

No. 86406

IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown
Clerk of Supreme Court

Troy White,

Petitioner-Appellant,

v.

State of Nevada, et al.

Respondents-Appellees.

Petitioner-Appellant's Appendix
Volume 7 of 10

Rene L. Valladares
Federal Public Defender,
District of Nevada
*Laura Barrera
Assistant Federal Public Defender
411 E. Bonneville Ave., Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Laura_Barrera@fd.org

*Counsel for Troy White

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Dated September 13, 2023.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera

Laura Barrera
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2023, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

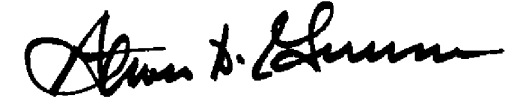
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Troy White #1143868 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	Jaime Stilz Deputy Attorney General Office of the Attorney General 100 N. Carson St. Carson City, NV 89701
--	--

/s/ Kaitlyn O'Hearn

An Employee of the Federal
Public Defender, District of
Nevada



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

TROY RICHARD WHITE

Defendant

.

CASE NO. C-286357

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

JURY TRIAL - DAY 6

TUESDAY, APRIL 14, 2015

APPEARANCES:

FOR THE STATE:

ELIZABETH MERCER
JEFFREY S. ROGAN
Deputy District Attorneys

FOR THE DEFENDANTS:

SCOTT L. COFFEE
DAVID LOPEZ-NEGRETE
Deputy Public Defenders

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 14, 2015, 9:29 A.M.
2 (Court was called to order)
3 (Jury is not present)
4 THE COURT: Anything outside the presence? Somebody
5 mentioned there might be a stipulation.
6 MS. MERCER: Your Honor, I think it's a stipulation
7 to Exhibits 102, 102A, 102B, and 102C.
8 THE COURT: Is that accurate?
9 MR. COFFEE: Yes.
10 THE CLERK: 102A, 102B.
11 THE COURT: Why do some of us think there is a C and
12 others of us don't?
13 MS. MERCER: Well, I know there were two bags. So
14 it would -- okay. 102, 102A and 102B.
15 THE COURT: I don't know. The clerk's in charge,
16 not me.
17 MR. ROGAN: 102, 102A, 102B is correct.
18 THE COURT: Okay.
19 MR. ROGAN: [Inaudible] 103, which is --
20 THE COURT: So 102, 102A and 102B are admitted, and
21 103 is admitted.
22 (State's Exhibits 102, 102A, 102B, 103 admitted)
23 MR. COFFEE: And then we've got some others that
24 we're getting marked.
25 THE COURT: Are there some others that are

1 stipulated?

2 MR. ROGAN: That are being marked.

3 MR. COFFEE: Yes.

4 THE COURT: Okay. I'm not trying to rush you.

5 We're one juror short.

6 MR. COFFEE: Oh. Good.

7 THE COURT: Okay. I just came in because you said

8 there were some stips.

9 MS. MERCER: Okay.

10 THE COURT: So I'm here.

11 I have to break for a meeting at noon.

12 MR. ROGAN: Okay.

13 THE COURT: So we'll try to break about five till or

14 ten till, depending on where you are with witnesses.

15 MR. ROGAN: Okay.

16 MR. COFFEE: Sure.

17 THE COURT: Does that work?

18 MR. COFFEE: Sure. We'll be done today without

19 issue.

20 THE COURT: How are we doing on jury instructions?

21 MR. COFFEE: Good.

22 MR. ROGAN: We're good. We were talking about them

23 last night. I think if we're early today we'll have our

24 chance to finalize our two versions to get to you by this

25 afternoon for your flight tomorrow.

1 THE COURT: Okay.

2 MR. COFFEE: I've got my research done. I am
3 formatting my comments on the bottom of some. I've got
4 probably 20 minutes of work to get it in a readable format.

5 THE COURT: Okay.

6 MR. COFFEE: But I've got everything laid out at
7 least.

8 THE COURT: So you're close.

9 MR. COFFEE: I'm close. But we're going to have to
10 run back and forth we've been trading notes and we haven't had
11 a chance to actually sit down.

12 THE COURT: Well, let me tell you the one
13 instruction that I've added that you probably don't know,
14 because either of you've tried a case in here.

15 MR. COFFEE: Okay.

16 THE COURT: So this is my odd instruction. "If it
17 becomes necessary during your deliberations to communicate
18 with me, you may send a note through the marshal signed by the
19 foreperson you have selected or by one or more members of the
20 jury. No member of the jury should ever attempt to
21 communicate with me except by a signed writing, and I will
22 communicate with any member of the jury on anything concerning
23 the case only in writing or here in open court. If you send
24 out a question I will consult with parties before answering,
25 which may take some time. You may continue your deliberation

1 while waiting for the answer to my question. Remember, you
2 are not to tell anyone, including me, how the jury stands,
3 numerically or otherwise until after you've reached a verdict
4 or have been discharged. Do not disclose any vote count in
5 any note to the Court."

6 I've add that because of problems I've had
7 historically over the years. So that's one of my standard
8 instructions that goes in every packet I've got.

9 MR. COFFEE: That's fine with us.

10 MR. ROGAN: No objection from the State.

11 THE COURT: I didn't think you'd care, but --

12 (Pause in the proceedings)

13 THE CLERK: Defendant's marked his.

14 THE COURT: What are they?

15 THE CLERK: They are Proposed EE.

16 THE COURT: EE.

17 THE CLERK: EE through NN as in Nancy.

18 THE COURT: EE through NN.

19 MR. ROGAN: Stipulated by the State.

20 THE COURT: So they'll be admitted.

21 (Defense Exhibits EE through NN admitted)

22 MR. COFFEE: Thank you.

23 THE COURT: So I've admitted 102A and B, 103, and EE
24 through NN. Anything else?

25 MR. ROGAN: Yes. There's just a few more, Your

1 Honor.

2 THE COURT: Okay.

3 THE CLERK: State's or [unintelligible].

4 MR. ROGAN: State's.

5 (Pause in the proceedings)

6 THE COURT: We're all here now?

7 THE MARSHAL: Yes, Judge.

8 THE COURT: Okay. As soon as we get these exhibits

9 marked we'll get started, Kevin.

10 So if you want to line then up you can.

11 (Pause in the proceedings)

12 MR. ROGAN: Your Honor, the State just marked as --

13 THE COURT: 104 through 111.

14 MR. ROGAN: Correct. And I believe the defense is

15 going to stipulate to those.

16 THE COURT: Mr. Coffee.

17 MR. COFFEE: Yes.

18 (State's Exhibits 104 through 111 admitted)

19 THE COURT: All right. Were there any additional?

20 Anything else outside the presence?

21 MR. COFFEE: Does that include the disc and the

22 other --

23 MR. ROGAN: The 911 and the Facebook message.

24 MR. COFFEE: Good enough.

25 THE COURT: So are we all done --

1 MR. ROGAN: Yes.

2 MR. COFFEE: We're done.

3 THE COURT: -- with the stipulating?

4 Bring our jurors in.

5 (Jury is present)

6 THE COURT: Good morning, ladies and gentlemen.

7 Counsel, you may be seated. Ms. Clerk, if you would please

8 take the roll of the jurors.

