result of abuse or neglect, to wit: negligent treatment
7 or maltreatment, and/or cause the said JAZZY WHITE to be placed in a situation where he
8 might have suffered unjustifiable physical pain or mental suffering as a result of abuse or
9 neglect, to wit: negligent treatment or maltreatment, by discharging a firearm inside the
10 child's home within close proximity to the child and/or shooting the child's mother, Echo
11 White, failing to seek assistance for Echo White, and allowing her to die while the said
12 JAZZY WHITE was coming in and out of the room and/or was in the near vicinity.

13 COUNT 8 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

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

26 Each charge and the evidence pertaining to it should be considered separately. The
27 fact that you may find the defendant guilty or not guilty as to one of the offenses charged
28 should not control your verdict as to any other offense charged.

In this case the defendant is accused in an Indictment alleging an open charge of murder. This charge may include First Degree Murder and Second Degree Murder.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

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2 Murder is the unlawful killing of a human being with malice aforethought, either
3 express or implied. The unlawful killing may be effected by any of the various means by
4 which death may be occasioned.
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Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

There are two types of malice; they are:

1. Express malice: Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.
2. Implied malice: Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

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2 First Degree Murder is murder which is perpetrated by means of any kind of willful,
3 deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and
4 premeditation -- must be proven beyond a reasonable doubt before an accused can be
5 convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no appreciable space of time between
7 formation of the intent to kill and the act of killing.

8 Deliberation is the process of determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the action and considering the
10 consequences of the actions.

11 A deliberate determination may be arrived at in a short period of time. But in all
12 cases the determination must not be formed in passion, or if formed in passion, it must be
13 carried out after there has been time for the passion to subside and deliberation to occur. A
14 mere unconsidered and rash impulse is not deliberate, even though it includes the intent to
15 kill.

16 Premeditation is a design, a determination to kill, distinctly formed in the mind by the
17 time of the killing.

18 Premeditation need not be for a day, an hour, or even a minute. It may be as
19 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence
20 that the act constituting the killing has been preceded by and has been the result of
21 premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

22 Murder of the second degree is all other kinds of murder.
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The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as First Degree Murder.

INSTRUCTION NO. 10

The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

A defendant's state of mind does not require the presentation of direct evidence as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party from the circumstances disclosed by the evidence.

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TROY RICHARD WHITE,) No. 68632
)
Appellant,)
)
v.)
)
THE STATE OF NEVADA,)
)
Respondent.)
)

APPELLANT'S APPENDIX VOLUME X PAGES 1923-2071

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 16th day of February, 2016, Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

SCOTT L. COFFEE
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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c/o HIGH DESERT STATE PRISON
PO Box 650
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BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office