

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASEY ALAN JOHNS

Appellant,

v.

STATE OF NEVADA

Respondent.

CASE NO. 83064

Appeal from a Judgment of Conviction After Jury Verdict
in Case CR20-10DC-0552
Tenth Judicial District Court of the State of Nevada, Churchill County
Honorable Thomas L. Stockard, District Judge

APPELLANT'S APPENDIX VOLUME 5

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CASE NO. 20-10DC-0552

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IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

BEFORE THE HONORABLE DISTRICT COURT JUDGE, THOMAS L. STOCKARD

THE STATE OF NEVADA,

Plaintiff,

vs.

CASEY ALAN JOHNS,

Defendant.

_____ /

JAVS TRANSCRIPT OF PROCEEDINGS

VOLUME 4

TRIAL

THURSDAY, MAY 13, 2021

Transcribed By:

Kathy Jackson, CSR
Nevada CCR #402
California CCR #10465

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APPEARANCES

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	Fallon, Nevada
For the Defendant:	DAVID K. NEIDERT
	Attorney at Law
	Fallon, Nevada

1 THURSDAY, MAY 13, 2021, FALLON, NEVADA

2 -oOo-

3 THE COURT: Good morning. This is Case Number
4 20-0552, State of Nevada versus Casey Alan Johns. The record
5 will now reflect the presence of the parties and counsel, all
6 officers of the court and the full jury and the alternate
7 jurors.

8 Will counsel stipulate to the correct seating of
9 the jury?

10 MS. BAKER: Yes, Your Honor.

11 MR. NEIDERT: Yes, Your Honor.

12 THE COURT: Ladies and gentlemen of the jury, I'm
13 about to instruct you upon the law as it applies to this
14 case. I would like to instruct you orally without reading to
15 you. However, these instructions are of such importance that
16 almost every word is of some significance. Therefore, it is
17 necessary for me to read to you careful -- from carefully
18 prepared written instructions.

19 The instructions are relatively long and some are
20 quite complicated. If they are not especially clear to you
21 when I read them please bear in mind that you will -- you
22 will be provided a copy of the instructions when you retire
23 to the jury room so that you can read and consider them
24 carefully.

1 It is my duty to instruct you in the law that
2 applies to this case, and you must follow the law as I state
3 it to you. As jurors it is your duty to decide all questions
4 of facts submitted to you for the purpose of determining
5 the -- determining the effect and the value of the evidence.
6 In performing this duty you must not be influenced by pity
7 for the defendant or by passion or prejudice against him.

8 You must not be biased against the defendant
9 because he has been arrested for this offense or because
10 charges have been filed against him or because he has been
11 brought to trial. None of these facts is evidence of guilt,
12 and you must not infer or speculate from any or all of them
13 that he is more likely to be guilty than innocent.

14 In determining whether the defendant is guilty or
15 not guilty you must be governed solely by the evidence
16 received in this trial and the law as stated to you by the
17 Court. You must not be governed by mere sentiment,
18 conjecture, sympathy, passion, prejudice, public opinion or
19 public feeling.

20 Both the State and the defendant have a right to
21 expect that you will conscientiously consider and weigh the
22 evidence and apply the law of the case and that you will
23 reach a just verdict regardless of what the consequences of
24 such a verdict may be. That was Instruction Number One.

1 Instruction Number Two, jurors are not to
2 communicate with anyone in any way regarding the case or its
3 merits either by phone, e-mail, text, internet or other
4 means, read, watch or listen to any news or media -- news,
5 media or social media accounts or commentary about the case,
6 do any research such as consulting dictionaries, using the
7 internet or using reference materials, make any
8 investigation, test the theory of the case, recreate any
9 aspect of the case or in any other way investigate or learn
10 about the case on their own.

11 Instruction Number Three, if in these
12 instructions any rule, direction or idea is stated in varying
13 ways, no emphasis thereon is intended by me and none must be
14 inferred by you. For that reason you are not to single out
15 any certain sentence or any individual point or instruction
16 and ignore the others, but you are to consider all of the
17 instructions as a whole and are to regard each in the light
18 of all of the others. The order in which the instructions
19 are given has no significance as to their relative
20 importance.

21 Instruction Number Four, the defendant is
22 presumed to be innocent until the contrary is proved. This
23 presumption places upon the State the burden of proving
24 beyond a reasonable doubt every material element of the

1 crimes charged and that the defendant is the person who
2 committed the offenses.

3 Instruction Number Five, a reasonable doubt is
4 one based on reason. It is not mere possible doubt but is
5 such a doubt as would govern or control a person in the more
6 weighty affairs of life. If the minds of the jurors after
7 the entire comparison and consideration of all of the
8 evidence are in such a condition that they can say they feel
9 an abiding conviction of the truth of the charge there is not
10 a reasonable doubt. Doubt to be reasonable must be actual,
11 not mere possibility or speculation. If you have a
12 reasonable doubt as to the guilt of the defendant he is
13 entitled to a verdict of not guilty.

14 Instruction Number Six, it is a constitutional
15 right of a defendant in a criminal trial that he may not be
16 compelled to testify. You must not draw any inference of
17 guilt from the fact that he does not testify nor should this
18 fact be discussed by you or enter into your deliberations in
19 any way.

20 Instruction Number Seven, an information is but a
21 formal method of accusing a person of a crime and is not of
22 itself any evidence of his guilt. In Case Number
23 20-10VC-0552 it is charged in a first amended information
24 that the defendant, Casey Alan Johns, committed the offense

1 of Count One, burglary with possession of a firearm or a
2 deadly weapon, in violation of NRS 205.060 subsection (4).

3 Count Two, battery with a deadly weapon causing
4 substantial bodily harm to a victim, in violation of Nevada
5 Revised Statutes 200.481 subsection (2) subsection (e)
6 subsection (2).

7 Count Three, battery by a prisoner in lawful
8 custody or confinement in violation of NRS 200.481 subsection
9 (2) subsection (1).

10 Count Four, home invasion with possession of a
11 firearm or deadly weapon, in violation of NRS 205.067
12 subsection (4).

13 And Count Five, obtaining or possessing credit
14 card or debit card or identifying description of credit card,
15 credit account or debit card without consent, in violation of
16 NRS 205.690 subsection (1).

17 It is the duty of the jury to apply the rules of
18 law contained in these instructions to the facts of the case
19 and determine whether or not the defendant is guilty of the
20 offense as charged.

21 The defendant, Casey Alan Johns, in Case Number
22 20-10VV-0552 is being tried upon a first amended information
23 which has been duly and regularly filed by the District
24 Attorney of Churchill County, Nevada, charging said Casey

1 Alan Johns with committing the crime of Count One, burglary,
2 with possession of a firearm or deadly weapon, in violation
3 of NRS 205.060 subsection (4).

4 Count Two, battery with a deadly weapon causing
5 substantial bodily harm to a victim, in violation of NRS
6 200.481 subsection (2) subsection (e) subsection (2).

7 Count Three, battery by a prisoner in lawful
8 custody or confinement, in violation of NRS 200.481
9 subsection (2) subsection (f).

10 Count Four, home invasion with possession of a
11 firearm or deadly weapon, in violation of 205.067 subsection
12 (4).

13 And Count Five, obtaining or possessing credit
14 card or debit card or identifying description of a credit
15 card, credit account or debit card without consent, in
16 violation of NRS 205.690 subsection (1), in the following
17 manner.

18 Count One, burglary with possession of a firearm
19 or deadly weapon, in violation of NRS 205.060 subsection (4).
20 That within declarant's information and belief Casey Alan
21 Johns on or about the 16th day of April, 2020 and prior to
22 the filing of this first amended information at or near 60
23 South Allen Road, Number 135, Fallon, Churchill County,
24 Nevada did willfully and unlawfully enter any house, room

1 apartment, tenement, shop, warehouse, store, mill, barn,
2 stable, outhouse or other building, tent, vessel, vehicle,
3 semitrailer, or house trailer, airplane, glider, boat or
4 railroad car with the intent to commit grand or petty
5 larceny, assault or battery on any person or any felony or to
6 obtain money or property by false pretense and had in his or
7 her possession or gained possession of any firearm or deadly
8 weapon at any time during the commission of the crime at any
9 time before leaving the structure or upon leaving the
10 structure. To wit, said defendant did enter the Budget Inn,
11 Room Number 135 with a knife with the intent to commit a
12 battery.

13 Count Two, battery with a deadly weapon causing
14 substantial bodily harm to a victim, in violation of NRS
15 200.481 subsection (2) subsection (e) subsection (2) that
16 within dec -- that within declarant's information and belief,
17 Casey Alan Johns on or about the 16th day of April, 2020 and
18 prior to the filing of this first amended information at or
19 near 60 South Allen Road, Number 135, Fallon, Churchill
20 County, Nevada did willfully and unlawfully use force or
21 violence upon the person of another with the use of a deadly
22 weapon causing substantial bodily harm. To wit, said
23 defendant did cut Michael Malone in the hand with the knife
24 causing prolonged physical pain and/or causing impairment of

1 the function of Michael Malone's hand.

2 Count Three, battery by a prisoner in lawful
3 custody or confinement, in violation of NRS 200.481
4 subsection (2) subsection (f). That within declarant's
5 information and belief Casey Alan Johns on or about the 16th
6 day of April, 2020 and prior to the filing of this first
7 amended information at or near 60 South Allen Road, Fallon,
8 Churchill County, Nevada did willfully and unlawfully while
9 in lawful custody or confinement use force or violence upon
10 the person of another. To wit, said defendant after being
11 placed under arrest and while in lawful custody did kick
12 Officer Kevin Grimes in the leg.

13 Count Four, home invasion with possession of a
14 firearm or deadly weapon, in violation of NRS 205.067
15 subsection (4), that within declarant's information and
16 belief Casey Alan Johns on or about the 16th day of April,
17 2020 and prior to the filing of this first amended
18 information at or near 60 South Allen Road, Number 132,
19 Fallon, Churchill County, Nevada did willfully and unlawfully
20 with use of a deadly weapon enter an inhabited dwelling
21 without permission of the owner, resident or lawful
22 occupants, whether or not a person was present at the time of
23 entry. To wit, said defendant did forcefully enter 60 South
24 Allen Road, Number 132 with a knife causing damage to the

1 entry door and/or door frame.

2 Count Five, obtaining or possessing credit card
3 or debit card or identifying description of credit card or
4 credit account or debit card without consent, in violation of
5 NRS 205.690 subsection (1). That within declarant's
6 information and belief Casey Alan Johns on or about the 10th
7 day of April 2020 through the 16th day of April 2020 and
8 prior to the filing of the first amended information at or
9 near 60 South Allen Road, Fallon, Churchill County, Nevada
10 did steal, take or remove a credit card or debit card from
11 the person, possession, custody or control of another without
12 the cardholder's consent or with the knowledge that a credit
13 card or a debit card had been so taken, removed or stolen,
14 did receive the credit card or debit card with the intent to
15 circulate, use or sell it to transfer it to a person other
16 than the issuer or the cardholder. To wit, defendant did
17 obtain credit cards belonging to Brandie West Castillo
18 without her consent. To which information the defendant has
19 entered his plea of not guilty.

20 Instruction Number Nine, to constitute the crime
21 charged there must be -- there must exist a union or joint
22 operation of an act forbidden by law and an intent to do the
23 act. The intent with which an act is done is shown by the
24 facts and circumstances surrounding the case.

1 Instruction Number Ten, the word willful when
2 used in a criminal statute means an act or omission that is
3 done intentionally, deliberately or designedly as
4 distinguished from an act or omission done accidentally,
5 inadvertently or innocently.

6 Instruction Number 11, the evidence which you are
7 to consider in this case consists of the testimony of the
8 witnesses, the exhibits and any facts admitted or agreed to
9 by counsel. Statements, arguments and opinions of counsel
10 are not evidence in the case. However, if the attorneys
11 stipulate or agree as to the existence of a fact you must
12 accept the stipulation as evidence and regard the fact as
13 proved -- that fact as proved.

14 You must not speculate to be true any
15 insinuations suggested by a question asked a witness. A
16 question is not evidence and may be considered only as it
17 supplies meaning to the answer. Any evidence as to which an
18 objection it was sustained by the Court and any evidence
19 ordered stricken by the Court must be entirely disregarded.
20 Anything you may have seen or heard outside the courtroom is
21 not evidence and must also be disregarded.

22 Instruction Number 12, the law recognizes two
23 classes of evidence. One is direct evidence. The other --
24 and the other is circumstantial evidence. Direct evidence

1 consists of the testimony of every witness who with any of
2 his own physical senses -- senses perceived an act or
3 occurrence and who relates what was perceived. All evidence
4 that is not direct evidence is circumstantial evidence and
5 insofar it shows any act or occurrence or any circumstance or
6 fact tending to prove or disprove by reasonable inference one
7 side or the other of an issue it may be considered by you in
8 arriving at a verdict.

9 The law makes no distinction between direct and
10 circumstantial evidence but respects each for such convincing
11 force as it may carry and accepts each as a reasonable method
12 of proof.

13 Instruction Number 13, the degree of credit due a
14 witness should be determined by his or her manner upon the
15 stand, his or her fears, motives, interests or feelings. His
16 or her opportunities to have observed the matter to which he
17 or she testified, the reasonableness or unreasonableness of
18 the statements he or she makes and the strength or weakness
19 of his or her recollections.

20 If you believe that a witness has lied about any
21 material fact in the case you may disregard the entire
22 testimony of that witness or any portion of his testimony
23 which is not proved by other evidence.

24 Instruction Number 14, a witness who has special

1 knowledge, skill, experience, training or education in a
2 particular science, profession or occupation is an expert
3 witness. An expert witness may give his opinion as to any
4 matter in which he is skilled. You should consider such
5 expert testimony and weigh the reasons if any given for it.
6 You are not bound, however, by such an opinion. Give the
7 weight to which you deem it entitled, whether that be great
8 or slight, and you may reject it if in your opinion the
9 reasons given for it are under -- are unsound.

10 Instruction Number 15, neither side is required
11 to call as witnesses all persons who may have been present at
12 any of the events disclosed by the evidence or who may appear
13 to have some knowledge of the -- of these events or to
14 produce all objects or documents mentioned or suggested by
15 the evidence.

16 Instruction Number 16, it is the duty of each of
17 you to consider the evidence for the purpose of arriving at a
18 verdict if you can do so. Each of you must decide the case
19 for yourself but should do so only after discussion of the
20 evidence and the -- and instructions with the other jurors.
21 You should not hesitate to change an opinion if you are
22 convinced it is erroneous. However, you should not be
23 influenced to decide any question in a particular way just
24 because a majority of the jurors or any of them favor such a

1 decision.

2 Instruction Number 17, at times throughout the
3 trial the Court has been called upon to pass on the question
4 of whether or not certain offered evidence might be -- might
5 properly be admitted. You are not to be concerned with the
6 reasons for such rulings and are not to draw any inferences
7 from them. Whether offered evidence is admissible is purely
8 a question of law in admitting evidence to which an objection
9 is made. The Court does not determine what weight should be
10 given such evidence nor does it pass on the credibility of
11 the witness.

12 As to any offer of evidence that was -- that has
13 been rejected by the Court you, of course, must not consider
14 the same as to any question to which an objection was
15 sustained you must not conjecture as to what the answer might
16 have been or as to the reason for the objection.

17 Instruction Number 18, in arriving at a verdict
18 in this case the subject of penalty or punishment is not to
19 be discussed or considered by you, as the matter is one that
20 lies solely with the Court and must not in any way affect
21 your decision as to the innocence or guilt of the defendant.

22 Instruction Number 19, if during this trial I
23 have said or done anything which has suggested to you that I
24 am inclined to favor the claims or position of either party

1 you will not suffer yourself to be influenced by any such
2 suggestion. I have not expressed nor intended to express nor
3 have I intended to intimate any opinion as to which witnesses
4 are or are not worthy of belief what facts are or are not
5 established or what inferences should be drawn from the
6 evidence.

7 If any expression of mine has seemed to indicate
8 an opinion related to any of these matters I instruct you to
9 disregard it.

10 Instruction Number 20, although you are to
11 consider only the evidence in the case in reaching a verdict
12 you must bring to the consideration of the evidence your
13 everyday common sense and judgment as reasonable men and
14 women. Thus you are not limited solely to what you see and
15 hear as the witnesses testify. You may draw reasonable
16 inferences which you feel are justified by the evidence.
17 Keeping in mind that such inferences should not be based on
18 speculation or guess.

19 A verdict may never be influenced by sympathy,
20 prejudice or public opinion. Your decision should be the
21 product of sincere judgment and sound discretion in
22 accordance with these rules of law.