9 THE CLERK: Yes, Your Honor.

10 (Jury roll called)

11 THE CLERK: All present, Your Honor.

12 THE COURT: Counsel, stipulate to the presence of

13 the jurors?

14 MS. MERCER: Yes, Your Honor.

15 MR. COFFEE: Yes, Judge.

16 THE COURT: Your next witness.

17 MR. ROGAN: Your Honor, the State recalls Tate

18 Sanborn.

19 THE COURT: Sir, if you'll come back up. It's a new

20 day so we're going to re-swear you.

21 THE CLERK: Please raise your right hand.

22 TATE SANBORN, STATE'S WITNESS, SWORN

23 THE CLERK: Thank you. Please be seated. And

24 please state and spell your name for the record.

25 THE WITNESS: Tate Sanborn, T-A-T-E S-A-N-B-O-R-N.

1 MR. ROGAN: Good morning, sir.
2 THE COURT: Sir, if you might --
3 MR. ROGAN: Sorry.
4 THE COURT: -- notice that there are M&M's there
5 now. I don't think they were there the last time you were
6 here.
7 THE WITNESS: Thank you, Your Honor.
8 THE COURT: And if you need water or coffee let us
9 know.
10 THE WITNESS: Thank you.
11 THE COURT: Okay.
12 MR. ROGAN: May I proceed, Your Honor.
13 THE COURT: You may.
14 MR. ROGAN: Thank you.
15 FURTHER REDIRECT EXAMINATION
16 BY MR. ROGAN:
17 Q Detective, thank you for coming back. There was
18 some questions I needed to ask you based upon evidence that's
19 been presented so far.
20 Do you recall recovering a holster from 325
21 Altamira?
22 A Yes. It was located inside the backpack that was
23 recovered from the driveway.
24 Q Sir, I'm going to publish for you what's been marked
25 and admitted as State's Exhibit 102A. Showing you an evidence

1 packet that's marked with the initials J8167R in the center.
2 Do you believe that this contains the holster that you
3 recovered from the backpack?

4 A Yes, it did.

5 MR. ROGAN: May I approach the witness, Your Honor.

6 THE COURT: You may.

7 BY MR. ROGAN:

8 Q Now showing you State's Exhibit 102B. Does this
9 appear to be the package containing the holster?

10 A Yes. That's what -- the bag the holster was placed
11 into once it was taken out of the paper bag.

12 MR. ROGAN: Now, may I approach the witness, Your
13 Honor.

14 THE COURT: You may.

15 MR. ROGAN: Thank you.

16 BY MR. ROGAN:

17 Q Sir, could you open up that bag for me and take out
18 the holster. Thank you. Can you just hold it up for the
19 jury. And can you describe that holster for the jury, please?

20 A This is a black nylon holster utilizing a belt clip
21 on the interior side, a snap for retention to help retain the
22 firearm and located on the top of the holster is what would be
23 an extra magazine pouch to contain an extra magazine for more
24 ammunition or it could be used for a flashlight. This appears
25 to be -- I don't see a brand name on it so it appears to be

1 maybe a universal type holster that you buy that fits several
2 different types of weapons.

3 Q How is that designed to be worn, sir?

4 A It's designed to be worn on the belt. The clip here
5 being on the interior would cause me to believe that it's set
6 up for a right handed person to be worn on the right side of
7 their belt. Can I demonstrate?

8 Q Sure. Yes, go right ahead.

9 A It would be clipped to the belt some where in this
10 fashion here.

11 Q Thank you, sir. Now, are there things known as
12 concealed carry holsters?

13 A Yes.

14 Q Is that a concealed carry holster?

15 A No. This is meant to be worn on the belt out in the
16 open on the side.

17 Q How would a concealed carry holster differ from that
18 holster that you have in your hand?

19 A Typically depending on what part of the body the
20 holster's designed to be concealed upon, you wouldn't have a
21 belt clip like this or this size. Typically since you don't
22 wear it concealed on your belt. There are holsters designed
23 to be worn around your ankle, typically the ones like I wear
24 every day, which are big elastic bands that hold a gun around
25 your ankle. There's concealed holsters that are meant to be

1 put in your pocket that don't have any of this extra type of
2 attachments that slide in your pocket, the gun slides inside,
3 and then you can't see the outline of the gun in the person's
4 pocket and has a special band on it that when you go to remove
5 the firearm from the pocket the holster stays in the pocket.
6 There are small -- the back holsters that I have seen that do
7 utilize a clip like this to where the gun at the small of your
8 back; however, it wouldn't be set up like this, the gun would
9 be canted at an angle like that and the clip would be inverted
10 so that you could reach behind your back and take the gun out
11 from behind your back. So this is just a standard right hand
12 holster to be worn out in the open on the right side of your
13 belt.

14 Q Thank you. And now showing you State's Exhibit 34.
15 Looking inside that backpack that's depicted in that photo is
16 that the same holster that you have in your hand? That's the
17 same holster that's depicted inside that backpack in State's
18 34?

19 A Yes, it is.

20 Q It's the same holster that's depicted in State's 35?

21 A Yes, it is.

22 Q Thank you, sir.

23 MR. ROGAN: Can I approach the witness, Your Honor.

24 THE COURT: You may.

25 //

1 BY MR. ROGAN:

2 Q Sir, some tattoos have been mentioned about Echo
3 White. Isn't it also true that the defendant had tattoos on
4 his body, as well?

5 A Yes, he does. His right arm is covered in a design,
6 I believe, a sleeve design the whole right arm, I believe.

7 Q Showing you what's been admitted as State's Exhibit
8 103. What do you see depicted in State's Exhibit 103?

9 A It's a picture of Mr. White wearing the backpack
10 actually that was recovered in the driveway at the scene.
11 Visible clearly are the tattoos on his right arm, as well as
12 two tattoos on -- one tattoo on each calf depicting a black
13 widow spider.

14 Q You said a black widow spider? Is that what they
15 are?

16 A Yes.

17 Q Okay. And then you mentioned also on his right
18 sleeve.

19 A Correct.

20 Q All right. Thank you, sir.

21 When was this photograph taken?

22 A That photograph was taken in May -- May 12th of
23 2012, I believe.

24 Q And was it recovered from the phone of Echo Lucas
25 White?

1 A Yes, it was.

2 Q Yesterday it was mentioned the possibility that the
3 defendant called 911 on the morning of July 27th, 2012. Did
4 in fact he call 911?

5 A Yes, he did.

6 Q Do you recall what time he called 911?

7 A I believe the call came in about 11:53:30
8 approximately.

9 Q And J [REDACTED]'s call came in at approximately 11:50?

10 A Correct.

11 Q So about three, three and a half minutes between
12 J [REDACTED]'s first call and the defendant's call.

13 A Correct.

14 Q So how far -- do you know how long after the
15 shooting that the defendant finally placed his 911 call?

16 A I guess if you look at the timing of those calls
17 it'd probably be about five to seven minutes.

18 Q Sir, have you listened to the defendant's 911 call
19 before?

20 A Yes, I have.

21 Q And you recognize the caller as being the defendant
22 based upon your identification of his voice?

23 A Yes.

24 Q Can I play that call for you now?

25 A Yes.

1 MR. ROGAN: This is Exhibit 110, which has been
2 admitted by stipulation. And again, we're still having
3 difficulty with the audio, Your Honor. So I'll do my best to
4 play it for the jury.

5 (State's Exhibit 110 played)

6 BY MR. ROGAN:

7 Q Sir, with regard to that 911 call the caller, the
8 defendant asks for medical; correct?

9 A Correct.

10 Q And that's different from asking for police; right?

11 A Correct. Initially a police dispatcher answers the
12 911 call and then when they ask the question, police, fire or
13 medical, if it's just a medical call or someone needs an
14 ambulance, then our 911 dispatcher will transfer that to a
15 fire department dispatcher so the police don't respond to a
16 medical case or someone who needs medical attention.

17 Q I see. Now, at the beginning of the call when the
18 medical operator first takes the call, that's the second
19 dispatcher --

20 A Right.

21 Q -- there's children that are heard in the
22 background.

23 A Yes.

24 Q Do you recall that? And what does the defendant say
25 presumably to the children at that time?

1 A He tells them to stop it.

2 Q And then when the dispatcher asks him what's the
3 emergency, how does the defendant respond?

4 A He says there were shots fired.

5 Q He doesn't say I shot someone; right?

6 A Correct.

7 Q Okay. And then when there are further inquiries
8 made as to what happened, does he hang up the phone at that
9 point?

10 A Yes. When they ask the questions regarding the
11 patient he hangs up.

12 Q Thank you. Lastly, Detective, we showed you an
13 exhibit, a Facebook conversation between the defendant and a
14 friend of his named Tim Henderson. Do you remember that when
15 we discussed that on Thursday?

16 A Yes, I do.

17 Q And showing you know what's been marked and admitted
18 as State's Exhibit 111, do you recall the first portion of
19 this conversation that we discussed on Thursday, which is a
20 conversation on July 14th, 2012, at approximately 12:48 p.m
21 pacific time?

22 A Yes.

23 Q And this is the conversation where he calls his wife
24 a whore and Joe Averman a whoremonger.

25 A That's correct.

1 Q Now, this is the remainder of that conversation; is
2 it not?

3 A Yes, it is.

4 Q And including the response by Tim Henderson.

5 A Yes.

6 Q And after Tim Henderson replied on July 16th, the
7 defendant sent another message back to Tim Henderson on July
8 -- I'm sorry, July 16th approximately 8:00 p.m. pacific time;
9 correct?

10 A Correct. Yes.

11 Q And what does he say to Tim Henderson?

12 A He says, "Call me any time Tom, and for the record,
13 I wasn't perfect. There's a lot you don't know about her and
14 I."

15 Q And then he gives his phone number; correct?

16 A Correct.

17 Q He actually sends that message twice after
18 correcting Tom to Tim; right?

19 A Yes.

20 Q And that's reflected on State's Exhibit 111?

21 A Yes.

22 Q Thank you. And that number that you saw in Tim --
23 that the defendant gave Tim Henderson, [REDACTED]-9121, that's the
24 same phone number that was used by the defendant to call 911
25 at 11:53 on July 27th; right?

1 A Yes, it was.

2 MR. ROGAN: Thank you.

3 THE COURT: Cross-examination.

4 MR. COFFEE: Thank you.

5 FURTHER CROSS-EXAMINATION

6 BY MR. COFFEE:

7 Q Working backwards for a moment; all right?

8 A Okay.

9 Q Now, let's talk about the messages here. The
10 message that I've got on the screen, I'm showing you State's
11 111. That's the message he sent from Tim Henderson; right?
12 You see author, Tim Henderson there?

13 A Yes.

14 Q And Tim Henderson talks about his blood pressure
15 soaring here. It's about three quarters of the way down.
16 Here I'll point it out for you.

17 A Yes, I see it.

18 Q Okay. And it talks about how Troy had brought her
19 in and basically done everything for her. That's Tim
20 Henderson's opinion; yes?

21 A Yes.

22 Q And tells Troy he has more respect for him than he
23 realizes; right?

24 A I'm sorry. Tells who?

25 Q Troy.

1 A Yes. Sorry, I didn't hear you. Yes.

2 Q And there was, ah, "I apologize if it's not my place
3 to talk bad about her, but, oh, if I was a woman I would be on
4 a plane right now with bail money in my pocket." Okay? Time
5 Henderson says that to Mr. White also?

6 A Yes.

7 Q And since -- essentially, "it's not my place to talk
8 bad about her," and that's when Mr. White sends the response,
9 "There's a lot you don't know about her and I"; right? "I
10 wasn't perfect," for the record.

11 A Yes.

12 Q So even after calling his wife a whore monger, back
13 and forth with this conversation he sticks up and takes some
14 responsibility for the problems, also. Is that fair?

15 A Yes.

16 Q There was a description in the police report that
17 this was a volatile situation. You'd agree with that
18 characterization; right?

19 A Initially?

20 Q The love triangle overall.

21 A Yes.

22 Q The backpack that we talked about that you saw a
23 picture of Troy White had owned that for a number of months?

24 A Yes.

25 Q And I don't know if we'd asked before so I'm going

1 to ask now. Was Troy White's cell phone recovered?

2 A He had several phones. Some of them belonged to his

3 work, and I believe his phone was recovered also. There were

4 several phones recovered from --

5 Q In Prescott, Arizona; right?

6 A As well as at Herman Allen's apartment.

7 Q Okay. And was a phone from Joe Averman seized?

8 A No.

9 Q Now, this holster, State's 102B.

10 A Yes.

11 Q Holster that's found in the driveway. Yeah?

12 A Yes.

13 Q And on the front is a pocket on that holster; yes?

14 A Yes.

15 Q And you said that pocket is for an extra clip or

16 could be for an extra clip. Is that right?

17 A Correct.

18 Q So if you've got a clip in the gun and a clip in the

19 pocket, you might store this all as one unit some place?

20 A Correct.

21 Q Okay. And you were talking about this being left or

22 right handed. Actually, this is switchable; right? This

23 comes off and can be switched with this side as a left or

24 right handed holster?

25 A Yes.

1 MR. COFFEE: Okay. Thank you, Detective. I
2 appreciate you coming back in for us.

3 THE COURT: Any redirect?

4 FURTHER REDIRECT EXAMINATION

5 BY MR. ROGAN:

6 Q The condition that the holster was recovered in is
7 the same condition it was in today; correct?

8 A Correct.

9 Q Meaning the side hasn't -- the side the clip is on
10 has not been switched since it was recovered that day?

11 A Correct. The way it was set up was for -- to be
12 worn on the right side.

13 MR. ROGAN: Thank you. Nothing further, Your Honor.

14 THE COURT: Counsel, can you approach for the jury
15 question?

16 MR. COFFEE: Sure.

17 (Bench Conference)

18 MR. COFFEE: Sure.

19 (End of bench conference)

20 THE COURT: Sir, I have a question from the jurors.
21 When 911 is dialed and you ask for medical then tell them
22 "from shots fired" are the police dispatched?