23 Instruction Number 21, each charge and the
24 evidence pertaining to it should be considered separately.

1 The fact that you find the defendant guilty or not guilty as
2 to one of the offenses charged should not control your
3 verdict as to any other offense charged.

4 Instruction Number 22, upon retiring to the jury
5 room you will select one of your member to act as foreperson
6 who will preside over your deliberations and will sign the
7 verdict to which you all agree. It requires all 12 of your
8 number to agree upon a verdict. The bailiff will hand the
9 forms of verdict when you retire.

10 Instruction Number 23, if during your
11 deliberation you should desire to be further informed on any
12 point of law or hear again portions of the testimony you must
13 reduce your request to writing signed by the foreman. The
14 officer will then return you to court where the information
15 sought will be given you in the presence of and after notice
16 to the district attorney and the defendant and his counsel.

17 Read backs of testimony are time consuming and
18 are not encouraged unless you deem it a necessity. Should
19 you require a read back you must carefully describe the
20 testimony to be read back so the court reporter can arrange
21 her notes. Remember, the Court is not at liberty to
22 supplement the evidence.

23 Instruction Number 24, upon retiring for
24 deliberation, the jury may take with them all papers and all

1 other items and materials which have been received as
2 evidence in the case. They also may take with them the
3 written instructions given and notes of testimony or other
4 proceedings on the trial taken by themselves or any of them
5 but none taken by any other person.

6 Instruction Number 25, the defendant is charged
7 in Count One of the first amended information with burglary,
8 with possession of a firearm or deadly weapon, in violation
9 of NRS 205.060 subsection (4). For the defendant to be found
10 guilty of burglary or possession of a firearm or deadly
11 weapon the State must prove each of the following elements
12 beyond a reasonable doubt.

13 One, on or about the -- on or about April 16th,
14 2020, two, in Churchill County, Nevada, three, the defendant,
15 Casey Alan Johns, four, did willfully and unlawfully, five,
16 enter any house, room, apartment, tenement, shop, warehouse,
17 store, mill, barn, stable, outhouse or other building, tent,
18 vessel, vehicle, semitrailer or house trailer, airplane,
19 glider, boat or railroad -- railroad car with the intent to
20 commit grand or petty larceny, assault or battery on any
21 person or any felony or to obtain money or property by false
22 pretenses, six, and had in his possession or gained
23 possession of any firearm or deadly weapon at any time during
24 the commission of the crime at any time before leaving the

1 structure or upon leaving the structure.

2 Instruction Number 26, deadly weapon as used in
3 these instructions is defined as follows. One, any
4 instrument which if used in the ordinary manner contemplated
5 by its design and construction will or is likely to cause
6 substantial bodily harm or death or, two, any weapon, device,
7 instrument, material or substance which under the
8 circumstances in which it is used, attempted to be used or
9 threatened to be used is readily capable of causing
10 substantial bodily harm or death.

11 Instruction 27, if you are not satisfied beyond a
12 reasonable doubt that the defendant is guilty of the offense
13 charged the defendant may, however, be found guilty of any
14 lesser related offense if the evidence is sufficient to
15 establish his guilt of such lesser offense beyond a
16 reasonable doubt. The offense of burglary with possession of
17 a firearm or deadly weapon as set forth in Count One
18 necessarily includes the lesser offense of burglary.

19 If you believe from the evidence beyond a
20 reasonable doubt that the defendant is guilty of burglary but
21 not -- but that the burglary was not committed with
22 possession of a firearm or deadly weapon then you must
23 convict the defendant of burglary.

24 In order for the defendant to be found guilty of

1 the lesser related offense to Count One of burglary, the
2 State must prove each of the following elements by competent
3 evidence and beyond a reasonable doubt that, one, on or about
4 April 16th, 2020, two, in Churchill County, Nevada, three,
5 the defendant, Casey Alan Johns, four, did willfully and
6 unlawfully, five, enter any house, room, apartment, tenement,
7 shop, warehouse, store, mill, barn, stable, outhouse or other
8 building, tent, vessel, vehicle, semitrailer or house
9 trailer, airplane, glider, boat or railroad car with the
10 intent to commit grand or petty larceny, assault or battery
11 on any person or any felony or to obtain money or property by
12 false pretense.

13 Thus, you are to determine whether the defendant
14 is guilty or not guilty of the crime charged in Count One or
15 of any lesser crime. In doing so you have the discretion to
16 choose the order in which you evaluated each crime and
17 consider the evidence pertaining to it.

18 You may find it productive to consider and reach
19 a tentative conclusion on all charges and lesser crimes
20 before reaching any final verdict. However, the Court cannot
21 accept a guilty verdict on a lesser crime unless you have
22 unanimously found the defendant guilty -- not guilty of the
23 charged crime. You should not complete the lesser included
24 verdict forms unless you unanimously agree that the defendant

1 is not guilty of the charged crime.

2 Instruction Number 28, the defendant is charged
3 in Count Two with battery with a deadly weapon causing
4 substantial bodily harm to a victim. For the defendant to be
5 found guilty of battery with a deadly weapon causing
6 substantial bodily harm to victim the State must prove each
7 of the following elements beyond a reasonable doubt.

8 One, on or about April 16, 2020, two, in
9 Churchill County, Nevada, three, the defendant, Casey Alan
10 Johns, four, did willfully and unlawfully, five, use force or
11 violence upon the person of another, six, with use of a
12 deadly weapon, and seven, causing substantial bodily harm to
13 the victim.

14 Instruction Number 29, battery is used in these
15 instructions means the willful and unlawful use of force or
16 violence upon the person of another. The least touching may
17 constitute a battery. In other words force against the
18 person is enough. It need not be violent or severe. It need
19 not cause bodily harm or even pain. It need not even leave
20 any mark. Only a slight unprivileged touching is needed to
21 satisfy the force requirement of a criminal battery.

22 For example, spitting on another person
23 constitutes the use of force or violence necessary to support
24 a conviction for battery. At a minimum battery is the

1 intentional and unwanted exertion of force upon another
2 however slight.

3 Instruction Number 30, substantial bodily harm as
4 used in these instructions is defined as follows. One,
5 bodily injury which creates a substantial risk of death or
6 which causes serious permanent disfigurement or protracted
7 low or impairment of the function of any bodily member or
8 organ or, two, prolonged physical pain which must necessarily
9 encompass some physical suffering or injury that lasts longer
10 than the pain immediately resulting from the wrongful act.

11 Instruction Number 31, the defendant is charged
12 in Count Three with battery by a prisoner in lawful custody
13 or confinement. For the defendant to be found guilty of
14 battery by a prisoner in lawful custody or confinement the
15 State must prove each of the following elements beyond a
16 reasonable doubt. One, on or about April 16, 2020, two, in
17 Churchill County, Nevada, three, the defendant, Casey Alan
18 Johns, four, while being a probationer, a prisoner who was in
19 lawful custody or confinement or a parolee, five, did
20 willfully and unlawfully, six, use force or violence upon the
21 person of another.

22 Instruction Number 32, prisoner as used in these
23 instructions is defined as follows, any person held in
24 custody under process of law or under lawful arrest or, two,

1 any person who either submits to the arrest or has been
2 physically confined or controlled.

3 Instruction 33, the defendant is charged in Count
4 Four with home invasion with possession of firearm or deadly
5 weapon. For the defendant to be found guilty of home
6 invasion with possession of firearm or deadly weapon the
7 State must prove each of the following elements beyond a
8 reasonable doubt. One, on or about April 16, 2020, two, in
9 Churchill County, Nevada, three, the defendant, Casey Alan
10 Johns, four, by day or night did forcibly enter an inhabited
11 dwelling, five, without permission of the owner or resident
12 or lawful occupant, whether or not a person is present at the
13 time of the entry and, six, had in his possession or gained
14 possession of any firearm or deadly weapon at any time during
15 the commission of the crime or at any time before leaving the
16 structure.

17 Instruction Number 34, forcibly enter -- enters
18 as used in these instructions is defined as the entry of an
19 inhabited dwelling involving in any act of physical force
20 resulting in damage to the structure.

21 Instruction Number 35, inhabited dwelling as used
22 in these instructions is defined as any structure, building,
23 house, room, apartment, tenement, tent, conveyance, vessel,
24 boat, vehicle, house trailer, travel trailer, motor home or

1 railroad car in which the owner or other lawful occupant
2 resides, whether or not the person is actually present.

3 Instruction Number 36, dwelling as used in these
4 instructions is defined as any structure, building, house,
5 room, apartment, tenement, tent, conveyance, vessel, boat,
6 vehicle, house trailer, travel trailer, motor home or
7 railroad car, including without limitation any part thereof
8 that is divided into a separately occupied unit, one, in
9 which any person lives or, two, which is currently used by a
10 person for overnight accommodations regardless of whether the
11 person is inside at the time of the offense.

12 Instruction Number 37, if you are not satisfied
13 beyond a reasonable doubt that the defendant is guilty of the
14 offense charged the defendant may, however, be found guilty
15 of any lesser related offense if the evidence is sufficient
16 to establish his guilt of such lesser offense beyond a
17 reasonable doubt. The offense of home invasion with
18 possession of a firearm or deadly weapon as set forth in
19 Count Four necessarily includes the lesser offense of home
20 invasion.

21 If you believe from the evidence beyond a
22 reasonable doubt that the defendant is guilty of home
23 invasion but that the home invasion was not committed with
24 possession of a firearm or deadly weapon then you must

1 convict the defendant of home invasion.

2 In order for the defendant to be fund guilty of
3 the lesser related offense to Count Four of home invasion,
4 the State must prove each of the following elements by
5 competent evidence and beyond a reasonable doubt that on or
6 about April 16, 2020, one, in Churchill County, Nevada, two,
7 the defendant, Casey Alan Johns, three, did willfully and
8 unlawfully, four, by day or night did forcibly enter an
9 inhabited dwelling, and, five, without permission of the
10 owner, resident or lawful occupant, whether or not a person
11 is present at the time of entry.

12 Thus, you are to determine whether the defendant
13 is guilty or not guilty of the crime charged in Count Four or
14 any of the -- or of any lesser crime. In doing so you have
15 the discretion to choose the order in which you evaluated
16 each crime and considered the evidence pertaining to it. You
17 may find it productive to consider and reach a tentative
18 conclusion on all charges and lesser crimes before reaching
19 any final verdict.

20 However, the Court cannot accept a guilty verdict
21 to the lesser crime unless you have unanimously found the
22 defendant not guilty of the charged crime. You should not
23 complete the lesser included verdict forms unless you
24 unanimously agree that the defendant is not guilty of the

1 charged crime.

2 Instruction Number 38, the defendant is charged
3 in Count Five with obtaining or possessing credit card,
4 credit account or debit card without consent. For the
5 defendant to be found guilty of obtaining or possessing
6 credit card, credit account or credit card without consent
7 the State must prove each of the following elements beyond a
8 reasonable doubt. One, on or about April 16th, 2020, two, in
9 Churchill County, Nevada, three, the defendant, Casey Alan
10 Johns, four, did steal, take or remove, five, a credit card
11 or debit card from the person, possession, custody or control
12 of another, six, without the cardholder's consent or who with
13 knowledge that a credit card or debit card has been so taken,
14 removed or stolen receives the credit card or debit card with
15 the intent to circulate, use or sell it or transfer or to
16 transfer it to a person other than the issuer or the
17 cardholder.

18 Instruction Number 39, if you find beyond a
19 reasonable doubt that the defendant possessed two or more
20 credit cards issued in the name or names of another person or
21 persons and if you find beyond a reasonable doubt that the
22 defendant had knowledge that the cards were stolen you may
23 presume the defendant intended to circulate, use, sell or
24 transfer the cards with the intent to defraud.

1 Instruction Number 40, the right to self-defense
2 is not available to an original aggressor. The use of force
3 is justified when a person reasonably believes that it is
4 necessary for the defense of oneself or another against the
5 immediate use of unlawful force. However a person must use
6 no more force than appears reasonably necessary under the
7 circumstances. A bear fear of death or great bodily injury
8 is not sufficient to justify a killing or -- or attempted
9 killing.

10 To justify taking or attempting to take the life
11 of another in self-defense the circumstances must be
12 sufficient to excite the fears of a reasonable person placed
13 in a similar situation. The person killing or attempting to
14 kill must act under the influence of those fears alone and
15 not in revenge.

16 If evidence of self-defense is present the State
17 must prove beyond a reasonable doubt that the defendant did
18 not act in self-defense. If you find that the State has
19 failed to prove beyond a reasonable doubt that the defendant
20 did not act in self-defense you must find the defendant not
21 guilty.

22 Instruction 41, there is no requirement that the
23 testimony of a victim be corroborated and the victim's
24 testimony standing alone if believed beyond a reasonable

1 doubt is sufficient to sustain a verdict of guilty.

2 Instruction 42, no act committed by a person
3 while in a state of insanity or voluntary intoxication shall
4 be deemed less criminal by reason of his condition. However,
5 whenever the actual existence of any particular purpose,
6 motive or intent is a necessary element which is the case in
7 Count One and Count Five to constitute a particular species
8 or degree of crime the fact of his insanity or intoxication
9 may be taken into consideration in determining the purpose,
10 motive or intent.

11 Instruction 43, intent is manifested by the
12 circumstances connected with the perpetration of the offense
13 and the sound mind and discretion of the person accused.
14 Thus intent can rarely be proved by direct evidence of a
15 defendant's state of mind but instead is incurred from the
16 individualized external circumstances of the crime.

17 Instruction Number 44, if the crimes charged in
18 Count -- in the crimes charged in Count One and Count Five
19 there must exist a union or joint operation of act or conduct
20 and a certain specific intent in the mind of the perpetrator.
21 Unless this specific intent exists the crime to which it
22 relates is not committed.

23 Instruction Number 45, Count Two, Count Three and
24 Count Four are general intent crimes. Therefore, any claim

1 or evidence of voluntary intoxication by the defendant is no
2 excuse for the criminal conduct and is no defense.

3 Instruction Number 46, in the crimes charged in
4 Count Two, Count Three and Count Four there must exist a
5 union or joint operation of act or conduct and general
6 criminal intent. General criminal intent is the intent to do
7 the -- that which the law prohibits. It is not necessary for
8 the prosecution to prove that the defendant intended the
9 precise harm or the precise result which eventuated.

10 General criminal intent does not require an
11 intent to violate the law. When a person intentionally does
12 that which the law declares to be a crime he or she is acting
13 with general criminal intent even though he or she may not
14 know that his or her act or conduct is unlawful. General
15 criminal intent requires an intent to do the act, not an
16 intent to violate the law or injure another.

17 Instruction Number 47, every person who in the
18 commission of a burglary or invasion of home commits any
19 other crime may be prosecuted for each crime separately.

20 48, you will now listen to the arguments of
21 counsel who will endeavor to aid you to reach a proper
22 verdict by refreshing in your minds the evidence and by
23 showing the application thereof to the law. But whatever
24 counsel may say you will bear in mind that it is your duty to

1 be governed in your deliberation by the evidence as you
2 understand it and remember it to be and by the law as given
3 to you in these instructions with the sole fixed and
4 steadfast purpose of doing equal and exact justice between
5 the defendant and the State of Nevada.

6 Will counsel stipulate to the correct reading of
7 the jury instructions?

8 MR. NEIDERT: Yes, Your Honor.

9 MS. BAKER: Yes, Your Honor.

10 THE COURT: Ms. Baker, you may proceed with your
11 closing argument.

12 MS. BAKER: Good morning. First of all, the
13 State would like to thank everyone for taking their time out
14 of their busy schedules to do their civic duty and be a juror
15 in this trial. It's an important part of the judicial
16 process and we appreciate your participation.

17 Now, you may be asking yourself now what? Do I
18 need to move? Now what? You have now heard and seen all of
19 the evidence in the trial. It was during the trial it was
20 the State's responsibility to prove beyond a reasonable doubt
21 that the defendant in Churchill County committed certain
22 crimes.

23 Reasonable doubt does not mean no doubt. As you
24 heard in the jury instructions, reasonable doubt must be

1 actual, not mere speculation. Now it is your duty as a juror
2 to weigh the evidence presented to you and apply the facts to
3 the law.

4 As I'm a visual person, I've created this power
5 point to help me go through to do just that, to assist you.
6 I thought I had it. When I moved, right. There are two
7 types of evidence, direct evidence and circumstantial
8 evidence. Direct evidence as you heard in the jury
9 instruction could be witness testimony of what they
10 physically saw and observed at the time of the incident. It
11 could also be video surveillance.

12 But what is -- circumstantial evidence is what is
13 not direct evidence. Circumstantial evidence is an act,
14 circumstance or fact tending to prove or disprove by
15 reasonable inference. Both forms are equal in the eyes of
16 the law. It is your job then to weigh that evidence to
17 determine guilt.