23 THE WITNESS: Yes. They would -- the fire or
24 medical dispatcher would reconference that with the police, so
25 it kind of bounced back and then they would both remain on the

1 phone. Like they -- what happened in this case, the police
2 dispatcher stayed on the line and then -- but even if the
3 dispatcher -- if our dispatcher had disconnected and someone
4 reported shots fired the medical dispatcher would kick it back
5 to the police dispatcher and then the police would be
6 dispatched automatically.

7 THE COURT: Thank you. Anything? Followup?

8 FURTHER REDIRECT EXAMINATION

9 BY MR. ROGAN:

10 Q The police had already been dispatched due to
11 J [REDACTED]'s phone call at the time the defendant had called 911;
12 correct?

13 A Correct. They were already responding on this
14 event; yes.

15 MR. ROGAN: Thank you.

16 FURTHER RECROSS-EXAMINATION

17 BY MR. COFFEE:

18 Q There was some discussion yesterday about the
19 defendant saying that he was having problems with his cell
20 phone. Are you able to tell if that call was dropped or if he
21 hung up?

22 A No. I would not be able to tell.

23 Q You just don't know?

24 A Just disconnected, correct.

25 Q Just disconnected. Could be either one.

1 Particularities or the juror question had to do with
2 particularities of what happens inside the 911 system once the
3 call is routed to medical; yes?

4 A Correct.

5 Q Fair to say it's not necessarily common knowledge,
6 medical, police, which one you're going to need in a specific
7 situation. Do you understand my point? If I call 911 to get
8 emergency help for somebody, might I ask for medical, let me
9 put it that way?

10 A I'm sorry. I don't quite understand.

11 Q Sure. Sure.

12 A Sorry.

13 Q Sure. Let -- let me. And that was confusing
14 because I was thinking my question through when I did it and I
15 should know better than that. Okay.

16 If I call and want to get somebody emergency medical
17 help, might I ask for medical?

18 A Yes.

19 MR. COFFEE: Okay. Nothing further.

20 THE COURT: Anything further?

21 MR. ROGAN: Not from the State.

22 THE COURT: Thank you, sir. We appreciate your
23 time. Thank you for coming back. Have a nice afternoon.

24 THE WITNESS: Thank you.

25 THE COURT: Your next witness.

1 MR. ROGAN: Your Honor, I believe at this time the
2 defendant is going to call a witness out of order.

3 THE COURT: Okay. Mr. Coffee, are you going to call
4 a witness out of order?

5 MR. COFFEE: Yes, Judge.
6 Tim Henderson, please.

7 TIMOTHY HENDERSON, DEFENDANT'S WITNESS, SWORN

8 THE CLERK: Thank you. Please be seated. And
9 please state and spell your name for the record.

10 THE WITNESS: Timothy Henderson, T-I-M-O-T-H-Y
11 H-E-N-D-E-R-S-O-N.

12 THE COURT: Sir, there's water in that pitcher and
13 M&M's in those dispenser. If you need some coffee the marshal
14 can get you some.

15 THE WITNESS: Okay. Thank you.

16 THE COURT: You may proceed, Mr. Coffee.

17 DIRECT EXAMINATION

18 BY MR. COFFEE:

19 Q Good morning, Mr. Henderson.

20 A Good morning.

21 Q Where do you live?

22 A Indiana. Rockfield, Indiana.

23 Q Have you always lived there?

24 A No.

25 Q Did you live in Las Vegas at some point?

1 A Yes.

2 Q When was that?

3 A A few years ago. A couple years ago.

4 Q Do you remember when you moved from --

5 A 2011 is when we left Las Vegas.

6 Q What do you do for a living?

7 A I'm a minister.

8 Q A minister. Have you been affiliated with the

9 Potter's House Church at some point?

10 A Yes. I was credentialed with the Potter's House for

11 a number of years, yes.

12 Q When did that start?

13 A As far as being in like full time or part time

14 ministry probably around 10 years ago, somewhere around there.

15 Q Had you been a member of Potter's House before

16 becoming a minister?

17 A Yes. Yeah.

18 Q As a member of Potter's House were you a member of a

19 Las Vegas congregation?

20 A Yes.

21 Q Which congregation was that?

22 A The West Las Vegas Potter's House on Sahara.

23 Q Did you attend church regularly?

24 A Oh, yeah. Yeah.

25 Q As a result did you meet Echo Lucas White?

1 A Yes.

2 Q When was that?

3 A A long time ago. Probably more than 10 years ago, I
4 would say.

5 Q All right. And what was your relationship with Echo
6 White?

7 A Oh, we were friends. She was really good friends
8 with my wife. They hung out a lot. My wife, when she first
9 started coming to the church my wife would go pick her up and
10 bring her to church and take her places where she needed to
11 go, because she didn't have a car. They were really good
12 friends. And so consequently, we were friends, as well.

13 Q At some point did you meet Troy White?

14 A Yes.

15 Q When was that?

16 A It would have been a few years after that.

17 Q A few years after. So you actually knew Echo before
18 Troy and Echo were married?

19 A Yes. Yes.

20 Q All right. Did you work with them at the church?

21 A In ministry, yes. Yes.

22 Q Did you have the opportunity to see them interact?

23 A Oh, yeah. A lot. Yeah. We hung out a lot even
24 outside of church, yes.

25 Q Can you describe their relationship for me?

1 A As far as we knew they had a very good relationship.
2 There was nothing that ever indicated anything that there was
3 anything wrong with their relationship at all.

4 Q Now, there's been some discussion through detectives
5 about Potter's House. What sort of religion is it?

6 A It's Pentecostal. As far as the Potter's House
7 Church goes where it would differ, I guess, as far as regular
8 Pentecostalism would be, it's sort of, I hate to use the term,
9 but it's a legalistic type of a church. There's a lot of
10 rules. You know, if you're going to be in ministry you can't
11 have a TV, you can't go to movies, you know, better wear a
12 tie, you know, very, very rule oriented type of a church, yes.
13 It was a good church, but it's very strict rule oriented type
14 of a church, yes.

15 Q All right. Did the church have -- there's been some
16 talk, there's been some research done, traditional views on
17 marriage. Does that make sense?

18 A Yes. I know what you're saying, yes.

19 Q Okay.

20 A Yeah. But that, I mean, that's not just singular to
21 the Potter's House, but yes, we did -- yeah.

22 Q Understood. And I didn't mean to single out
23 Potter's House --

24 A Oh, okay.

25 Q -- in anyway.

1 A Right.

2 Q The tradition role would be a woman being a
3 homemaker to some extent, and the man being the provider. Is
4 that fair?

5 A Yeah. Being the spiritual leader of the home, and
6 yeah. And traditionally, yeah, that was probably the gist of
7 most of the couples in the church were like that, yeah.

8 Q All right. Traditionally, does that also mean that
9 the man has a leadership role in the family, generally?

10 A Yes. Yes.

11 Q Was that the case with Echo and Troy?

12 A No, not in my opinion, no, not at all.

13 Q Tell me about that?

14 A My opinion towards them would be that as far as who
15 was in charge of that relationship it would have been Echo.

16 Q Okay.

17 A And I think that was very clear to anyone that knew
18 them. I mean, they had a great relationship, but as far as
19 who was in charge it would be Echo. She would make the final
20 decision. They did what she wanted to do when she wanted to
21 do it.

22 Q Okay. Now, and Mr. White seemed happy with that?

23 A Yes. Very much so, yes.

24 Q Echo had had two children that came into her
25 relationship with Mr. White, J [REDACTED] and --

1 A J [REDACTED]
2 Q -- J [REDACTED]?
3 A Yes.
4 Q You knew those children?
5 A Yes. Yes.
6 Q All right.
7 A And my wife babysat them quite a bit. We knew them,
8 yeah.
9 Q Okay. And subsequently she had three more children
10 with Mr. White?
11 A Yes.
12 Q Did Mr. White treat those two children differently
13 than one?
14 A Oh, absolutely not. If you didn't know them, you
15 would think that they were his kids.
16 Q Okay. Did he introduce them as his kids?
17 A Yes. Yeah. They were all his kids.
18 Q All right. There's been some discussion about some
19 Facemail -- Facebook posting -- Facemail?
20 A Yes.
21 MR. COFFEE: Court's indulgence.
22 THE COURT: Uh-huh.
23 BY MR. COFFEE:
24 Q Now, the first posting I want to ask you about there
25 was a -- were you friends with Mr. White on Facebook?

1 A Yes.

2 Q Okay. And did you read posts on occasion on
3 Facebook?

4 A Yes.

5 Q There was a posting with a quote something about,
6 "If you love something set it free". Did you see that post?

7 A Yes.

8 Q "If it comes back it was meant to be. If it doesn't
9 it wasn't," something like that?

10 A Right. Yeah.

11 Q And he said, "I like this version better. If you
12 love something set it free. If it doesn't come back hunt it
13 down." Do you remember that?

14 A I do, yes.

15 Q Okay. Did you take that as a threat to Echo White?

16 A Oh, absolutely not.

17 Q Why not?

18 A It was just said out of anger and hurt. Nothing
19 different than anybody in that situation probably would have
20 said, if they were hurt and angry and spouting off with the
21 mouth. I've done it, I mean, maybe not to that exact same
22 degree, but just out of anger and hurt, frustration,
23 emotionalism. No way would I take that as a hint that
24 something was about to happen.

25 Q All right. Now, there was a post that was some time

1 later, I think it was several weeks later, actually, on 10/16.
2 I'm going to show you State's Exhibit 111, all right? This is
3 a post that you had authored, yes?

4 A Yes.

5 Q And you actually make some remarks in there about
6 being upset and, "if I ever see this dude when I come out and
7 visit."

8 A Right.

9 Q Oh, "beat his," and you put in some exclamation
10 marks; right, yes?

11 A Yes.

12 Q All right. You weren't happy about the situation
13 with Troy and Echo. Is that true?

14 A No, I wasn't. I'm kind of embarrassed by some of
15 the things that I said in there, it was kind of immature, but
16 I was angry and I was upset and I was spouting off with mouth,
17 and --

18 Q And that happens I suppose on Facebook. Some times
19 we post things without thinking about it.

20 A Well, that was a private message. I would have
21 never posted that for everyone to see. That was a private
22 message between him and I.

23 Q That was a private message?

24 A Yeah. That was not a post where everyone could see
25 that. That was a private message and was just angry and upset

1 and I was spouting off with the mouth, and some of the things
2 I said in there I regret, and it was just said out of anger
3 and frustration.

4 MR. COFFEE: Court's indulgence.

5 THE COURT: Uh-huh.

6 THE WITNESS: Very embarrassing.

7 BY MR. COFFEE:

8 Q The quote that we talked about a moment ago.

9 A Yes.

10 Q I said a couple weeks. Actually, it looks like it
11 was sent on 7/9, and that is State's 86. Have you -- this is
12 what we were talking about with the have you heard the quote;
13 right?

14 A Right. Yeah. Yes.

15 Q Now, you made a distinction a moment ago. You said
16 what you had said in anger was a private correspondence?

17 A Yes.

18 Q And there were no comments on it because it wasn't
19 part of public consumption?

20 A Correct. Yes.

21 Q You see the comments on this?

22 A Yes, I do.

23 Q So --

24 A I can't say that I've read them previously, but I
25 see them now.

1 Q Okay. The point being, this appears to be a public
2 post; right?

3 A It appears so, yes.

4 Q Is Mr. White still your friend?

5 A Absolutely, yes.

6 Q I know you'd said some things, some bad things in
7 that post about kicking, I think Mr. Averman's butt, did you
8 know who it was?

9 A Yes, I knew him. Yes.

10 Q Did you continue to care for Echo Lucas up until --

11 A Oh, yeah. Absolutely. Yes.

12 Q Do you know if Troy wanted to reconcile his
13 marriage, to get his marriage back?

14 A Yeah. I know that he did, yes.

15 Q Was there any question about that?

16 A No, there was not.

17 MR. COFFEE: Thank you for coming in for us, Mr.
18 Henderson.

19 THE WITNESS: Okay.

20 THE COURT: Cross-examination?

21 MS. MERCER: Thank you, Your Honor.

22 May I approach your clerk, Your Honor.

23 THE COURT: You may.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MS. MERCER:

3 Q Good morning, Mr. Henderson.

4 A Good morning.

5 Q You indicated that you've been friends with the
6 defendant for about 10 years?

7 A I think so. I don't know the exact dates, but it's
8 a very long time, yes.

9 Q And you also said that you have worked as a minister
10 or assistant -- or you've worked in --

11 A Yes.

12 Q -- a ministerial position or assistant ministerial
13 position for at least 10 years.

14 A Yeah. Well, not always full time.

15 Q What do you mean by not always full time?

16 A Well, some times part time.

17 Q Okay. When we say ministerial position what are we
18 talking about?

19 A I was a basically a youth pastor, but it wasn't
20 called a youth pastor in the Potter's House, and then we left
21 Vegas and went to Houston and pioneered a new church there,
22 and then when we came back to Vegas, I was a worship pastor
23 there, and then when we left there I went to Covington,
24 Indiana, where I was the associate minister, and now I'm a
25 senior minister in Rockfield.

1 Q What is an associate minister?

2 A Basically you do anything and everything that's
3 asked of you, but you also run the youth at the same time.
4 It's essentially if a church can't afford a full time youth
5 pastor you're an associate pastor, which means you do the
6 youth, but then you also do a lot of other things, as well,
7 media, what ever's needed.

8 Q What are the obligations of a pastor or minister
9 within the Potter's House Church?

10 A Senior minister, associate minister, youth pastor,
11 worship pastor, I mean --

12 Q All of them. Any position you've hold, I want to
13 know about your job duties.

14 A Okay. I was in charge of the, as far as a youth
15 minister in Vegas, I was in charge of the what was called the
16 door scene. It was bands and drama teams, outreach type
17 ministry, I was in charge of organizing that, doing
18 outreaches, ministering during that time, and then I did a lot
19 of other things, running errands, setting up reservations for
20 parks and things we did in the parks, all kinds of stuff like
21 that.