18 I'm going to go through the crimes and I don't
19 want to confuse anybody. He is charged -- the defendant is
20 charged with five crimes. I'm going to talk about them as in
21 the order of what occurred on April 16th, 2020, at the Budget
22 Inn in Churchill County. So I'm starting with the home
23 invasion.

24 On April 16th, 2020, in Churchill County the

1 defendant, Casey Alan Johns, by day or night did forcibly
2 enter an inhabited dwelling without permission and had in his
3 his possession a deadly weapon. However, as you read in the
4 jury instruction there is a lesser included offense to this
5 charge of just home invasion. It's very similar elements.
6 It just is omitting with possession of a firearm or deadly
7 weapon.

8 You may be asking yourself what does forcibly
9 enter mean? The definition is pretty straight forward and
10 simple. It means force resulting in damage. An inhabited
11 dwelling, it's another legal term. It's a structure,
12 building, house or room in which the owner or whoever can
13 lawfully occupy and they don't have to be present at the
14 time.

15 You're going to hear deadly weapon a few times.
16 I'm going to talk more specifically now, but I may remind you
17 later. Deadly weapon, is a knife a deadly weapon? We're
18 looking at the first definition. An instrument which is used
19 in the order and manner contemplated by its design or
20 construction will or likely cause substantial bodily harm or
21 death, a knife. A knife is designed or -- sorry. It's an
22 instrument. How do you normally use that instrument? A
23 knife you use to cut. Cutting can -- can cause substantial
24 bodily harm or death.

1 A knife under the second definition, a weapon,
2 device, instrument, material substance which under the
3 circumstances in which they are used is readily capable of
4 causing substantial bodily harm or death. Again, when you
5 use a knife it has a sharp edge. You tell your children be
6 careful when you touch -- you handle knives because they can
7 hurt themselves. Knives are designed to cut.

8 In this case the video surveillance shows Johns
9 is going -- well, first he runs into Mike, right. He's in
10 the field. Mike testified that he first sees Mr. Johns in
11 this field next to the Budget Inn, Room 135. He sees him
12 coming towards the door. He puts his hand and says not here,
13 dude, to keep Mr. Johns moving forward along the other room.

14 Johns knows he's not welcome. And he goes
15 towards Room 132. You saw on the video surveillance he's
16 standing around Room 132 smoking a cigarette, and then he
17 takes the window off -- window screen off. He has an object
18 in his hand which Detective Sergeant John Fransden and
19 Officer Kevin Grimes both indicated it was his folding pocket
20 knife. He takes the knife and he hits it, hits the window
21 with it and Detective Sergeant Fransden said after hitting it
22 this way a few times he turns and hits it this way.

23 And then he decides to back up, kick the door to
24 Room 132. Room 132, as you heard testimony by Marsha Gower,

1 that's her room. She had rented that room and she had been
2 staying there for quite a while. That was also verified by
3 Ambiben Bhakta, the manager at the Budget Inn. He kicks the
4 door once. Nothing happened. He backs up. He puts some
5 good force and kicks it a second time and then the door
6 opens.

7 I'm just going to mention before we move on, the
8 parties had stipulated that the injury that -- that caused
9 the pinky, missing pinky was from a prior incident, not this
10 one. As you can see in the photograph it does not look to be
11 bleeding. It was stipulated to be a prior injury.

12 And, again, Detective Sergeant Fransden talks
13 about the shoe print and it was being consistent with a
14 double print kicking in the door twice or kicking the door
15 twice. He -- Johns enters Marsha's room. The door was
16 split. Damage was done to the door. The lock was broken.
17 The door split. Amiben Bhakta indicated they had to
18 temporarily fix the door and then replace it altogether.
19 After a few minutes in the room the defendant exits.

20 This is Exhibit 20. Although it's very difficult
21 for some of you to have seen the video of the -- once the
22 defendant exits the Room 132 that was rented by Marsha then
23 his hand starts bleeding. You can see in Exhibit 20 the
24 blood droplets on the ground. You see the -- the screen of

1 the window off Room 132.

2 Detective Sergeant Fransden indicated that in
3 looking at all of the evidence that this is -- that when the
4 defendant was hitting the window with the knife in his hand
5 that's how he caused this injury. Officer Kevin Grimes
6 indicated that when he was at the hospital the only injury
7 sustained by the defendant was the cut to his -- his pointer
8 finger on his right hand going this way. I'm bad at
9 horizontal and vertical. I believe it's horizontal. That
10 was the only injury. And you can see when -- in the -- in
11 the surveillance video that he walked up and down that
12 walkway.

13 Burglary with possession or going back to when
14 he -- when he kicked in the door and entered Marsha's room
15 the entire time he had that knife in his hand. When he
16 walked up and down the walkway, when the blood was dripping
17 down on the walkway the knife was in his hand. In discussing
18 burglary with possession of a firearm, a deadly weapon, the
19 State had to prove on April 16th, 2020 in Churchill County,
20 the defendant, Casey Alan Johns, did willfully and unlawfully
21 enter a room with the intent to commit assault or battery and
22 had in his possession a deadly weapon.

23 For this offense you may also consider the lesser
24 included which is just burglary. That you would admit that

1 he had in his possession a deadly weapon, just quickly a
2 knife. Is that a deadly weapon?

3 Willful, that's another legal term. As used in
4 criminal statute it's an act or omission that is done
5 intentionally, deliberately. So when somebody willfully
6 walks into a room they make that decision to enter a room.
7 It is not -- it's distinguished from an accident
8 inadvertently or innocently.

9 As we discussed with surveillance, as well as
10 Mr. Mike Malone, the defendant came up to the room initially,
11 was told not here, dude, went to Room 132 and came back to
12 Room 135. The defendant knew there were people in that room
13 and he still and he knew he wasn't welcome. He was told
14 earlier and he still entered the room. Intent may be
15 inferred from individual acts and circumstances.

16 Intent, to constitute a crime there must exist a
17 union or joint operation of an act forbidden by law and an
18 intent to do that act. And, again, you can look at all of
19 the events leading up to this and consider that when trying
20 to form -- to try to show intent.

21 It's hard to get somebody to say I intended to
22 burglarize. However, Mike testified the first time he sees
23 Johns in that field he's agitated, not here, dude. You're
24 not welcome here. The second time he sees Johns he tries to

1 shut the door but he's too late. Johns entered the room.
2 Mike thinks at just a glance that he sees what he thinks is
3 scissors in the defendant's hand. Dee testifies that she
4 didn't know who Johns was. She asked him to leave and she
5 grabbed her knife for protection. There was an unknown male
6 in her room. She didn't know what he wanted. Johns with the
7 knife in his hand, we'll get to that.

8 Dee also testified that he threatened Dee to cut
9 her throat if he didn't get Corey, if she didn't get Corey.
10 Then we talk about battery. The State had to prove that it
11 happened on April 16th, 2020, in Churchill County, Nevada
12 that Casey Alan Johns did willfully and unlawfully use force
13 or violence upon the person of another with use of a deadly
14 weapon causing substantial bodily harm. Again, is a knife a
15 deadly weapon?

16 Battery, it does not take much. You don't need
17 to leave a mark. It just needs to be that unwanted touching.
18 And in this instance Mr. -- the defendant, Mr. Johns, used a
19 knife to slash Mr. Malone's hand. Mike testified or Mike
20 testified the deep or the cut was deep, went all the way
21 across the palm. Dee testified there was a lot of blood.
22 She had to grab some towels to stop the bleeding.

23 Detective Sergeant Fransden indicated that there
24 was blood everywhere. There were blood splatter on the walls

1 that he saw that once it hit the wall it dripped down. The
2 defendant admitted when officers arrived that he stabbed
3 Mr. Malone but he goes I stabbed him because he stabbed me
4 first.

5 But let's look at the evidence. The defendant
6 with the knife walks into Dee's room. They are asking him to
7 leave. Dee indicated she did grab her knife but she was
8 behind Mr. Malone. Mr. Malone was there, arms up, palms out
9 and blocked -- was trying to block Mr. Johns from getting to
10 Dee. And before they could figure out what was going on Mike
11 said he looked behind him to see, okay, there's going to be
12 an altercation. I need to figure out if I'm going to trip on
13 anything and the next thing he knows his hand is slit. Mike
14 testified he never went after the defendant. He just put his
15 hands up to block and protect Dee.

16 Instruction Number 40 talks about self-defense.
17 The right to self-defense is not available to original
18 aggressor. Mike and Dee were minding their own business,
19 packing Mike's truck to take Dee out for the weekend when the
20 defendant enters their room, knife in hand. Mike wasn't
21 holding a weapon. His hands were out, palms up, and he was
22 just trying to protect Dee.

23 Substantial bodily harm, what does that mean? It
24 means impairment of the function. Mike testified that he has

1 a hard time buttoning his pants, buttoning his shirts. He
2 has a hard time writing, using any -- using a writing
3 utensil. It hurts. He has -- he can't hardly control it.
4 You know, it slips is what he said. He's a server and has a
5 hard time doing his job.

6 Prolonged physical pain, prolonged physical pain,
7 it lasts more than an immediate act, the wrongful act. Mike
8 Malone testified that it had a constant pain of three to
9 four. His hand was slashed all the way across the palm.
10 Loss of sensation in his fingertips, loss of function. He
11 also testified there were scar tissue and he had to go to
12 physical therapy.

13 Dr. Coley who treated him at Saint Mary's at the
14 ER testified that he had to give him pain medication. He
15 testified that it's typical in that type of injury to have
16 loss of sensation, loss of functionality.

17 Dr. Aikin, Dr. Aikin testified same thing, loss
18 of sensation. He talked about the median nerve being cut
19 which resulted in both disfunction most likely being
20 permanent. It was a complex injury. And Dr. Aikin also
21 testified that it was caused by a sharp instrument. It was a
22 clean cut.

23 Battery by a prisoner, again, the State must
24 prove April 16th, 2020, in Churchill County the defendant

1 being a prisoner who was in lawful custody willfully and
2 unlawfully used force or violence upon the person of another.

3 And as a reminder of willful, willful is an act
4 done intentionally not accidentally. You saw on the body cam
5 when the defendant was put into cuffs and trying to be taken
6 into the patrol vehicle the defendant started kicking his
7 foot, his leg, again a battery. There does not need to be a
8 mark. It doesn't need to cause pain. It just needs to be an
9 unwanted touching.

10 Definition of prisoner, it does not mean that the
11 defendant had to be in, behind bars or in a patrol vehicle.
12 He just had to be in the officer's custody and control.
13 Officer Groom or sorry, Officer Grimes testified that
14 Mr. Johns was in cuffs, mask on. His hand was on his
15 shoulder. There were officers all around.

16 So when Officer Grimes arrested the defendant,
17 notified him of the arrest, they stood him up. He resisted.
18 They had to take him to the ground to take control. They
19 tried one more time, stood him up. That's when he started
20 kicking.

21 And then Officer Grimes, after they got Mr. Johns
22 in the patrol vehicle all officers started looking at their
23 uniforms to see if there was anything going on. Officer
24 Grimes testified that earlier he was -- he looked at his

1 uniform because he was concerned about the blood that he had
2 walked in when he walked into the Room 135 initially. He was
3 trying to get stuff to clean that. So then after the
4 altercation you see the footprint, the shoe print on Officer
5 Grime's uniform.

6 He doesn't remember the contact. He doesn't
7 remember the specific kick, but he testified there was a lot
8 going on, and he was -- they were struggling, and he was
9 concentrating on making sure that he got the defendant under
10 control.

11 Obtaining and using, possessing of a credit card
12 without the owner's consent. We have the dates of, the
13 potential dates of it going missing, Churchill County, Casey
14 Alan Johns. Stealing, taking or removing the credit card
15 without consent with the intent. Let's go through those.

16 Instruction 39 talks about intent. So if you
17 find that the State beyond a reasonable doubt proved the
18 defendant possessed two or more credit cards, and if you find
19 beyond a reasonable doubt the defendant had knowledge that
20 they were stolen you may but you are not required to presume
21 that the defendant intended to circulate, use or transfer the
22 cards with the intent to defraud.

23 Officer Grimes testified that Johns had Brandie's
24 wallet in his possession. It was found after his search when

1 he was arrested. The wallet contained five credit cards all
2 in Brandie West Castillo's name. Officer Grimes testified
3 that it had about 100 something dollars in cash. I can't
4 remember. And he notified Brandie on April 4th, 2020. The
5 incident occurred on April 16th. He notified Brandie on
6 April 24th, eight days later.

7 Brandie testified that her wallet went missing
8 about a week prior, so a time the wallet was found on
9 Mr. Johns and being notified it had already been a week. She
10 did not give permission for anyone to have that wallet. She
11 did not know Mr. Johns and did not give him permission to
12 have possession.

13 Brandie also testified, as you remember, she knew
14 exactly how much money was in that wallet. It was \$315
15 because she was paying bills and she still needed to pay her
16 rent, but about 150 was missing. Now by the time the
17 defendant may have gotten possession of the wallet or did get
18 possession of the wallet and being found in possession not a
19 lot of time had to have passed. Officer Grimes testified
20 that money is easier to spend than using those credit cards.

21 Let's talk about voluntary intoxication. There
22 was evidence from Detective Sergeant John Fransden as well as
23 Officer Grimes that the defendant may have been taking
24 stimulants, his hand movements, his finger movements.

1 Although a test wasn't performed because they found that that
2 was not necessary, the defendant may have been taking
3 something.

4 For general intent crimes voluntary intoxication
5 is no defense. So Counts Two, Three and Four are general
6 intent crimes. Voluntary intoxication is not an intent.

7 Counts One and Five are specific intent. So you
8 can consider intoxication in determining purpose, motive and
9 intent. But as Officer Grimes testified when he was -- when
10 he had interacted with Mr. Johns that day he knew what was
11 going on. He knew where he was. He was answering questions.
12 He told the doctors at Banner that he didn't want certain
13 things done. He was aware.

14 Detective Sergeant John Fransden said when he was
15 reviewing the surveillance video and sees this picture the
16 defendant was determined. The State argues that this
17 defendant was on a mission. Knife in hand. It was a pocket
18 knife. It was out, ready to go. Nothing was going to get in
19 his way, not a door, not a person. Thank you.

20 With that the State asks that you find the
21 defendant guilty on all charges.

22 THE COURT: Mr. Neidert, you may now proceed with
23 your argument.

24 MR. NEIDERT: Members of the jury, I want to

1 thank you for your time and your patience and your attention
2 over the last few days. This has been a relatively short
3 trial. I think of other trials lasting long periods of time.
4 This one was short. We heard testimony on Monday afternoon,
5 Tuesday afternoon and yesterday.

6 But I want to take you back to my opening
7 statement to you. And I said let's remember crimes, and I
8 use the illusion of baking chocolate chip cookies. I made
9 that because as you were instructed today the Court told you
10 here are the elements of each of those offenses. Here's the
11 elements and each element like an ingredient in a recipe have
12 to be proven beyond a reasonable doubt.

13 It's not a matter of pick and choose, well, they
14 proved these four elements and a little sketchy on that one
15 so maybe. That's not what the law requires. The law
16 requires that with respect to every element that there is an
17 element missing you have a duty as jurors to find my client
18 not guilty of that offense.

19 Likewise and as the Court instructed you today
20 each of these crimes is separate. So if you conclude perhaps
21 that he committed one of these offenses that doesn't mean,
22 oh, well, we've done our job now. Let's find him guilty of
23 everything else. Each of these offenses has its own list of
24 elements. Just like you read the recipe, if they have not

1 met you have the obligation of not guilty.

2 And I'll -- and the Court instructed you on
3 reasonable doubt. And basically if you have a reasonable
4 doubt with respect to any element of any offense you have the
5 duty as a juror to find my client not guilty of that offense.

6 The prosecutor went through a chronological
7 listing of what happened that day. My presentation is more
8 focused on the order of the prosecution decided to charge the
9 various offenses. We can look at each offense in the order
10 they were charged to determine what elements are missing.

11 The first one is the burglary, and that one, a
12 very key element is missing from the prosecution's
13 presentation of the evidence. And it's found in number five,
14 and you'll be getting these -- you'll be getting the
15 instructions. It's Instruction 25. But Instruction 25,
16 Instruction Five is enter any house, whatever, et cetera with
17 the intent to commit grand or petty larceny, assault or
18 battery or any felony.

19 I want you to think about that because what that
20 means is for the State -- for Mr. Johns to be convicted of
21 that offense you have to be convinced beyond a reasonable
22 doubt that he entered Room 135, specifically intending to
23 stab Mr. Malone. In other words it can't be enough if you
24 conclude he stabbed Mr. Malone. That's not enough. Your

1 obligation is that he had to at the point he entered that
2 room thinking to himself I'm going to stab him.