22 Q When you say ministering what do you mean though? I
23 guess that's what I'm getting at. For those of us that might
24 not have as much experience in the church, what is
25 ministering? Can you describe that for me?

1 A Sure. Encompasses a lot of things, I guess. I
2 headed up the outreach ministry, which means I set up all the
3 dates, organized all that. I ran that night scene. I
4 preached at the end of that night scene.

5 Q Okay. So part of your obligation was preaching.

6 A Oh, yeah. I preached a lot, yes.

7 Q Were there times when you were called upon to
8 counsel people who are going through tough times?

9 A During that time or now?

10 Q Now?

11 A Yes. Yes.

12 Q What about in 2012? I think at that time you would
13 have been, did you say an associate minister?

14 A Yes. Yeah. And at that time it would have mainly
15 -- any counseling that I would have done would have mainly
16 been with teenagers and the youth.

17 Q And as a senior minister what ministerial obligations
18 did you have?

19 A Well, like when we were pioneering a church, it was
20 a very, very small church, but I did everything from unlocking
21 doors and turning on lights and making coffee to studying,
22 writing sermons, preaching, counseling when needed, all of
23 that. And now the position that I'm at is essentially the
24 same thing, but it's a much larger church.

25 Q Okay. And you were working as an associate minister

1 in 2012?

2 A Yes, I believe so.

3 Q Where at?

4 A That would have been in Covington, Indiana.

5 MS. MERCER: Permission to publish?

6 THE COURT: You may.

7 BY MS. MERCER:

8 Q And I would -- you indicated that on direct, you're
9 embarrassed by some of the things you said in this --

10 A Oh, yes. Very much, yes.

11 Q -- conversation with the defendant?

12 A Yes.

13 Q Is it safe to say that this is not in line with the
14 obligations that you have in a ministerial role within the
15 church?

16 A Oh, does that mean like I'm a hypocrite for saying
17 that stuff or something?

18 Q Well, I mean, you would agree with --

19 A I was angry and I was very, very upset, and I said
20 things that I shouldn't have said, and I regretted it. It was
21 private and I was angry. Would I say that behind a pulpit,
22 absolutely not.

23 Q You would agree with me that in hindsight the better
24 thing to do would have been to calm him down perhaps?

25 A Well, of course.

1 Q And teach forgiveness perhaps?

2 A Of course, yes. But again, I was angry, immature,
3 did not handle it correctly.

4 Q And prior to him reaching out to you on July 16th of
5 2012, and prior to that post, "if you love something let it
6 go" --

7 A Uh-huh.

8 Q -- on July 9th of 2012, he had not indicated to you
9 that they were going through any sort of marital problems;
10 correct?

11 A No, I don't think so, no. Not that I remember.

12 Q And you left Las Vegas in 2011?

13 A 2011, yes.

14 Q So you have no idea what issues complicated their
15 marriage; correct?

16 A Only what I've heard.

17 Q Since then?

18 A Yes.

19 Q And in fact, in this post the defendant admits that
20 he had some part in the issues that they were going through;
21 correct?

22 A Yes, he does. Yes. Essentially, he was the more
23 mature one in calming me down in that post.

24 Q And I don't mean to embarrass you, I'm just --

25 A Yes.

1 Q -- trying to get further clarification as to your
2 embarrassment.

3 MS. MERCER: Permission to publish one more, Your
4 Honor.

5 THE COURT: You may.

6 BY MS. MERCER:

7 Q I'm publishing Defense Exhibit A. The quote at the
8 top of that frame.

9 A Uh-huh.

10 Q Do you recognize that quote?

11 A Yes.

12 Q What is it from?

13 A It's from the Bible, I think it's Philippians.

14 Q And it says, "Love bears all things, believes all
15 things, hopes all things, endures all things"?

16 A Yes.

17 Q You have maintained contact with the defendant in
18 this case since the incident on July 27th of 2012; correct?

19 A Yes.

20 Q You're still friends with him?

21 A Yes.

22 Q In fact, at times sent him money; correct?

23 A Yes.

24 Q What is a -- what is grounds for divorce within the
25 Potter's House Church?

1 A You can do whatever you want. I don't mean to imply
2 that the Potter's House is a cult. If you want to get a
3 divorce, you can get a divorce, but as far as the standards of
4 the church they would be the biblical standards, which would
5 be, you know, marital unfaithfulness, abuse, things like that,
6 yeah.

7 MS. MERCER: Court's indulgence, Your Honor.

8 THE COURT: Sure.

9 MS. MERCER: Oh. Court's indulgence.

10 BY MS. MERCER:

11 Q Just so we're clear, you have no idea the things
12 that might have upset either Echo or the defendant in the
13 course of their relationship that caused it to ultimately end
14 in early 2012; correct?

15 A No, I'm not aware of that. No.

16 Q You don't know what things the defendant might have
17 done to her, or what she might have done to him?

18 A No, I'm not aware.

19 Q So when you say that their marriage appeared fine,
20 that was outwardly; correct?

21 A Yes.

22 Q There are things that people might not share that
23 occur behind closed doors; correct?

24 A Well, that would go with anyone, yes.

25 Q And especially when you're dealing with people that

1 you attend a church with; correct?

2 In other words, people might be ashamed of certain
3 things happening at the home that they wouldn't necessarily
4 want to share with people that they attend a church with;
5 correct?

6 A Well, I mean, the answer to that would be yes, but I
7 don't think that would be strict to our church. I mean,
8 anyone would be --

9 Q No. I'm saying any church. I didn't mean to narrow
10 it down to the Potter's House Church. Any church?

11 A Any church or even people that don't go to church.
12 I'm a man, I'm not going to go share my problems with
13 everyone.

14 MS. MERCER: Okay. Thank you.

15 THE COURT: Anything else from the State?

16 MS. MERCER: Pass.

17 THE COURT: Mr. Coffee, anything else?

18 Hold on. I have a jury question coming up.
19 Counsel, can you approach?

20 (Bench Conference)

21 THE COURT: I'm not inclined to.

22 MR. ROGAN: Okay.

23 MR. COFFEE: I can't read it.

24 MS. MERCER: Did you contact Joe or Echo to discuss
25 the situation to help resolve it?

1 MR. COFFEE: Oh.

2 MS. MERCER: That's fair.

3 (End of bench conference)

4 THE COURT: Sir, I have a couple questions from the
5 jury.

6 THE WITNESS: Yes.

7 THE COURT: Did you contact Joe or Echo to discuss
8 this situation to help resolve it?

9 THE WITNESS: No. Joe and I were friends, I mean, I
10 knew him, but he went to a different -- he went to the
11 Potter's House, but it was not the West Las Vegas Potter's
12 House. So we knew them, but not nearly as well. We weren't
13 really close to them. And, no, we did not contact them to try
14 to resolve or get involved in problems that were going on
15 there. I mean, as far as my wife, I'm not sure. I don't
16 think she did either, but as far as me, I'm just -- I guess
17 I'm a typical guy, if you're not asking me for advice I'm not
18 going to stick my nose in your marriage. And so, no, I did
19 not attempt to resolve or get involved in that regard, no.

20 THE COURT: In the past you question Echo's role as
21 a wife, a mother, skills, lack of occupation.

22 THE WITNESS: Right.

23 THE COURT: You stated you and Echo were friends.

24 THE WITNESS: Yes.

25 THE COURT: Had you had previous conflicts or

1 disagreements with her to make you come to those conclusions?

2 THE WITNESS: There was never any conflict or
3 anything like that that made me come to those conclusions. We
4 were very good friends. What made me come to those
5 conclusions was just the fact that we'd known them for a very
6 long time and enacted [sic] with them a lot. And I know that
7 she would take advantage of him in a sense and whatever she
8 wanted she got, and he would do what ever she wanted. If she
9 wanted it, they would buy it, whether they had the money or
10 not, and just things I would never say outwardly because I'm
11 not going to get involved in somebody else's marriage. But
12 those were things that were always there that I saw, but they
13 were none of my business. And so there in the post I was
14 spouting off things that were none of my business.

15 THE COURT: Okay. Thank you, sir.

16 THE WITNESS: Yes.

17 THE COURT: Any followup, Mr. Coffee?

18 MR. COFFEE: Since he's mine I get to go first. I
19 never have.

20 REDIRECT EXAMINATION

21 BY MR. COFFEE:

22 Q First off, as to what the marital problems were, you
23 said you don't know.

24 A Right. I was unaware.

25 Q And it wouldn't be appropriate to speculate?

1 A Correct.

2 Q Now, there's some discussion about -- before we go
3 to that. Defendant's A, underneath the quote are some
4 pictures and you recognize the people in those pictures;
5 right?

6 A Yes.

7 Q Troy and Echo?

8 A Yes.

9 Q Now, you regret some of the things that you said, it
10 may not have been the most ministerial thing to say. Is that
11 an appropriate way to do it?

12 A That's correct, yes.

13 Q You were also Troy's friend though; right?

14 A Yes, I was.

15 Q Is it fair to say that minsters are human too?

16 A Oh, absolutely. Yes.

17 Q You can feel anger and --

18 A Oh, yeah.

19 Q -- sadness and those kinds of things like the rest
20 of us?

21 A Yeah. I mean, there's a line that you need to be
22 careful as far as how much you open up to people within your
23 congregation, but yeah, you're no different than anyone else.

24 Q And at this point Troy wasn't in your congregation,
25 you'd left to --

1 A Correct.

2 Q -- Indiana.

3 A Yes.

4 Q And before you get too hard on yourself, let's talk
5 about the last thing. You say the last line, you say, "Keep
6 serving God in doing the right thing, God sees, don't worry
7 about me running my mouth, I have more respect for you than
8 you know, and value you as a friend more than you realize. I
9 love you man." Do you remember writing that too?

10 A Yes.

11 MR. COFFEE: Okay. Thank you, Mr. Henderson.

12 THE COURT: Anything further from the State?

13 MS. MERCER: No, Your Honor.

14 THE COURT: Any additional questions from the jury?
15 Thank you, sir. We appreciate your time. Travel
16 safely.

17 Next witness?

18 MR. ROGAN: Your Honor, State calls Amber Gaines.
19 May I approach your clerk?

20 THE COURT: You may.

21 (Pause in the proceedings)

22 AMBER GAINES, STATE'S WITNESS, SWORN

23 THE CLERK: Thank you. Please be seated. And
24 please state and spell your name for the record.

25 THE WITNESS: Amber Gaines, A-M-B-E-R G-A-I-N-E-S.

1 THE COURT: And, ma'am, there's water in the
2 pitcher, M&Ms in the dispenser, and, if you should need it,
3 the marshal can get you some coffee.

4 MR. ROGAN: May I proceed, Your Honor?

5 THE COURT: You may.

6 DIRECT EXAMINATION

7 BY MR. ROGAN:

8 Q Good morning, ma'am. How are you today?

9 A I'm okay. Sorry.

10 Q It's fine.

11 A Okay.

12 Q What is your relationship to Echo Lucas White?

13 A I'm her mother.

14 Q I want to ask you some questions about Echo and her
15 life and what happened to her on July 27th, 2012, all right.
16 And I want to ask you some questions about her children. Are
17 you comfortable doing that this morning?

18 A Yes.

19 Q If you need to take a break, please let us know.

20 A Okay.

21 Q We understand. Showing you what's been marked and
22 admitted as State's Exhibit 104, who is this person?

23 A My daughter, Echo.

24 Q When was Echo born?

25 A [REDACTED], [REDACTED], [REDACTED].

1 Q When did she die?
2 A 7/27/12.
3 Q How old was she?
4 A Twenty-nine.
5 Q Was she a mom?
6 A Yes.
7 Q Showing you State's Exhibit 105. Who is that?
8 A Echo and J[REDACTED].
9 Q With who?
10 A J[REDACTED]. No, no. I'm sorry. That's J[REDACTED] J[REDACTED].
11 Q Who's J[REDACTED] J[REDACTED]?
12 A J[REDACTED] J[REDACTED] is her youngest son.
13 Q How old is J[REDACTED] J[REDACTED] today?
14 A Four.
15 Q And how old was J[REDACTED] J[REDACTED] when Echo died?
16 A One and a half.
17 Q It's a bit blurry, but Exhibit 106. Who's Echo with
18 in this photograph?
19 A That's J[REDACTED] and J[REDACTED].
20 Q And those are her older of the five children that
21 she had --
22 A Yes.
23 Q -- at the time that she died; right?
24 State's Exhibit 107. Who's that?
25 A Echo and J[REDACTED] J[REDACTED].

1 Q State's Exhibit 109. Who do you see depicted in
2 that photograph?
3 A J████, J████, J████, and J████ Je████.
4 Q Defendant's Exhibit B. Pictured in that photo Echo
5 with four of her five children?
6 A Yes.
7 Q That's J████, J████ --
8 A J████, J████, J████, J████ Je████.
9 Q Who's -- which child is missing from this?
10 A Cupcake, J████.
11 Q The youngest?
12 A Yes.
13 Q When was she born?
14 A I don't know the exact day, but she was born -- yes,
15 I do. ██████████.
16 Q And how old was she when Echo died?
17 A Six months.
18 Q Who's this man in the picture?
19 A Troy.
20 Q What's Troy's last name?
21 A White.
22 Q Do you see Troy White in the courtroom here today?
23 A Yes.
24 Q Will you please point to him and identify a piece of
25 clothing that he's wearing today.

1 A Right there. Black jacket and a checkered tie.

2 Q Of the three guys is he the one in the middle?

3 A The middle, yes.

4 MR. ROGAN: Thank you.

5 Your Honor, may the record reflect the

6 identification of the defendant?

7 THE COURT: Record will so reflect.

8 BY MR. ROGAN:

9 Q Exhibit 108. Who's that dog that Echo's with?

10 A Spencer.

11 Q Spencer? Is that a chihuahua?

12 A Yes.

13 Q Showing you again State's Exhibit 109, was Echo a

14 good mother?