3 The analogy that I had remembered from law
4 school, one of my law school professors in criminal law
5 describing burglary. We talk about somebody. He says I'm
6 going to rob a bank, and they walk through the bank, and they
7 look around and they see all of the security cameras. And
8 they go, oh, maybe it's not such a good idea and they turn
9 around and leave. They don't go up to the teller. They
10 don't say this is a stick up. They don't do anything.
11 Nevertheless, under the laws of burglary my hypothetical
12 robber is, in fact, guilty of the crime of burglary because
13 he entered that bank with the intent to commit the robbery
14 whether he did it or not.

15 And that analogy is appropriate in this case
16 because as I said, you have to find my client guilty of the
17 crime of burglary be convinced not that he stabbed
18 Mr. Malone, you have to be convinced at the point in time he
19 walked into that room he intended to stab Mr. Malone or to
20 batter Mr. Malone and the evidence is just not there.

21 You have to remember the evidence with respect
22 that particular incident was particularly as we look to it
23 for the crime of burglary. He walked into the room and they
24 had a discussion. The discussion lasted about 30 seconds or

1 so and that's what Mr. Malone testified.

2 Mr. Malone was trying to get him to leave but it
3 wasn't like Mr. Johns went into the room and immediately used
4 a knife on him or did anything or stabbed him or anything
5 else. They had some communication. It was only at a point
6 in time later than that that according to Mr. Malone's
7 testimony that he put his hands up and his hand was sliced.

8 So I would suggest to you with respect to the
9 crime of burglary the State has not met its burden with
10 respect to whether he entered that room with the intent in
11 his mind at the moment in time he entered the room that he
12 was going to slice Mr. Malone's hand because if he did not
13 have that intent when he entered my client is entitled to a
14 verdict of not guilty on the count of burglary.

15 Again, let's go back to the recipe analogy.
16 That's -- go to Count Two, which is battery with a deadly
17 weapon. That has to do with Mr. Malone's injuries, and I'm
18 certainly not going to belittle Mr. Malone's injuries or
19 make -- or make light of them. Mr. Malone has a cut on his
20 hand. You heard the testimony from the doctors and the
21 damage is severe and permanent.

22 In this case it's not a matter of it goes more to
23 the evidence of self-defense because what did the officers
24 say Mr. Johns was saying? Now, remember my client did not

1 leave the scene. He did not run away after this incident
2 occurred. He stayed and himself waited for law enforcement.
3 He could have left. We had testimony from Ms. Douglas that
4 quite a few minutes passed.

5 We had -- we had testimony that -- that a passage
6 of time occurred. And with the testimony of one of the
7 officers were that the time they arrived Mr. Johns was still
8 there, and the first words out of the mouth was that he cut
9 me first so I had to cut him. That's what Mr. Johns said at
10 that time, and that goes again to self-defense which is
11 separately -- separately described to you.

12 But if you decide that my client may have acted
13 in self-defense you again like my recipe analogy have the
14 obligation to find him not guilty of this battery. It's that
15 sample. And, in fact, the -- the instruction that you heard
16 on self-defense made it crystal clear not that my -- we have
17 to prove that Mr. Johns has to act in self-defense. It is
18 the duty of the State to prove beyond a reasonable doubt that
19 he did not act in self-defense. So, again, if Mr. Johns was
20 acting in self-defense you cannot find him guilty of battery
21 with a deadly weapon.

22 We get to Count Three, Count Three is the charge
23 of battery by a prisoner in lawful custody. There's a
24 problem with this one as well. Now, think about it. We had

1 the testimony that the officer never felt it, never was even
2 aware of it until he was shown a footprint impression on his
3 pant leg after Mr. Johns was under arrest, in a squad car,
4 being taken to the hospital for an evaluation. There was no
5 visible marks. There was no wounds. He didn't feel
6 anything.

7 These don't happen because he saw -- we also
8 heard testimony of this. We heard the testimony that
9 Mr. Johns was taken to the ground not once but twice. We
10 also heard testimony that this particular officer, Officer
11 Grimes was leading him. And so when Mr. Johns went to the
12 ground the leading officer at least had to bend over with
13 him.

14 And so the State wants to say it was a kick. It
15 was a kick that nobody saw. The evidence could just as
16 easily can be that while he was bending over Mr. Johns was
17 while he was on the ground he leaned into him because --
18 because Officer Grimes was on the ground as Mr. Johns was
19 down. And at that point it's not a battery as Mr. -- as this
20 Officer Grimes goes down Mr. Johns' foot goes against his
21 pant leg long enough to leave an impression.

22 And if that's a reasonable conclusion that's how
23 it could happen, then the State has not proved beyond a
24 reasonable doubt that Mr. Johns committed the crime of

1 battery by a prisoner in lawful custody or confinement.

2 We go to Count Four, Count Four is the home
3 invasion charge. Count Four is that kicking in the Room 132.
4 The issue certainly, you should have it in your mind because
5 you saw the surveillance tapes and you heard that. That is
6 to the extent did Mr. Johns really enter the room because
7 again we're talking about the elements for the recipe of this
8 particular crime. He didn't enter, even if he might have --
9 you agreed he kicked in that door he can't be found guilty of
10 home invasion.

11 And finally we turn to Count Five which is
12 possession of the credit cards. These are credit cards that
13 the owner Brandie Castillo testified she had a monitoring
14 system on her credit cards. She was -- she knew if there was
15 any activity at all with respect to those credit cards and
16 there was none. And, in fact, I believe her testimony was
17 she was somewhat surprised because she was called by the
18 police because she thought her wallet was mislaid when the
19 officers had her come in and say, oh, here's my credit card,
20 none of which had been used.

21 And, again, my client -- first of all, he's not
22 charged with stealing money. He's charged with possessing of
23 the credit card. That's -- be careful what you think my
24 client is charged with. But again even this doesn't make a

1 lot of sense because the law was completely intact. If Mr.
2 Johns had the intent of stealing or using the credit card or
3 whatever why did he leave the check that clearly identified
4 Brandie Castillo was the owner of the wallet, the uncashed
5 paycheck to be used for direct deposit. Why did he leave her
6 driver's license. Jiminy Christmas. He left those things
7 behind.

8 So the evidence that shows at most some of the
9 money that was in Ms. Castillo's wallet was not there from
10 what she remembers being there and what the police returned
11 to her. But again my client is not charged with stealing
12 that money. My -- my client is charged with having these
13 credit cards unlawfully with an unlawful intent that he's
14 going to be using it for something when, in fact, there is
15 zero evidence that he, in fact, used them.

16 So I'm not trying to lessen what happened that
17 day. Certainly I'm -- Mr. Malone was traumatized, and I feel
18 for what happened to him but the reality is that whatever
19 happened on that day and what my client -- and whatever my
20 client did the State has not proved beyond a reasonable doubt
21 that my client committed them. And if they have not proven
22 beyond a reasonable doubt that he committed them you have the
23 absolute duty to find him not guilty, and that's what I'm
24 asking all of you folks to do. Thank you for your time

1 THE COURT: Ms. Baker, you may now conclude your
2 argument.

3 MS. BAKER: I have a power point. It keeps me on
4 track. First I want to address and respond to some of the
5 arguments defense counsel made. And I'll -- in order to keep
6 it consistent I'm going to go through the crimes as
7 Mr. Neidert went through them.

8 So Count One, burglary, he indicated the issue
9 with intent. And as I indicated in my closing argument,
10 intent is hard to prove. It is hard to go into somebody's
11 mind and take a picture to show you what that intent was.

12 So what is -- it was the State's job to show you
13 through circumstantial evidence intent. So look at the whole
14 day. Look at how this defendant had a knife in his hand, a
15 pocket knife. That's a folding pocket knife. He had it out,
16 ready to go in his hand. He goes towards Room 135 and hears
17 not here, dude, and he proceeds to 132.

18 Look at how he kicked in that door, what force he
19 used to kick in the door. Look at how he took the knife in
20 his hand and started hitting the window. Look at how he then
21 returned to Room 135 with his knife in his hand. Look at all
22 of the facts and it's your decision to determine did the
23 State prove intent.

24 Battery with substantial bodily harm using a

1 deadly weapon, the argument was self-defense. As we
2 discussed earlier self-defense cannot be -- cannot use
3 self-defense if you're the original aggressor. If you're an
4 original aggressor self-defense is not something you can
5 raise. So it doesn't matter if the State didn't approve --
6 prove, had the burden to prove that it wasn't self-defense.
7 You can't use self-defense if you're the original aggressor.

8 This defendant with his knife in his hand walked
9 back to Room 135 after kicking in the door to Room 132, knife
10 in hand, determined, agitated on a mission.

11 It was Mike and Dee that was like whoa. What are
12 you doing in my room? Dude? Asking him to get out. Mike
13 knew -- knew there was going to be a physical altercation
14 that is why he looked to see what was behind him to
15 see whether -- because he knew. And then before he knew it
16 he was cut. And, again that goes back to use that knowing
17 that to show intent to Count One, how Mike reacted, what
18 feeling he felt when Mr. Malone entered the room.

19 Battery by a prisoner, we talk about reasonable
20 doubt. Again, reasonable doubt doesn't mean no doubt, not
21 mere speculation. Circumstantial evidence is enough if you
22 determine it's reasonable. It's believable.

23 There's no other plausible explanation. You saw
24 in the body cam the second time the defendant was raised, he

1 started kicking his feet. Think about where all of the other
2 officers are. Officer Grimes is standing here. The
3 defendant is there, and all of the other officers around. It
4 would be pretty hard for another officer to kick -- kick up
5 their feet when Officer Grimes is taking a defendant to the
6 ground. His knees are down to kneel. I mean, look at the
7 body cam. It would be very difficult at that point to get
8 that shoe mark on his shin. Think about it.

9 There is no requirement that Officer Grimes had
10 to feel that kick. He indicated he felt a lot of contact.
11 There was a lot of bodies around, a lot of contact. He just
12 didn't remember feeling that one.

13 There's no requirement that it leave a mark for a
14 battery. That's no requirement that it be painful. It just
15 needs to be an unwanted touching. The defendant intended to
16 kick his feet which resulted in Officer Grimes being kicked
17 in the shin.

18 Home invasion, talked about the extent he was in
19 there. Yeah, he was only in that room a couple of minutes.
20 But in looking at the -- in looking at the elements to home
21 invasion did he forcibly enter an inhabited dwelling causing
22 damage. There is no requirement that once he entered he had
23 to stay for a specific amount of time. He just had to enter.
24 And as you see on the video surveillance he entered the room

1 after kicking in the door with his knife in his hand.

2 Then let's go to the credit card. The crime
3 charged is obtaining and possessing. It's not using. There
4 is no requirement that he had to actually use the credit
5 cards. And, again, we look at the circumstantial evidence.
6 He had the wallet for a very short period of time. Money is
7 missing. It's easier to spend that cash than to use the
8 cards.

9 The statute does require that we show some
10 intent, but you need to use your common sense. You need to
11 look at all of the evidence in this case and consider whether
12 or not all of that would lead to once the money is gone what
13 would happen next.

14 Intent, to constitute the crime charged there
15 must exist a union of joint operation of the act forbidden by
16 law and the intent to do that act. Intent in which is done
17 is shown by the facts and circumstances surrounding the case.
18 Intent can't be shown to you via picture. You need to think
19 about all of the acts done and consider what the intent is.

20 There's no right to self-defense. Johns entered
21 this room with the knife in hand. He asked him to leave. He
22 wasn't leaving. He was determined. He was agitated. Mike
23 didn't have a weapon. He had his hand out, palms up, trying
24 to protect Dee and to try to block him from further entering.

1 Johns was the original aggressor. Dee and Mike were just
2 trying to pack up Dee's stuff to take her out of the hotel
3 room for a weekend, minding their own business.

4 And, again, voluntary intoxication, that's no
5 defense for a general intent crime. Crime two, three and
6 four could not consider voluntary intoxication.

7 One, three and five, you could consider it, but
8 then think about what Officer Grimes indicated. He was
9 alert. He knew what he was doing. He knew where he was. He
10 answered all of the questions or refused to answer some
11 questions. He knew enough to, you know, say no to this or
12 ignore that. But when he was at the hospital and they wanted
13 to stitch his hand he's like nope. So they just wrapped it.

14 In review, home invasion with the use of deadly
15 weapon. Johns kicked in the door which he had been staying,
16 knife in hand, causing damage to the door, no requirement
17 that he enter in for a specific amount of time. He just had
18 to enter.

19 Johns entered Dee's room uninvited, knife in hand
20 after kicking in the door. After knowing he wasn't welcome
21 there from prior contact he comes back, knife in hand.
22 Johns -- Johns then slices Mike's hand causing a deep
23 laceration across the palm. He admits to stabbing
24 Mr. Malone. After being arrested Johns kicks Officer Grimes

1 in the leg. He was handcuffed, being escorted by officers
2 and he starts kicking.

3 Johns possessed Brandie's stolen wallet
4 containing five of her credit cards. Again, no requirement
5 that he use them, just that he intends to. And what do you
6 think? Johns was determined, agitated, on a mission.
7 Nothing was going to get in his way, not a door, not a
8 person. Thank you.

9 THE COURT: Mr. Wickware, Ms. Gagliardo, and
10 Ms. Anaya, you have been designated as our alternate jurors.

11 Counsel, what I would like to do is read the
12 admonishment that we read and then excuse the alternate
13 jurors subject to recall and ask them to leave a contact
14 number with the clerk's office that if needed, the alternate
15 jurors to have them return and join the jury and then we'll
16 have the jury begin to deliberate. Is there any objection to
17 that from the State?

18 MS. BAKER: No, Your Honor.

19 THE COURT: Objection from the defense?

20 MR. NEIDERT: No, Your Honor.

21 THE COURT: So, Mr. Wickware, Ms. Gagliardo, Ms.
22 Anaya, we're going to excuse you and go about your business,
23 but we'll need you to leave a number where we can reach you
24 in case we need to reach you or in the event that the jury

1 reaches a verdict we'll reach you and know that your service
2 has been completed.

3 During this time you must not discuss or
4 communicate with anyone, including fellow jurors in any way
5 regarding the case or its merits either by voice, phone,
6 e-mail, text, internet or other means of communication or
7 social media. You must not read, watch or listen to any news
8 or media accounts or commentary about the case.

9 You must not do any research such as consulting
10 dictionaries, using the internet or using reference
11 materials. You must not make any investigation, test the
12 theory of the case, recreate any aspect of the case or in any
13 other way investigate or learn about the case on your own.
14 You must not form or express any opinion regarding the case
15 until it has been submitted to you.

16 So I'll excuse the alternate jurors and go to the
17 window right out here. Give them contact information.

18 The jury may take with them to the jury room all
19 papers and other items which have been received as evidence
20 in the case, the written instructions given by the Court and
21 all notes taken by the members of the jury during trial. The
22 jury may request through the bailiff further information or
23 instruction.

24 The clerk will now swear the officers who will

1 take charge of the jury and it will be Bailiff Brandon
2 Mccane, officers or Deputy Sweeney and Ms. Samong (phonetic).

3 (Whereupon, the bailiffs were duly sworn.)

4 THE COURT: The Court will be in recess subject
5 to the call of the jury.

6 (Whereupon, after jury deliberations the
7 following proceedings were had.)

8 THE COURT: We're back on the record in Case
9 Number 20-0552, State of Nevada versus Casey Alan Johns. The
10 record will now reflect the presence of the parties and
11 counsel, all officers of the court. We're currently outside
12 the presence of the jury. The Court has been informed the
13 jury has reached verdicts in the case, and the Court intends
14 to bring the jury in now. Is there anything? Anything the
15 parties have?

16 MS. BAKER: No, Your Honor.

17 MR. NEIDERT: No.

18 THE COURT: We'll ask the bailiff to bring the
19 jury in.

20 Please be seated. The record will now reflect
21 the presence of the parties and counsel, all officers of the
22 court and the full jury in the courtroom.

23 Will counsel stipulate the presence of the
24 complete jury?

1 MS. BAKER: Yes, Your Honor?

2 MR. NEIDERT: Yes, Your Honor.

3 THE COURT: Ladies and gentleman of the jury, who
4 has been selected as foreman? Mr. Billett. Have you reached
5 verdicts on all counts?

6 THE JUROR: Yes, Your Honor, we have.

7 THE COURT: Would you please hand the verdict to
8 the bailiff who will in turn hand the verdict to the Court.
9 The clerk will now read the jury verdicts.

10 THE CLERK: We the jury in the above entitled
11 case find the defendant, Casey Alan Johns, guilty of Count
12 One, burglary with possession of a firearm or deadly weapon.
13 Dated this 13th day of May, 2021. Johnny Billett,
14 foreperson.

15 We the jury in the above entitled case find the
16 defendant, Casey Alan Johns, guilty of Count Two, battery
17 with a deadly weapon causing substantial bodily harm to the
18 victim. Dated this 13th day of May, 2021. Johnny Billett,
19 foreperson.

20 We the jury in the above entitled case find the
21 defendant, Casey Alan Johns, guilty of Count Three, battery
22 by a prisoner in lawful custody or confinement. Dated this
23 13th day of May, 2021. Johnny Billett, foreperson.

24 We the jury in the above entitled case find the

1 defendant, Casey Alan Johns, guilty of Count Four, home
2 invasion with possession of a firearm or deadly weapon.
3 Dated this 13th day of May, 2021. Johnny Billett,
4 foreperson.

5 We the jury in the above entitled case find the
6 defendant, Casey Alan Johns, guilty of Count Five, obtaining
7 or possessing credit card or debit card or identifying
8 description of credit card, credit account or debit card
9 without consent. Dated this 13th day of May, 2021. Johnny
10 Billett, foreperson.

11 THE COURT: Before the verdict is recorded, does
12 either party request that the jury be polled?

13 MR. NEIDERT: I would ask for that. Yes, sir.

14 THE COURT: The clerk will now poll the jury.

15 THE CLERK: Juror Number One, to Count Number One
16 is this your verdict?

17 THE JUROR: Yes, it is.

18 THE COURT: Juror Number Two, to Count One is
19 this your verdict?

20 THE JUROR: Yes, it is.

21 THE CLERK: Juror Number Three, to Count One is
22 this your verdict?

23 THE JUROR: Yes, it is.

24 THE CLERK: Juror Number Four, to Count One is

1 this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number Five, to Count One is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number Six, to Count One is
7 this your verdict?

8 THE JUROR: Yeah.

9 THE CLERK: Juror Number Seven, to Count One is
10 this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror Number Eight, to Count One is
13 this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number Nine, to Count One is
16 this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number Ten, to Count One is
19 this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Job Number 11, to Count One is this
22 your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number 12, to Count One is this

1 your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number One, to Count Two is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number Two, to Count Two is
7 this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror Number Three to Count Two, is
10 this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror Number Four, to Count Two is
13 this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number Five, to Count Two is
16 this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number Six, to Count Two is
19 this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number Seven, to Count Two is
22 this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number Eight, to Count Two is

1 this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number Nine, to Count Two is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number Ten, to Count Two is
7 this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror Number 11, to Count Two is this
10 your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror Number 12, to Count Two is this
13 your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number One, to Count Three is
16 this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number Two, to Count Three is
19 this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number Three, to Count Three is
22 this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number Four, to Count Three is

1 this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number Five, to Count Three is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number Six, to Count Three is
7 this your verdict?

8 THE JUROR: Yeah.

9 THE CLERK: Juror Number Seven, to Count Three is
10 this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror Number Eight, to Count Three is
13 this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number Nine, to Count Three is
16 this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number Ten, to Count Three is
19 this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number 11, to Count Three is
22 this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number 12, to Count Three is

1 this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number One, to Count Four is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number Two, to Count Four is
7 this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror Number Three, to Count Four is
10 this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror Number Four, to Count Four is
13 this your verdict?

14 THE JUROR: Yeah.

15 THE CLERK: Juror Number Five, to Count Four is
16 this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number Six, to Count Four is
19 this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number Seven, to Count Four is
22 this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number Eight, to Count Four is

1 this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number Nine, to Count Four is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number Ten, to Count Four is
7 this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror Number 11, to Count Four is
10 this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror Number 12, to Count Four is
13 this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number One, to Count Five is
16 this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number Two, to Count Five is
19 this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number Three, to Count Five is
22 this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number Four, to Count Five is

1 this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number Five, to Count Five is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number Six, to Count Five is
7 this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror Number Seven, to Count Five is
10 this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror Number Eight, to Count Five is
13 this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number Nine, to Count Five is
16 this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number Ten, to Count Five is
19 this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number 11, to Count Five is
22 this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror 12, to Count Five is this your

1 verdict?

2 THE JUROR: Yes.

3 THE COURT: The clerk will now record the verdict
4 of the jury in the minutes of the Court.

5 Ladies and gentlemen of the jury, it's with my
6 sincere gratitude I would like to thank you for your service.
7 As a result of your service you're now eligible to be excused
8 from jury service for the remainder of this year and all of
9 next year.

10 You do remain in the jury pool so if you are
11 called you have the opportunity to serve. But if you just
12 call the jury commissioner and the Court that you have served
13 on a jury you will be automatically excused if that's your
14 desire.

15 I know, and we've said this as part of the jury
16 selection process what a sacrifice it is to serve, and we
17 thank you for your willingness. We thank you for your
18 participation, for your attention. And it's with my
19 gratitude now that I excuse you and allow you to go back with
20 your lives.

21 After today, one, either or both of the attorneys
22 may reach out and talk to you. You're welcome now to talk to
23 them or to not talk to them. That is your responsibility,
24 and I know both of these counsel and they will respect your

1 decision. But if in any way you don't feel like whatever you
2 say is being respected please contact the Court and we'll
3 make sure that your wishes are honored.

4 We thank you, and we wish you the best. You are
5 now excused.

6 Back on the record. We have excused the jury.
7 There is a presence of the parties and counsel, all officers
8 of the court. We have received the jury's verdict on all
9 five counts.

10 Mr. Neidert, have you previously received the
11 presentence investigative report that was completed in a
12 prior case?

13 MR. NEIDERT: I have, Your Honor. It's my
14 understanding I have no opposition to using the investigative
15 report for this case. The Court administrator has informed
16 me that she has set aside 1:00 o'clock Tuesday of next week
17 for sentencing.

18 THE COURT: And do you have a copy, Ms. Baker?

19 MS. BAKER: Yes, Your Honor.

20 THE COURT: Do you think you'll be prepared for
21 this to make your statutory obligations to notify the victims
22 in this case?

23 MS. BAKER: Yes, Your Honor.

24 THE COURT: Does 1:00 o'clock on Tuesday, May

1 18th work for you?

2 MS. BAKER: Yes, Your Honor.

3 THE COURT: Is there anything else from the
4 State?

5 MS. BAKER: Nothing further.

6 THE COURT: Anything else from the defense?

7 MR. NEIDERT: No, Your Honor.

8 THE COURT: Okay. Now, as I understand it,
9 pursuant to my order to produce Mr. Johns will remain at the
10 Churchill Detention Facility pending sentencing on the 18th.

11 MR. NEIDERT: That's my understanding, Your
12 Honor. He can remain there until sentencing.

13 THE COURT: So Mr. Johns is remanded to the
14 custody and he will remain in the detention facility pending
15 sentencing. Thank you.

16 MR. NEIDERT: Thank you.

17 THE COURT: We'll be in recess.
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1 STATE OF NEVADA,)
2 CARSON CITY.)

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I, KATHY JACKSON, do hereby certify:

That a Trial was held in the within-entitled matter in Churchill County, Fallon, Nevada;

That said Trial was recorded by a recording system, and said recording was delivered to me for transcription;

That the foregoing transcript, consisting of pages 512 through 583 is a full, true and correct transcript of said recording performed to the best of my ability.

Dated at Carson City, Nevada, this 20th day of June, 2021.


KATHY JACKSON, CCR

FILED

MAY 13 2021 11:15AM

By SUE SEVON, Clerk
Deputy Clerk

Case No. 20-10DC-0552

Dept. No. I

**IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL**

THE STATE OF NEVADA,

Plaintiff,

vs.

INSTRUCTIONS TO THE JURY

CASEY ALAN JOHNS,

Defendant.

It is my duty to instruct you in the law that applies to this case and you must follow the law as I state it to you.

As jurors it is your duty to decide all questions of fact submitted to you for the purpose of determining the effect and value of the evidence. In performing this duty, you must not be influenced by pity for a defendant or by passion or prejudice against him. You must not be biased against a defendant because he has been arrested for this offense or because charges have been filed against him or because he has been brought to trial. None of these facts is evidence of his guilt and you must not infer or speculate from any or all of them that he is more likely to be guilty than innocent.

In determining whether the defendant is guilty or not guilty, you must be governed solely by the evidence received in this trial and the law as stated to you by the Court. You must not be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the State and the defendant have a right to expect that you will

1 conscientiously consider and weigh the evidence and apply the law of the case, and that you will
2 reach a just verdict regardless of what the consequences of such verdict may be.
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INSTRUCTION NO. 2.

Jurors are not to communicate with anyone in any way regarding the case or its merits

(1) either by phone, email, text, Internet, or other means:

(2) read, watch, or listen to any news, media or social media accounts or commentary about the case;

(3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;

(4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on their own

INSTRUCTION NO. 3.

If, in these instructions any rule, direction or idea is stated in varying ways, no emphasis thereon is intended by me, and none must 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 are to 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.

INSTRUCTION NO. 4.

The defendant is presumed to be innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crimes charged and that the defendant is the person who committed the offenses.

INSTRUCTION NO. 5.

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

If you have a reasonable doubt as to the guilt of the defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 6.

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. 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.

INSTRUCTION NO. 7.

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 Case No. **20-10DC-0552**, it is charged in a First Amended Information that the defendant, **CASEY ALAN JOHNS**, committed the offense of **COUNT 1, BURGLARY WITH POSSESSION OF A FIREARM OR DEADLY WEAPON**, in violation of NRS 205.060(4); **COUNT 2, BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL BODILY HARM TO VICTIM**, in violation of NRS 200.481(2)(E)(2); **COUNT 3, BATTERY BY A PRISONER IN LAWFUL CUSTODY OR CONFINEMENT**, in violation of NRS 200.481(2)(F); **COUNT 4, HOME INVASION WITH POSSESSION OF FIREARM OR DEADLY WEAPON**, in violation of NRS 205.067(4); and **COUNT 5, OBTAINING OR POSSESSING CREDIT CARD OR DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD WITHOUT CONSENT**, in violation of NRS 205.690(1).

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the defendant is guilty of the offenses charged.

INSTRUCTION NO. 8.

The defendant, **CASEY ALAN JOHNS**, in case no. 20-10DC-0552 is being tried upon a First Amended Information which has been duly and regularly filed by the District Attorney of Churchill County, Nevada, charging the said **CASEY ALAN JOHNS** with committing the crime of **COUNT 1, BURGLARY WITH POSSESSION OF A FIREARM OR DEADLY WEAPON**, in violation of NRS 205.060(4); **COUNT 2, BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL BODILY HARM TO VICTIM**, in violation of NRS 200.481(2)(E)(2); **COUNT 3, BATTERY BY A PRISONER IN LAWFUL CUSTODY OR CONFINEMENT**, in violation of NRS 200.481(2)(F); **COUNT 4, HOME INVASION WITH POSSESSION OF FIREARM OR DEADLY WEAPON**, in violation of NRS 205.067(4); and **COUNT 5, OBTAINING OR POSSESSING CREDIT CARD OR DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD WITHOUT CONSENT**, in violation of NRS 205.690(1), in the manner following:

COUNT 1

**BURGLARY WITH POSSESSION OF A FIREARM OR DEADLY WEAPON
in violation of NRS 205.060(4)**

That within declarant's information and belief, **CASEY ALAN JOHNS**, on or about the 16th day of April, 2020, and prior to the filing of this FIRST AMENDED INFORMATION, at or near 60 South Allen Road #135, Fallon, Churchill County, Nevada, did willfully and unlawfully enter any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretense, and had in his or her possession or gained possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure or upon leaving the structure, to wit: said Defendant did enter the Budget Inn room #135 with a knife with the intent to commit a battery.

COUNT 2

**BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL
BODILY HARM TO VICTIM, in violation of NRS 200.481(2)(E)(2)**

That within declarant's information and belief, **CASEY ALAN JOHNS**, on or about the 16th day of April, 2020, and prior to the filing of this FIRST AMENDED INFORMATION, at or near 60 South Allen Road #135 Fallon, Churchill County,

1 Nevada, did willfully and unlawfully use force or violence upon the person of another
2 with the use of a deadly weapon causing substantial bodily harm, to wit: said Defendant
3 did cut Michael Malone in the hand with a knife causing prolonged physical pain and/or
4 causing impairment of the function of Michael Malone's hand.

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COUNT 3

**BATTERY BY A PRISONER IN LAWFUL CUSTODY OR CONFINEMENT,
in violation of NRS 200.481(2)(F)**

That within declarant's information and belief, CASEY ALAN JOHNS,
on or about the 16th day of April, 2020, and prior to the filing of this FIRST AMENDED
INFORMATION, at or near 60 South Allen Road, Fallon, Churchill County, Nevada, did
willfully and unlawfully, while in lawful custody or confinement, use force or violence
upon the person of another, to wit: said Defendant, after being placed under arrest and
while in lawful custody, did kick Officer Kevin Grimes in the leg.

COUNT 4

**HOME INVASION WITH POSSESSION OF FIREARM OR DEADLY
WEAPON, in violation of NRS 205.067(4)**

That within declarant's information and belief, CASEY ALAN JOHNS,
on or about the 16th day of April, 2020, and prior to the filing of this FIRST AMENDED
INFORMATION, at or near 60 South Allen Road #132, Fallon, Churchill County,
Nevada, did willfully and unlawfully, with use of a deadly weapon, enter an inhabited
dwelling without permission of the owner, resident or lawful occupant, whether or not a
person was present at the time of entry, to wit: said Defendant did forcefully enter 60
South Allen Road #132 with a knife, causing damage to the entry door and/or doorframe.

COUNT 5

**OBTAINING OR POSSESSING CREDIT CARD OR DEBIT CARD, OR
IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT
OR DEBIT CARD WITHOUT CONSENT, in violation of NRS 205.690(1)**

That within declarant's information and belief, CASEY ALAN JOHNS,
on or about the 10th day of April, 2020 through the 16th day of April, 2020, and prior to
the filing of this FIRST AMENDED INFORMATION, at or near 60 South Allen Road,
Fallon, Churchill County, Nevada, did steal, take or remove a credit card or debit card
from the person, possession, custody or control of another without the cardholder's
consent, or, with the knowledge that a credit card or debit card had been so taken,
removed or stolen, did receive the credit card or debit card with the intent to circulate, use
or sell it or to transfer it to a person other than the issuer or the cardholder, to wit: said
Defendant did obtain credit cards belonging to Brandie West-Castillo without her
consent.

To which Information, the defendant has entered his plea of Not Guilty.

INSTRUCTION NO. 9.

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.

INSTRUCTION NO. 10.

The word “willful” when used in a criminal statute means an act or omission that is done intentionally, deliberately or designedly, as distinguished from an act or omission done accidentally, inadvertently, or innocently.

INSTRUCTION NO. 11.

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.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate or agree as 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.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

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

INSTRUCTION NO. 12.

The law recognizes two classes of evidence; one is direct evidence, and the other is circumstantial evidence.

Direct evidence consists of the testimony of every witness who, with any of his own physical senses, perceived an act or occurrence, and who relates what was perceived.

All evidence that is not direct evidence is circumstantial evidence and, insofar as it shows any act or occurrence or any circumstance or fact tending to prove or disprove by reasonable inference one side or the other of an issue, it may be considered by you in arriving at a verdict.

The law makes no distinction between direct and circumstantial evidence, but respects each for such convincing force as it may carry and accepts each as a reasonable method of proof.

INSTRUCTION NO. 13.

The degree of credit due a witness should be determined by his or her manner upon the stand, his or her fears, motives, interest, or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness or unreasonableness of the statements he or she makes, and the strength or weakness of his or her recollections.

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

INSTRUCTION NO. 14.

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. 15.

Neither side is required to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events or to produce all objects or documents mentioned or suggested by the evidence.

INSTRUCTION NO. 16.

It is the duty of each of you to consider the evidence for the purpose of arriving at a verdict if you can do so. Each of you must decide the case for yourself, but should do so only after a discussion of the evidence and instructions with the other jurors.

You should not hesitate to change an opinion if you are convinced it is erroneous. However, you should not be influenced to decide any question in a particular way just because a majority of the jurors, or any of them, favor such a decision.

INSTRUCTION NO. 17.

At times throughout the trial, the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

INSTRUCTION NO. 18.

In arriving at a verdict in this case the subject of penalty or punishment is not to be discussed or considered by you, as that matter is one that lies solely with the Court and must not in any way affect your decision as to the innocence or guilt of the defendant.

INSTRUCTION NO. 19.

If during this trial I have said or done anything which has suggested to you that I am inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are, or are not, worthy of belief; what facts are, or are not, established; or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 20.

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

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 21.

Each charge and the evidence pertaining to it should be considered separately.

The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

INSTRUCTION NO. 22.

Upon retiring to the jury room you will select one of your number to act as foreperson, who will preside over your deliberations and who will sign the verdict to which you all agree.

It requires all twelve of your number to agree upon a verdict. The bailiff will hand you the forms of verdict when you retire.

INSTRUCTION NO. 23.

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

Read backs of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a read back, you must carefully describe the testimony to be read back so that the court reporter can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 24.

Upon retiring for deliberation, the jury may take with them all papers and all other items and materials which have been received as evidence in the case. They also may take with them the written instructions given, and notes of testimony or other proceedings on the trial taken by themselves or any of them, but none taken by any other person.

INSTRUCTION NO. 25

The Defendant is charged in Count 1 of the First Amended Information with Burglary with Possession of a Firearm or Deadly Weapon, in violation of NRS 205.060(4).

For the Defendant to be found guilty of Burglary with Possession of a Firearm or Deadly Weapon, the State must prove each of the following elements beyond a reasonable doubt:

- 1) On or about April 16, 2020;
- 2) In Churchill County, Nevada;
- 3) The Defendant, CASEY ALAN JOHNS;
- 4) Did willfully and unlawfully;
- 5) Enter any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretense;
- 6) And had in his possession or gained possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure or upon leaving the structure.

INSTRUCTION NO. 26

“Deadly weapon” as used in these instructions is defined as follows:

- 1) 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
- 2) 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.

INSTRUCTION NO. 27.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, the defendant may, however, be found guilty of any lesser related offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The offense of Burglary with Possession of a Firearm or Deadly Weapon as set forth in Count 1 necessarily includes the lesser offense of burglary. If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of burglary but that the burglary was not committed with possession of a firearm or deadly weapon, then you must convict the Defendant of burglary.

In order for the Defendant to be found guilty of the lesser related offense to Count 1 of burglary, the State must prove each of the following elements by competent evidence and beyond a reasonable doubt that:

1. On or about April 16, 2020;
2. In Churchill County, Nevada;
3. The Defendant, CASEY ALAN JOHNS;
4. Did willfully and unlawfully;
5. Enter any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretense.

Thus you are to determine whether the defendant is guilty or not guilty of the crime charged in Count 1, or of any lesser crime. In doing so you have discretion to choose the order in which you evaluated each crime and consider the evidence pertaining to it. You may

1 find it productive to consider and reach a tentative conclusion on all charges and lesser crimes
2 before reaching any final verdict. However the court cannot accept a guilty verdict on a lesser
3 crime unless you have unanimously found the defendant not guilty of the charged crime.

4 You should not complete the lesser included verdict forms unless you unanimously agree that
5 defendant is not guilty of the charged crime.

INSTRUCTION NO. 28

The Defendant is charged in Count 2 with Battery With A Deadly Weapon Causing Substantial Bodily Harm To Victim.

For the Defendant to be found guilty of Battery With A Deadly Weapon Causing Substantial Bodily Harm To Victim, the State must prove each of the following elements beyond a reasonable doubt:

- 1) On or about April 16, 2020;
- 2) In Churchill County, Nevada;
- 3) The Defendant, CASEY ALAN JOHNS;
- 4) Did willfully and unlawfully;
- 5) Use force or violence upon the person of another;
- 6) With Use of a deadly weapon;
- 7) Causing substantial bodily harm to the victim.

INSTRUCTION NO. 29

“Battery” as used in these instructions means the willful and unlawful use of force or violence upon the person of another. The least touching may constitute battery. In other words, force against the person is enough, it need not be violent or severe, it need not cause bodily harm or even pain, and it need not leave any mark. Only a slight unprivileged touching is needed to satisfy the force requirement of a criminal battery. For example, spitting on another person constitutes the “use of force or violence” necessary to support a conviction for battery. At a minimum, battery is the intentional and unwanted exertion of force upon another, however slight.

INSTRUCTION NO. 30

“Substantial bodily harm” as used in these instructions is defined as follows:

- 1) Bodily injury which creates a substantial risk of death or which causes, serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
- 2) Prolonged physical pain, which must necessarily encompass some physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act.

INSTRUCTION NO. 31

The Defendant is charged in Count 3 with Battery by a Prisoner in Lawful Custody or Confinement.

For the Defendant to be found guilty of Battery by a Prisoner in Lawful Custody or Confinement, the State must prove each of the following elements beyond a reasonable doubt:

- 1) On or about April 16, 2020;
- 2) In Churchill County, Nevada;
- 3) The Defendant, CASEY ALAN JOHNS;
- 4) While being a probationer, a prisoner who is in lawful custody or confinement or a parolee;
- 5) Did willfully and unlawfully;
- 6) Use force or violence upon the person of another.

INSTRUCTION NO. 32

“Prisoner” as used in these instructions is defined as follows:

- 1) Any person held in custody under process of law, or under lawful arrest; or
- 2) Any person who either submits to the arrest or has been physically confined or controlled.

INSTRUCTION NO. 33

The Defendant is charged in Count 4 with Home Invasion with Possession of Firearm or Deadly Weapon.

For the Defendant to be found guilty of Home Invasion with Possession of Firearm or Deadly Weapon, the State must prove each of the following elements beyond a reasonable doubt:

- 1) On or about April 16, 2020;
- 2) In Churchill County, Nevada;
- 3) The Defendant, CASEY ALAN JOHNS;
- 4) By day or night, did forcibly enter an inhabited dwelling;
- 5) Without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry;
- 6) And had in his possession or gained possession of any firearm or deadly weapon at any time during the commission of the crime or at any time before leaving the structure.

INSTRUCTION NO. 34

"Forcibly enters" as used in these instructions is defined as the entry of an inhabited dwelling involving any act of physical force resulting in damage to the structure.

INSTRUCTION NO. 35

“Inhabited dwelling” as used in these instructions is defined as any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car in which the owner or other lawful occupant resides, whether or not a person is actually present.

INSTRUCTION NO. 36

“Dwelling” as used in these instructions is defined as any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car, including, without limitation, any part thereof that is divided into a separately occupied unit:

- (1) In which any person lives; or
- (2) Which is customarily used by a person for overnight accommodations, regardless of whether the person is inside at the time of the offense.

INSTRUCTION NO. 37.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, the defendant may, however, be found guilty of any lesser related offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The offense of Home Invasion with Possession of a Firearm or Deadly Weapon as set forth in Count 4 necessarily includes the lesser offense of Home Invasion. If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of Home Invasion but that the Home Invasion was not committed with possession of a firearm or deadly weapon, then you must convict the Defendant of Home Invasion.

In order for the Defendant to be found guilty of the lesser related offense to Count 4 of Home Invasion, the State must prove each of the following elements by competent evidence and beyond a reasonable doubt that:

On or about April 16, 2020;

1. In Churchill County, Nevada;
2. The Defendant, CASEY ALAN JOHNS;
3. Did willfully and unlawfully;
4. By day or night, did forcibly enter an inhabited dwelling;
5. Without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry.

Thus you are to determine whether the defendant is guilty or not guilty of the crime charged in Count 4, or of any lesser crime. In doing so you have discretion to choose the order in which you evaluated each crime and consider the evidence pertaining to it. You may find it productive to consider and reach a tentative conclusion on all charges and lesser crimes before reaching any final verdict. However the court cannot accept a guilty verdict on a lesser crime unless you have unanimously found the defendant not guilty of the charged crime.

1 You should not complete the lesser included verdict forms unless you unanimously agree that
2 defendant is not guilty of the charged crime.

INSTRUCTION NO. 38

The Defendant is charged in Count 5 with Obtaining or Possessing Credit Card, Credit Account or Debit Card without Consent.

For the Defendant to be found guilty of Obtaining or Possessing Credit Card, Credit Account or Debit Card without Consent, the State must prove each of the following elements beyond a reasonable doubt:

- 1) On or about April 16, 2020;
- 2) In Churchill County, Nevada;
- 3) The Defendant, CASEY ALAN JOHNS;
- 4) Did steal, take or remove;
- 5) A credit card or debit card from the person, possession, custody or control of another;
- 6) Without the cardholder's consent or who, with knowledge that a credit card or debit card has been so taken, removed or stolen receives the credit card or debit card with the intent to circulate, use or sell it or to transfer it to a person other than the issuer or the cardholder.

INSTRUCTION NO. 39

If you find beyond a reasonable doubt that the Defendant possessed two or more credit cards issued in the name or names of another person or persons, and if you find beyond a reasonable doubt that the Defendant had knowledge that the cards were stolen, you may presume that the Defendant intended to circulate, use, sell or transfer the cards with the intent to defraud.

INSTRUCTION NO. 40.

The right of self-defense is not available to an original aggressor. The use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary under the circumstances.

A bare fear of death or great bodily injury is not sufficient to justify a killing or attempted killing. To justify taking or attempting to take the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing or attempting to kill must act under the influence of those fears alone and not in revenge.

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

INSTRUCTION NO. 41

There is no requirement that the testimony of a victim be corroborated, and the victim's testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

INSTRUCTION NO. 42

No act committed by a person while in a state of insanity or voluntary intoxication shall be deemed less criminal by reason of his condition. However, whenever the actual existence of any particular purpose, motive or intent is a necessary element, which is the case in count one and count five, to constitute a particular species or degree of crime, the fact of his insanity or intoxication may be taken into consideration in determining the purpose, motive or intent.

INSTRUCTION NO. 43

Intent is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused. Thus, intent can rarely be proven by direct evidence of a defendant's state of mind, but instead is inferred from the individualized, external circumstances of the crime.

INSTRUCTION NO. 44.

In the crimes charged in Count 1 and Count 5 there must exist a union or joint operation of act or conduct and a certain specific intent in the mind of the perpetrator. Unless this specific intent exists the crime to which it relates is not committed.

INSTRUCTION NO. 45

Count 2, Count 3, and Count 4 are general intent crimes. Therefore, any claim, or evidence of voluntary intoxication by the Defendant is no excuse for the criminal conduct and is no defense.

INSTRUCTION NO. 46

In the crimes charged in Count 2, Count 3 and Count 4, there must exist a union or joint operation of act or conduct and general criminal intent.

General criminal intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated.

General criminal intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he or she is acting with general criminal intent, even though he or she may not know that his or her act or conduct is unlawful. General criminal intent requires an intent to do the act, not an intent to violate the law or injure another.

INSTRUCTION NO. 47

Every person who, in the commission of a burglary or invasion of home, commits any other crime, may be prosecuted for each crime separately.

INSTRUCTION NO. 48.

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

Dated: May 13, 2021.

Given,


THOMAS L. STOCKARD
DISTRICT JUDGE

Case No. 20-10DC-0552

Dept. No. I

ILED

2021 MAY 13 PM 1:53

SUE SEVON
COURT CLERK

BY J. Bennett DEPUTY

**IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL**

THE STATE OF NEVADA,

Plaintiff,

vs.

CASEY ALAN JOHNS,

Defendant.

VERDICT

Guilty

We, the Jury in the above-entitled case, find the Defendant, **CASEY ALAN JOHNS,**
GUILTY OF COUNT 1, BURGLARY WITH POSSESSION OF A FIREARM OR
DEADLY WEAPON.

DATED this 13th day of May, 2021.

John B. Bell
FOREPERSON

Case No. 20-10DC-0552

Dept. No. I

FILED

2021 MAY 13 PM 1:53

SUE SEVON
COURT CLERK

BY J. Berning DEPUTY

**IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL**

THE STATE OF NEVADA,

Plaintiff,

vs.

CASEY ALAN JOHNS,

Defendant.

VERDICT

Guilty

We, the Jury in the above-entitled case, find the Defendant, **CASEY ALAN JOHNS,**
GUILTY OF COUNT 2, BATTERY WITH A DEADLY WEAPON CAUSING
SUBSTANTIAL BODILY HARM TO VICTIM.

DATED this 13th day of May, 2021.

John D. Burt
FOREPERSON

1 Case No. 20-10DC-0552

2 Dept. No. I

FILED

2021 MAY 13 PM 1:53

SUE SEVON
COURT CLERK

BY Benninghake DEPUTY

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7 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF CHURCHILL**
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11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 CASEY ALAN JOHNS,

15 Defendant.
16 _____/

VERDICT

Guilty

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18 We, the Jury in the above-entitled case, find the Defendant, **CASEY ALAN JOHNS,**
19 **GUILTY OF COUNT 3, BATTERY BY A PRISONER IN LAWFUL CUSTODY OR**
20 **CONFINEMENT.**

21 DATED this 13th day of may, 2021.
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26 John Bullitt
FOREPERSON
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Case No. 20-10DC-0552

Dept. No. I

FILED

2021 MAY 13 PM 1:53

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COURT CLERK
BY J. Benning DEPUTY

**IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL**

THE STATE OF NEVADA,

Plaintiff,

vs.

CASEY ALAN JOHNS,

Defendant.

VERDICT

Guilty

We, the Jury in the above-entitled case, find the Defendant, **CASEY ALAN JOHNS, GUILTY OF COUNT 4, HOME INVASION WITH POSSESSION OF FIREARM OR DEADLY WEAPON.**

DATED this 13th day of May, 2021.

John Ballant
FOREPERSON

JEP

Case No. 20-10DC-0552

Dept. No. I

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2021 MAY 13 PM 1:53

SUE SEVON
COURT CLERK

BY: J Benning DEPUTY

**IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL**

THE STATE OF NEVADA,

Plaintiff,

vs.

CASEY ALAN JOHNS,

Defendant.

VERDICT

Guilty

We, the Jury in the above-entitled case, find the Defendant, **CASEY ALAN JOHNS, GUILTY OF COUNT 5, OBTAINING OR POSSESSING CREDIT CARD OR DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD WITHOUT CONSENT.**

DATED this 13th day of May, 2021.

John B. Brett
FOREPERSON

JEP

FILED

CASE NO. 20-10DC-0552 2021 JUL -2 PM 12:14

ORIGINAL

COURT CLERK

IN THE TENTH JUDICIAL DISTRICT COURTS OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL
BEFORE THE HONORABLE DISTRICT COURT JUDGE, THOMAS L. STOCKARD

THE STATE OF NEVADA,
Plaintiff,

vs.

CASEY ALAN JOHNS,
Defendant.

JAVS TRANSCRIPT OF PROCEEDINGS

SENTENCING

MAY 18, 2021

Transcribed By: Kathy Jackson, CSR
Nevada CCR #402
California CCR #10465

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APPEARANCES

For the State:	PRISCILLA BAKER Deputy District Attorney Fallon, Nevada
For the Defendant:	DAVID K. NEIDERT Attorney at Law Fallon, Nevada

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MAY 18, 2021, FALLON, NEVADA

-oOo-

THE COURT: Good afternoon. This is Case Number 20-0186, State cr no, sorry. That's the wrong number. It's 20-0052, State of Nevada versus Casey Alan Johns. The record should reflect the presence of Mr. Johns. He is represented with his attorney, David Neidert. Priscilla Baker is present. She represents the State of Nevada. Lisa Brannon is appearing by Zoom. She represents parole and probation.

Ms. Brannon, can you hear us?

THE PROBATION OFFICER: I can, Your Honor.

THE COURT: And Brenda Ingram is appearing by Zoom and she represents Churchill County Court Services.

Last week we had a jury trial and the jury returned guilty verdicts on five counts. Count One, battery with a deadly weapon causing substantial bodily harm to a victim, which is a category B felony. The potential penalty of Count One, the Court shows it's two to 15 years and a fine of not more than \$10,000.

And so does everybody agree that that is Count One and that is the appropriate penalty?

MR. NEIDERT: That's the sentencing range, yes, Your Honor.

MS. BAKER: Yes, Your Honor.

1 THE COURT: Yeah, the range, okay.

2 Count Two, which the jury also found Mr. Johns
3 guilty was battery by a prisoner in lawful custody or
4 confinement. That's a category B felony. The sentencing
5 range is one to six years, and there is no fine. Does
6 everybody agree with that?

7 MR. NEIDERT: Yes, Your Honor.

8 MS. BAKER: You're saying battery causing
9 substantial bodily harm.

10 THE COURT: Battery by a prisoner in lawful
11 custody or confinement.

12 MS. BAKER: Yes, then that's correct, Your Honor.

13 THE COURT: That was Count Two, right?

14 MS. BAKER: Well, I had Count Two as battery
15 causing substantial bodily harm. Battery by a prisoner is
16 Count Three.

17 THE COURT: So let me just get --

18 MR. NEIDERT: I believe Count One might be
19 burglary with the use of --

20 MS. BAKER: Yeah, I'm sorry. That's why I was
21 confused.

22 THE COURT: No. Thank you for -- I apologize.
23 That is my error.

24 Okay. So let me just start over. Can I have a

1 drink of water.

2 So Count One is burglary with possession of a
3 firearm or a deadly weapon, which is a category B felony.
4 That was a guilty verdict by the jury. The sentencing range
5 is two to 15 years and a fine of not more than \$10,000. Does
6 everybody agree with that?

7 MS. BAKER: Yes, Your Honor.

8 THE COURT: Do you agree with that, Mr. Neidert?

9 MR. NEIDERT: Yes, Your Honor.

10 THE COURT: Okay. Count Two is battery with a
11 deadly weapon causing substantial bodily harm. Does
12 everybody agree with that?

13 MS. BAKER: Yes, Your Honor.

14 MR. NEIDERT: Yes, Your Honor.

15 THE COURT: That potential penalty range is two
16 to 15 years and a fine of not more than \$10,000. Does
17 everybody agree with that?

18 MS. BAKER: Yes, Your Honor.

19 MR. NEIDERT: Yes, Your Honor.

20 THE COURT: Count Three is battery by a prison in
21 lawful custody or confinement. Does everybody agree with
22 that?

23 MS. BAKER: Yes, Your Honor.

24 THE COURT: Count Three, the potential penalty or

1 the range is one to six years with no fine. Does everybody
2 agree with that?

3 MS. BAKER: Yes, Your Honor.

4 MR. NEIDERT: Yes, Your Honor.

5 THE COURT: Count Four is home invasion with
6 possession of a firearm or a deadly weapon, which is a
7 category B felony. That is two to 15 years, the range, and a
8 fine of not more than \$10,000. Does everybody agree with
9 that?

10 MS. BAKER: Yes, Your Honor.

11 MR. NEIDERT: Yes, Your Honor.

12 THE COURT: And Count Five is obtaining or
13 possessing a credit card or a debit card or identifying
14 description of a credit card or credit account -- credit
15 account or debit card without consent, a category I felony.
16 And the range is one to four years and a fine of not more
17 than \$5,000. Does everybody agree with that?

18 MS. BAKER: Yes, Your Honor.

19 MR. NEIDERT: Yes, Your Honor.

20 THE COURT: Now, we had guilty verdicts on all
21 five of those counts. The Court had previously provided the
22 presentence investigative report from a previous case to all
23 counsel. That report was dated June 8th, 2020. That was out
24 of Case Number 20-0186.

1 Mr. Neidert, you received that weeks ago; is that
2 correct?

3 MR. NEIDERT: I did, Your Honor.

4 THE COURT: Okay. And Ms. Baker?

5 MS. BAKER: Yes, Your Honor.

6 THE COURT: The Court said in the event that
7 there was a conviction on any of the accounts after the trial
8 or any of the counts after the trial that we could use this
9 PSI for sentencing purposes. Does everybody agree with that?

10 MR. NEIDERT: Yes, Your Honor.

11 MS. BAKER: Yes, Your Honor.

12 THE COURT: So that's what we're here for today
13 now is to sentence Mr. Johns after the jury has returned
14 verdicts on those five counts.

15 Ms. Baker, are you prepared to proceed?

16 MS. BAKER: Yes, Your Honor.

17 THE COURT: And, Mr. Neidert?

18 MR. NEIDERT: Yes, Your Honor.

19 THE COURT: We'll start with you, Ms. Baker, and
20 are there any corrections to the PSI other than the fact I
21 know it's not for these specific offenses.

22 MS. BAKER: No corrections.

23 MR. NEIDERT: No, Your Honor.

24 THE COURT: Very well, Ms. Baker, you may

1 proceed.

2 MS. BAKER: Thank you, Your Honor. First of all,
3 just as a reminder to the Court, for the sentence that was
4 imposed in the case that the PSI was created for, 2010DC0186,
5 this defendant was sentenced on June 23rd, 2020, to 21 to
6 56 months. All credit was given in that case. So the State
7 is asking that no credit be given in this case.

8 THE COURT: And as I understand it, because I did
9 an order to produce, Mr. Johns is still serving that sentence
10 as we speak, and I think my order said he'll be transported
11 after today's sentencing back to the prison, and I would
12 imagine do you know when you expire on that case?

13 THE DEFENDANT: I don't expire until September of
14 '22 I think.

15 THE COURT: Okay. So do you come up for parole
16 again?

17 THE DEFENDANT: I got dumped on my first parole
18 because of this pending case and I come up for parole I think
19 in March.

20 THE COURT: Okay. So he's still serving that 21
21 to 56 months.

22 MS. BAKER: That is correct, Your Honor.

23 THE COURT: Okay.

24 MS. BAKER: So as the Court sat through last

1 week's trial, the Court has heard and seen the evidence in
2 this case. So the State is not intending to go detail by
3 detail because the Court has already seen what had occurred.

4 But the State would like to point out a few
5 things. First of all, when we're talking about his prior
6 case he was O.R.'d on April 13th, 2020, before his sentencing
7 in June.

8 Three days later on April 16th, 2020 is when he
9 committed these acts. So he was out on pretrial services and
10 committed these -- these violent crimes. As you can also see
11 that in his criminal history you can see that progression of
12 his criminal history becoming more and more violent.

13 In regarding to restitution, Mike Malone is
14 present in the courtroom and he will -- he is electing to
15 make a victim impact statement, but he is estimating the
16 restitution of about \$1,000.

17 For the Budget Inn for the damage to the door for
18 what Mr. Johns kicked it in and the damage to the window when
19 he was hitting it with his knife, it is \$1,894.

20 For Brandie West Castillo, as the evidence
21 showed, her wallet was stolen and her money that she was
22 using for her rent was being spent. Her amount of
23 restitution is \$1,049.21.

24 The State will leave it up to the Court's

1 discretion, but there was also part of the altercation with
2 battery by a prisoner there was damage done to one of the
3 vehicles, the patrol vehicle. That damage is estimated at
4 \$1,123.53.

5 In taking all of the defendant's actions his
6 progression of his criminal history becoming more and more
7 violent, as well as his, you know, as committing these crimes
8 three days out on his O.R. release facing a burglary or
9 attempt to commit burglary charge sentencing, the State
10 believes that what's proper in this case is to sentence the
11 defendant to the maximum on each count and run them
12 consecutively.

13 Thank you.

14 THE COURT: Thank you.

15 Mr. Neidert?

16 MR. NEIDERT: Your Honor, several comments with
17 respect to that. I would -- first of all, I think the State
18 could have charged the damage to the vehicle count and did
19 not do that. So I don't think the restitution is appropriate
20 with respect to that \$1,000 or so for the damage to the
21 police vehicle. It's certainly something that in discovery I
22 actually asked the officer about that, about charging
23 decisions, if you remember that part of my cross-examination
24 during the trial because I knew that was something that had

1 been referred to the district attorney's office and was not
2 prosecuted.

3 I would note, Your Honor, that, and but the
4 record needs to be clear that this Court has the discretion
5 as to run this concurrently with his current sentence and had
6 that discretion because he had not already been sentenced on
7 the prior offense at the time of this offense, and that
8 certainly -- he was not -- the law is crystal clear. If
9 you're under a sentence of imprisonment any crime you commit
10 while you're under that sentence of imprisonment has to run
11 consecutive.

12 THE COURT: And I agree -- I agree. This can run
13 concurrent.

14 MR. NEIDERT: And I think that that was --
15 basically, Your Honor, when I'm looking at the recommendation
16 basically the State is making essentially the argument that
17 Mr. Johns is frankly irredeemable and should be sentenced to
18 an aggregate sentence of 55 years in prison. Certainly I'm
19 not going to -- the Court was here, and I'm not going to tell
20 but going off the facts of the case but that certainly does
21 not seem to be a sentence in line with what happened in this
22 case. Certainly, frankly, that's actually a longer sentence
23 if the Court ran everything anything on the lower. At the
24 maximum end as Ms. Baker said would be six to 15, six to 15,

1 six to 15, 28 to 72 and 19 to 48. I don't know what those
2 months add up to but certainly that's well over 20 years on
3 the lower end if the Court followed the recommendation.

4 Your Honor, I would argue that the burglary and
5 the battery basically happened in the same moment in time and
6 should run concurrently with each other, as should the home
7 invasion. Those all happened relatively short.

8 The battery of a police officer, on the one hand
9 my client has a prior conviction for battery with a police
10 officer. On the other hand you heard the testimony. The
11 only reason anybody was aware about the battery was they saw
12 a shoe print on the clothing. There was actually no injury
13 to the officer, no bruising, no bleeding, no nothing.

14 With respect to the credit card account, again,
15 Your Honor, the credit cards themselves were not used. We
16 are talking -- they are asking for 19 to 48 months for
17 essentially \$149 because having a credit card qualifies as a
18 petty larceny under Nevada law.

19 So I believe the State's recommendations are, in
20 fact, excessive. I am not -- I'll leave it to this Court's
21 discretion as to what they believe the appropriate sentences
22 are within that, but I do believe the Court should at a very
23 minimum run the burglary with the firearm or the deadly
24 weapon and the battery causing substantial bodily harm

1 concurrently along with home invasion. And we'll submit it
2 on that basis, Your Honor.

3 THE COURT: Thank you.

4 Mr. Johns, is there anything you wish to tell me
5 prior to sentencing?

6 THE DEFENDANT: Of course I'm asking for
7 leniency. But if there is a fine imposed I'm not a person
8 that gets a lot of love from my family. And I don't feel
9 it's right that my family would have to -- because now they
10 are taking money for the Marsy's -- Marsy's Law, but I don't
11 get a lot of love.

12 And I would ask if you do give me fines, if I
13 could pay those when I am released. They don't take --
14 because my family they don't need to be putting their hard
15 earned money towards my fine. They do feel obligated to take
16 care of me because I do have family out there. And I would
17 ask if -- if anything, if you could please stipulate that,
18 that my fines don't need to be paid until I am fully
19 released. That's really all I'm asking for.

20 I mean, of course, leniency. I mean, 55 years
21 for one stab wound, and then I know there's other cases that
22 had 23 stab wounds and they get two to seven. And there's is
23 violent areas. I'm talking attempted murders. I'm looking
24 at if I get the -- if I get the max I might as well allegedly

1 killed this guy. And I'm just asking for leniency and if you
2 can that would be very much appreciated. Thank you.

3 THE COURT: Thank you.

4 Ms. Baker, do you have any victim impact
5 testimony?

6 MS. BAKER: Yes, Your Honor. Thank you. Mike
7 Malone.

8 THE WITNESS: Do you want me to take the stand?

9 MS. BAKER: Yes, go ahead.

10 THE COURT: Mr. Malone, if you'll stand and face
11 the clerk and raise your right arm to take the oath of a
12 witness.

13

14

MIKE MALONE,

15

called as a witness on behalf of the

16

State having been first duly sworn,

17

was examined and testified as follows:

18

19

THE COURT: Please be seated.

20

THE WITNESS: Thank you, Your Honor.

21

DIRECT EXAMINATION

22

BY MS. BAKER:

23

Q. Just for the record can you please state and

24

spell your name.

1 A. Mike Malone, M-i-k-e M-a-l-o-n-e.

2 Q. And were you the victim in this case?

3 A. Yes, I was.

4 Q. And you testified in trial last week?

5 A. Yes, I did.

6 Q. And the testimony was regarding the injury to
7 your hand; is that correct?

8 A. Yes.

9 Q. All right. Can you please let the judge know how
10 that injury has affected you?

11 A. Well, it has affected me as far as my mobility
12 come back, but the feeling in my fingers are still not there.
13 So simple things such as tying my shoes, buttoning my pants,
14 using utensils, holding a tool has become difficult but more
15 so frustrating. And as it goes on, for instance like eating
16 a meal, cutting -- for instance cutting French toast with a
17 fork is difficult. I like to bake a lot and even -- even
18 just whipping up eggs is difficult. It's getting better but
19 not a whole lot better, but it is getting better. With a lot
20 of work it's become better.

21 I've lost muscle mass in my right arm due to this
22 which I'm doing physical therapy for that and still physical
23 therapy on my hand. If I overexert the fingers that are numb
24 it affects my hand below the numbness because I'm over --

1 overdoing it and then that becomes painful.

2 So it's just this -- the little things that we
3 don't think about everyday that are quite difficult.

4 Q. And are you right or left handed?

5 A. I am right handed and that is very difficult to
6 do.

7 Q. And what kind of issues have you been
8 experiencing because you don't have feeling in your fingers?

9 A. I'm sorry?

10 Q. What kind of issues have you been dealing with
11 because you don't have feeling in those fingers?

12 A. I'm sorry. I didn't.

13 Q. Did you have an instance where you were around
14 cut glass?

15 A. No.

16 Q. Okay.

17 A. I have dropped glasses.

18 Q. Okay.

19 A. Because of it and they did break but actually,
20 yes, I dropped one but it -- a minor scratch, minor cut on my
21 leg when it dropped, but that was minor. But, yes, I do drop
22 glasses. I drop glasses occasionally.

23 Q. And is that because of the injury?

24 A. Yes.

1 Q. And what do you do for a living?

2 A. Currently I'm a bartender.

3 Q. Okay. And how does this affect your employment?

4 A. It -- it didn't necessarily affect my employment.
5 I'm -- they are understanding. But as far as my, the service
6 that I give is a little bit slower. Hopefully that will come
7 back eventually. I do have an appointment with the surgeon
8 June 6th and we're going to -- he's going to determine along
9 with the -- the neuro doctor, neurologist, determine
10 whether -- whether it would be feasible -- when I say
11 feasible I mean with the risk outweighing the benefit of
12 doing another surgery and grafting some -- some nerve from
13 another part of my body. So that's what we're going to
14 determine either June -- well, we're going to talk about it
15 June 6th anyhow.

16 Q. And you had requested restitution. How are you
17 calculating that restitution?

18 A. Well, the only restitution that I was thinking
19 was just out-of-pocket is just going to see the doctors and
20 so forth which is basically three to -- three to \$400 a month
21 and it's been 13 months of going back and forth to the
22 doctors. Now that is probably going to continue I'm going to
23 guess at least another six to 12 months.

24 Q. All right. Is there anything else you would like

1 to tell the Court?

2 A. There is. You know, whatever the penalty is that
3 the defendant gets I was hoping it would -- he would have to
4 pay as long as I have to pay, but I think that would be a
5 little too long because this is going to be the rest of my
6 life I believe.

7 Q. All right. Thank you.

8 THE COURT: Mr. Neidert?

9 MR. NEIDERT: Nothing, Your Honor.

10 THE COURT: Thank you.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 THE COURT: Mr. Neidert, is there any legal cause
14 why judgment should not now be pronounced?

15 MR. NEIDERT: I was going to ask for
16 clarification. Are there any other people going to testify?

17 MS. BAKER: Your Honor, the State has notified
18 the other victims. I'm not seeing anyone on Zoom or in the
19 courtroom, so.

20 THE COURT: Do you want to check to see if any
21 victims are outside?

22 MS. BAKER: Yes, Your Honor.

23 Nothing further, Your Honor.

24 THE COURT: Is there any legal cause?

1 MR. NEIDERT: No, Your Honor.

2 THE COURT: Hearing no legal cause and based upon
3 the jury's guilty verdicts the Court does now pronounce you
4 guilty of Count One, burglary with possession of a firearm or
5 a deadly weapon, a category B felony. Count Two, battery
6 with a deadly weapon causing substantial bodily harm for a
7 victim, a category B felony. Count Three, battery by a
8 prisoner in lawful custody or confinement, a category B
9 felony. Count Four, home invasion with possession of a
10 firearm or deadly weapon, a category B felony. And Count
11 Five, obtaining or possessing credit card or debit card or
12 identifying description of a credit card or credit account or
13 debit card without consent, which is a category D felony.

14 In accordance with the laws of the State of
15 Nevada I assess a 25 dollar administrative assessment, a
16 three dollar DNA administrative assessment. The Court notes
17 that Mr. Johns is currently incarcerated, will be
18 incarcerated on other charges for the foreseeable future and
19 is qualified for indigency. So I'm going to waive the public
20 defender fee in this case. So there will be no public
21 defender fee.

22 On Count One, burglary with possession of a
23 firearm or deadly weapon you'll be sentenced to a term of 24
24 to 60 months in the Nevada State prison.

1 On Count Two, battery with a deadly weapon
2 causing substantial bodily harm to a victim you will be
3 sentenced to a term of 72 to 180 months in the Nevada State
4 Prison.

5 On Count Three, battery by a prisoner in lawful
6 custody or confinement you'll be sentenced to a term of 12 to
7 32 months in the Nevada State Prison.

8 On Count Four, home invasion, you'll be sentenced
9 to a term of 32 to 96 months in the Nevada State Prison.

10 And on Count Five the -- Count Four is home
11 invasion with possession of a firearm or a deadly weapon.
12 And on Count Five, obtaining or possession of a credit card
13 or a debit card or identifying description of a credit card
14 or credit account or a debit card without consent you'll be
15 sentenced to a term of 12 to 32 months in the Nevada State
16 Prison.

17 Now, Count Two will run consecutive to Count One.
18 Count Three will run consecutive to Counts One and Two.
19 Count Four will run consecutive to Counts One, Two and Three.
20 And Count Five will run consecutive to Counts One, Two, Three
21 and Four.

22 Case Number 20-0552 will run consecutive to Case
23 Number 2020-0186.

24 So there will be no credit for time served on

1 this case. Mr. Johns will be remanded to the custody of the
2 sheriff to be returned to the Nevada State Prison where he
3 will complete his obligation under Case 20-0186. And once
4 he's paroled on that case he'll begin his obligation on
5 Case Number 20-0552.

6 Is there anything else from the State? Oh,
7 there's going to be restitution. I'm going to order
8 restitution in the amount of \$3,043.21. I reached that
9 \$1,000 to Mike Malone is what the State asked for and I think
10 it was supported by the testimony. 1,894 to Budget Inn for
11 the damage. And \$149.29 to Brandie West Castillo. If I
12 added those up correctly it's 3,043.21?

13 Anything else from the State?

14 MS. BAKER: No, Your Honor.

15 THE COURT: Mr. Neidert?

16 MR. NEIDERT: Yes, Your Honor, there's one other
17 thing. My client has requested and certainly in this case it
18 is expected I'll be filing a notice of appeal on his behalf.
19 As the Court is aware I am winding down my private practice
20 and as I count the number of days that the Supreme Court
21 gives for filing a brief I find myself I will probably file
22 an opening brief but not respond to a reply brief during the
23 time period of the State that the Supreme Court gives under
24 the normal practice. I think they give 120 days to file an

1 opening brief. They give 25 some odd days to file a docket
2 statement, et cetera.

3 When my practice totally closes on October 1st
4 I'll be unable to do any private practice with law. What I
5 would suggest, Your Honor, is I'm more than happy to perfect
6 the appeal, but I will then be filing a motion to withdraw.
7 If the Court would like I will reach out and find experienced
8 public counsel for the Court.

9 THE COURT: Yeah, I think, and I was going to
10 suggest we proceed that way. Let's file the notice of
11 appeal. It's going to get up to the Supreme Court. You may
12 have to make the request there and make the suggestion, and
13 then we'll deal with it at that time. Does that make sense?

14 MR. NEIDERT: That makes sense, Your Honor. I'll
15 make sure within the next 30 days.

16 THE COURT: I do think under 176.035 when there's
17 a conviction of two or more offenses and the Court elects to
18 consecutive sentences I do have to aggregate those sentences.
19 Aggregating Counts One through Five the Court calculates
20 those aggregated sentences to be 152 to 400 months in the
21 Nevada State Prison. I just ask that that aggregation be
22 reflected in the judgment of conviction.

23 MS. BAKER: Your Honor, yes, and that's the
24 State's calculation as well.

1 THE COURT: So.

2 MR. NEIDERT: I trust the State's calculation,
3 Your Honor.

4 THE COURT: So, Mr. Neidert, we will order the
5 transcripts immediately now that they have been concluded.
6 And you'll start the appeal and we'll just see where it goes.
7 And the Supreme Court may want you to brief and how far
8 you'll get it and let's just see where it's at.

9 MR. NEIDERT: Thank you, Your Honor. If I reach
10 out and find someone who is willing to substitute in will the
11 Court accept and appoint that person?

12 THE COURT: Yeah. I mean, we'll just cross that
13 bridge.

14 MR. NEIDERT: I understand. I'm just trying to
15 get --

16 THE COURT: What I don't want to do is mess
17 Mr. Johns up.

18 MR. NEIDERT: I'm not going to do that at all,
19 Your Honor.

20 THE COURT: Okay.

21 MR. NEIDERT: I have three different attorneys I
22 was thinking might be qualified to do this.

23 THE COURT: Yes, absolutely.

24 Mr. Johns?

1 THE DEFENDANT: If I could I would like to get
2 all my district court minutes.

3 THE COURT: The minutes?

4 THE DEFENDANT: Yeah, whatever, transcripts.

5 THE COURT: Transcripts? The transcripts haven't
6 been made yet.

7 THE DEFENDANT: Okay.

8 THE COURT: They will be provided to your
9 counsel. You can get them through your counsel.

10 THE DEFENDANT: I'm talking even when I did my
11 arraignments and all of it, all of the times.

12 THE COURT: Yeah, that will be -- I mean, any
13 request you make you're represented by counsel. And so we
14 won't -- anything requested personally by you needs to go
15 through your counsel because that would be --

16 MR. NEIDERT: Your Honor, I will be requesting
17 all copies of all transcript proceedings in this case.

18 THE COURT: Okay. So we'll provide those to
19 Mr. Neidert to do that.

20 MR. NEIDERT: Okay.

21 THE COURT: Okay. Thank you.

22 MS. BAKER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 THE DEFENDANT: All right. Thank you.

1 STATE OF NEVADA,)
2 CARSON CITY.)
3

4 I, KATHY JACKSON, do hereby certify:

5 That a Sentencing was held in the within-entitled
6 matter in Churchill County, Fallon, Nevada;

7 That said hearing was recorded by a recording
8 system, and said recording was delivered to me for
9 transcription;

10 That the foregoing transcript, consisting of
11 pages 1 through 25 is a full, true and correct transcript of
12 said recording performed to the best of my ability.

13
14 Dated at Carson City, Nevada, this 20th day of
15 June, 2021.

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KATHY JACKSON, CCR

RECEIVED OCT 25 2021

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASEY ALAN JOHNS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

FILED
2021 OCT 25 PM 1:33

SUE SEVON
COURT CLERK No. 83064

BY J. Pennington DEPUTY

FILED

OCT 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER GRANTING MOTION TO WITHDRAW AND OF LIMITED
REMAND*

This is a direct appeal from a judgment of conviction. Attorney David Kalo Neidert has filed a motion to withdraw as counsel for appellant, to suspend the proceedings, and to remand for the appointment of alternative appellate counsel. Neidert explains that he has accepted a position with the state of Nevada and is closing his private practice. Respondent does not oppose the motion. Cause appearing, the motion is granted. See NRAP 46(d)(3); RPC 1.16(b)(7). The clerk of this court shall remove Neidert as counsel of record for appellant.

This court remands this appeal to the district court for the limited purpose of securing counsel for appellant. See *Evitts v. Lucey*, 469 U.S. 387 (1985). If appellant is indigent, the district court shall have 30 days from the date of this order to appoint counsel for appellant. Otherwise, within 30 days from the date of this order, the district court shall order that appellant must retain counsel and that retained counsel must enter an appearance in the district court on appellant's behalf within 30 days from the date of the district court's order. Within five (5) days from the appointment or appearance of counsel, the district court clerk shall

transmit to the clerk of this court a copy of the district court's written order appointing appellate counsel or a copy of the notice of appearance filed by retained counsel.

The deadlines for filing documents in this appeal are suspended until further order of this court.

It is so ORDERED.

1. J. J. J. J. J., C.J.

cc: Hon. Thomas L. Stockard, District Judge
David Kalo Neidert
Casey Alan Johns
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk

Case No. 20-10DC-0552

Dept. No. I

FILED

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BY Mauck DEPUTY

**IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL**

CASEY ALAN JOHNS,

Appellant,

vs.

ORDER APPOINTING COUNSEL

THE STATE OF NEVADA,

Respondent.

The appellant's counsel David Neidert, Esq., having filed a Notice of Appeal on June 11, 2021; and the Court having received an Order Granting Motion to Withdraw and of Limited Remand on October 25, 2021; and the Court determining it appropriate that Vicky Oldenburg, Esq., handle the appellant's direct appeal; and good cause appearing therefore;

IT IS HEREBY ORDERED that VICKY OLDENBURG be and hereby is appointed to represent CASEY ALAN JOHNS in all further proceedings related to the direct appeal of District Court Case 20-10DC-0552; Supreme Court Case 83064

DATED this 27th day of October, 2021.

Thomas L. Stockard
THOMAS L. STOCKARD
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I, Sue Sevon, am an employee of the Tenth Judicial District Court, and that on this date, pursuant to NRCF 5(b), I deposited for mailing at Fallon, Nevada, a true copy of the above

Order addressed to:

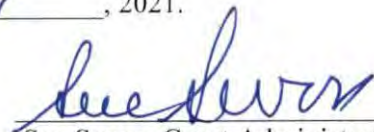
Casey Alan Johns #1098321
Warm Springs Correctional Center
PO Box 7007
Carson City, NV 89702

Vicky Oldenburg, Esq.
Appointed Counsel
P.O. Box 17422
Reno, NV 89511


Priscilla Baker, Esq.
Deputy District Attorney
165 N. Ada Street
Fallon, NV 89406

Elizabeth Brown
Clerk of the Supreme Court
201 S. Carson St., Ste. 300
Carson City, NV 89710
Filed Electronically in Court Record

DATED this 27th day of October, 2021.


Sue Sevon, Court Administrator

SUBSCRIBED AND SWORN TO before me
this 27th day of October, 2021.



Notary Public/Clerk

1 Case No. 20-10DC-0552

2 Dept. No. 1

3
4 The undersigned hereby affirms that
this document does not contain the
social security number of any person.

FILED
2021 MAY 18 PM 5:02
SUE SEVON
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DEPUTY

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6 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF CHURCHILL

8
9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 CASEY ALAN JOHNS,

13 Defendant.

JUDGMENT OF CONVICTION

14 On the 30th day of June, 2020, the above-named Defendant, CASEY ALAN JOHNS,
15 Date of Birth: April 23, 1988, Place of Birth: Fallon, NV, entered a plea of Not Guilty to the
16 crime(s) of: **COUNT 1, BURGLARY WITH POSSESSION OF A FIREARM OR**
17 **DEADLY WEAPON, a Category B Felony, in violation of NRS 205.060(4), COUNT 2,**
18 **BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL BODILY HARM**
19 **TO VICTIM, a Category B Felony, in violation of NRS 200.481(2)(E)(2), COUNT 3,**
20 **BATTERY BY A PRISONER IN LAWFUL CUSTODY OR CONFINEMENT, a**
21 **Category B Felony, in violation of NRS 200.481(2)(F), COUNT 4, HOME INVASION**
22 **WITH POSSESSION OF FIREARM OR DEADLY WEAPON, a Category B Felony, in**
23 **violation of NRS 205.067(4), and COUNT 5, OBTAINING OR POSSESSING CREDIT**
24 **CARD OR DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD,**
25 **CREDIT ACCOUNT OR DEBIT CARD WITHOUT CONSENT, a Category D Felony,**
26 **in violation of NRS 205.690(1).**

27 The Jury Trial Commenced on May 10, 2021 and ended on May 13, 2021. That at the
28 time of the Defendant's Jury Trial the Defendant was represented by an attorney, DAVID K.

1 NEIDERT ESQ., or the duly appointed representative; also present in Court were the Churchill
2 Court Clerk, or the duly appointed representative, the Sheriff of Churchill County, or the duly
3 appointed representative, the District Attorney of Churchill County, Nevada, or the duly
4 appointed representative, representing the State of Nevada; and the Operations Supervisor, or
5 the duly appointed representative, representing the Division of Parole and Probation.

6 The Jury found the Defendant guilty on Count One, Count Two, Count Three, Count
7 Four, and Count Five. The Court, thereafter, set the date of May 18, 2021, as the date for
8 imposing judgment and sentence and the Defendant having appeared at such time, represented
9 by counsel, and the Defendant having been given the opportunity to exercise the right of
10 allocution. and having shown no legal cause why judgment should not be pronounced at that
11 time.

12 This Court thereupon pronounced CASEY ALAN JOHNS guilty of: **COUNT 1,**
13 **BURGLARY WITH POSSESSION OF A FIREARM OR DEADLY WEAPON, a**
14 **Category B Felony, in violation of NRS 205.060(4), COUNT 2, BATTERY WITH A**
15 **DEADLY WEAPON CAUSING SUBSTANTIAL BODILY HARM TO VICTIM, a**
16 **Category B Felony, in violation of NRS 200.481(2)(E)(2), COUNT 3, BATTERY BY A**
17 **PRISONER IN LAWFUL CUSTODY OR CONFINEMENT, a Category B Felony, in**
18 **violation of NRS 200.481(2)(F), COUNT 4, HOME INVASION WITH POSSESSION OF**
19 **FIREARM OR DEADLY WEAPON, a Category B Felony, in violation of NRS**
20 **205.067(4), and COUNT 5, OBTAINING OR POSSESSING CREDIT CARD OR DEBIT**
21 **CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT**
22 **OR DEBIT CARD WITHOUT CONSENT, a Category D Felony, in violation of NRS**
23 **205.690(1).**

24 In accordance with the applicable statutes of the State of Nevada this Court sentenced
25 the Defendant to:

26 ON COUNT 1: imprisonment in the Nevada State Prison for a minimum term of 24
27 months, with a maximum term of 60 months, and a minimum parole eligibility of 24
28 months.

1 ON COUNT 2: imprisonment in the Nevada State Prison for a minimum term of 72
2 months, with a maximum term of 180 months, and a minimum parole eligibility of 72
3 months to run consecutive to Count 1.

4 ON COUNT 3: imprisonment in the Nevada State Prison for a minimum term of 12
5 months, with a maximum term of 32 months, and a minimum parole eligibility of 12
6 months to run consecutive to Count 1 and Count 2.

7 ON COUNT 4: imprisonment in the Nevada State Prison for a minimum term of 32
8 months, with a maximum term of 96 months, and a minimum parole eligibility of 32
9 months to run consecutive to Count 1, Count 2, and Count 3.

10 ON COUNT 5: imprisonment in the Nevada State Prison for a minimum term of 12
11 months, with a maximum term of 32 months, and a minimum parole eligibility of 12
12 months to run consecutive to Count 1, Count 2, Count 3, and Count 4.

13 Count 1 through Count 5 will run consecutive to District Court Case Number 20-10DC-
14 0186.

15 In addition, said Defendant shall pay:

- 16 1. Restitution in the amount of One Thousand Dollars (\$1,000.00) to Mike Malone
17 paid through Nevada Division of Parole & Probation.
- 18 2. Restitution in the amount of One Thousand Eight Hundred Ninety-four Dollars
19 (\$1,894.00) to Budget Inn paid through Nevada Division of Parole & Probation.
- 20 3. Restitution in the amount of One Hundred Forty-nine Dollars And Twenty-one
21 Cents (\$149.21) to Brandi West-Castillo paid through Nevada Division of Parole &
22 Probation.
- 23 4. An Administrative Assessment Fee in the amount of Twenty-five Dollars (\$25.00)
24 to Tenth Judicial District Court.
- 25 5. A Genetic Marker Analysis Fee in the amount of Three Dollars (\$3.00) to Tenth
26 Judicial District Court.

27 Pursuant to NRS 176.0913, Defendant must submit a biological specimen to determine
28 genetic markers and/or secretor status.

1 Pursuant to NRS 176.035, the Court hereby aggregates the sentence imposed in this
2 case. Therefore, the aggregate sentence is determined to be a minimum term of 152 months to a
3 maximum term of 400 months.

4 Therefore, the Clerk of the above-entitled Court is hereby directed to enter the
5 Judgment of Conviction as a part of the record in the above-entitled matter.

6 DATED: This 18th day of May, 2021.

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A handwritten signature in blue ink, appearing to read 'S S S A', is written over a horizontal line.

Thomas L. Stockard
District Court Judge

Case No. 20-10DC-0552
Dept. No. 1

FILED

2021 JUN 11 PM 12:32

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BY J. Benning DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

NOTICE OF APPEAL

CASEY ALAN JOHNS,

Respondent.

The Defendant, CASEY ALAN JOHNS, by and through DAVID K. NEIDERT, Attorney
at Law, does here by appeal his conviction in this case to the Nevada Supreme Court.

Respectfully submitted this 11th day of June, 2021.

/s/ David K. Neidert
DAVID K. NEIDERT
Attorney at Law

1 **AFFIRMATION OF MAILING AND DECLARATION PURSUANT TO NRS 239B.030**

2 The undersign affirms that on today's date the foregoing was served by email on the
3 Churchill County District Attorney at pbaker@churchillda.org.
4

5 The undersigned further affirms that the foregoing document does not contain the Social
6 Security number of any person.

7 Dated this 11th day of June, 2021.

8 /s/ David K. Neidert
9 DAVID K. NEIDERT
10 Attorney at Law
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