15 A Yes.

16 Q What kind of things would she do with her children?

17 A Almost everything. Fingerpaint, she would paint

18 herself. I used to call her my GT, my giant toddler, because

19 she was just like them. She was silly and goofy. They'd play

20 soccer, basketball, football, trampolines, everything

21 together.

22 Q Did the children play organized sports?

23 A Yes. They were in a football league.

24 Q What about school? Was Echo involved in their

25 schooling?

1 A Yes.

2 Q What kind of things would she do there?

3 A She would go to all the PTA stuff. She wouldn't

4 miss any of their dramas, any of their plays. She wouldn't

5 miss any functions they had at school. And she always would

6 make sure she posted it everywhere to make sure her friends

7 could go, as well.

8 Q Did she take those children to church, too?

9 A Yes.

10 Q And were they very involved in the church?

11 A Yes.

12 Q Is that the Potter's House Church?

13 A Yes.

14 Q Are you a member of the Potter's House Church?

15 A No.

16 Q Have you ever been a member of that church?

17 A No.

18 Q Do you know when your daughter met the defendant?

19 A She was pregnant with J [REDACTED], so I don't -- right now

20 I don't recollect the year. But she was pregnant with J [REDACTED],

21 and she started going to the Potter's House.

22 Q So J [REDACTED] was born in [REDACTED] of 2004, so either in 2003

23 or 2004?

24 A Yes.

25 Q Were they married quickly after they met?

1 A No.

2 Q How soon after they met?

3 A I want to say six to eight months.

4 Q Think some people would say that's fairly quickly.

5 Wouldn't you agree?

6 A Yes.

7 Q Okay.

8 A Fairly quickly, yes.

9 Q And were Echo and her children and the defendant

10 members of that church up and through the end of 2011, the

11 beginning of 2012?

12 A No.

13 Q Were there times when they weren't members of that

14 church?

15 A Yes.

16 Q And in 2012 had Echo and the defendant left Potter's

17 House Church?

18 A Yes.

19 Q Do you know what kind of things that they did

20 together after they left -- well, let me rephrase.

21 You're aware that there are strict codes of conduct

22 in the Potter's House Church?

23 A Yes.

24 Q Things like not cussing; right?

25 A Yes.

1 Q Not watching television?
2 A Yes.
3 Q Not drinking?
4 A Yes.
5 Q Not getting tattoos?
6 A Yes.
7 Q Did they begin to engage in those behaviors after
8 they left the church in late 2011, early 2012?
9 A Yes.
10 Q Both Echo and the defendant?
11 A Yes.
12 Q Did Echo have any tattoos before she joined the
13 church?
14 A Yes.
15 Q And she got a fair number of them after she left;
16 correct?
17 A Yes.
18 Q Showing you State's Exhibit 9, her wrist. There's a
19 tattoo there; correct?
20 A Yes.
21 Q Do you know what that says?
22 A "Once upon a time."
23 Q And then on State's Exhibit 8 there's a tattoo
24 there, correct, some Chinese characters?
25 A Yes.

1 Q So she had a fair number of them.

2 A Yes.

3 Q In 2012 did Echo confide in you about marital

4 problems that she was having?

5 A Yes.

6 Q Did you talk with her often?

7 A Yes.

8 Q How would you -- would you do this in person, or

9 would you do this over the phone or over text message?

10 A All of the above.

11 Q All of the above. And when did she start confiding

12 in you about her marriage?

13 A March of 2012.

14 Q And based upon your conversations with her is it

15 fair to say that there were things that were going on between

16 the two of them on both sides that caused her problems in the

17 marriage?

18 A Yes.

19 Q Did they ever become physically separated?

20 A Yes.

21 Q When was that?

22 A May.

23 Q End of May, beginning of June?

24 A Possibly.

25 Q Okay. And at the time that she became separated did

1 you know a person by the name of Joe Averman?

2 A Yes.

3 Q How did you know him?

4 A I have to take that back. No.

5 Q You didn't know Joe at the time they separated?

6 A No, I did not.

7 Q When did you learn about Joe?

8 A When I was on Facebook I learned about Joe.

9 Q Tell me how you learned about Joe.

10 A I saw the text and her commenting on his statuses.

11 Q I see. So public Facebook communications --

12 A Yes.

13 Q -- between Echo and Joe you saw?

14 A And many more, yeah. And I asked her about those.

15 Q And at the time that -- when you learned about that

16 and at the time that you learned that Echo and the defendant

17 has separated where were you living?

18 A Here in Las Vegas.

19 Q Are you married?

20 A Yes.

21 Q And were you living with your husband at the time?

22 A Yes.

23 Q And Echo had five children that she was caring for

24 at that time; right?

25 A Yes.

1 Q Did you invite them to live with you?
2 A Yes.
3 Q Echo and all the children?
4 A Yes.
5 Q Why?
6 A I was scared for her.
7 Q Because of her relationship with Joe in light of the
8 fact that she was still married to the defendant?
9 A Yes.
10 Q On the night of July 26th of 2012, it's the day
11 before Echo died, were you texting or communicating with Echo
12 about what she was doing?
13 A Yes.
14 Q What was she doing that night?
15 A Braiding her hair.
16 Q It's a long process?
17 A It takes her 24 hours.
18 Q Was she sending you pictures as she did that?
19 A Yes.
20 Q On July 27th did you continue to communicate with
21 her about her progress in braiding her hair?
22 A Yes.
23 Q Did she send you more pictures?
24 A Yes.
25 Q Okay. Do you remember what you were doing on the

1 morning of July 27th --

2 A Yes.

3 Q -- when you learned that the defendant had shot and
4 killed your daughter?

5 A Yes.

6 Q What were you doing?

7 A Texting Echo.

8 Q What were you texting her?

9 A We were texting about her hair, and we were texting
10 about possibly having lunch later. And then all of a sudden
11 the texts stopped.

12 Q And did you continue to try to text her?

13 A Yes.

14 Q What did you say?

15 A You're not answering me, you're scaring me, why
16 aren't you answering, what's wrong.

17 Q Okay. And at some point did you learn in fact that
18 something terrible had happened at your daughter's house at
19 325 Altamira?

20 A Yes.

21 Q How did you learn about it?

22 A A friend of Echo's called me and said that she heard
23 there was a shooting on Alta.

24 Q Based upon that information did you go to Echo's
25 house?

1 A Immediately.

2 Q What did you see there when you arrived?

3 A When I turned the corner I saw yellow tape,
4 ambulances, helicopters, CSI, a ton of cops. Just a lot of
5 activity.

6 Q Do you remember about what time it was that you
7 arrived at Echo's house?

8 A I want to say it was close to 11:00 o'clock, 11:30,
9 noon.

10 Q So sometime around then.

11 A Yes.

12 Q If the 911 call had come in at 11:50 a.m., do you
13 think it could have been sometime after that that you actually
14 arrived?

15 A Yes. Absolutely.

16 Q Is it fair to say some of these thing about that day
17 you don't want to remember?

18 A Yes.

19 Q Going to ask you some questions about that day that
20 you may have difficulty explaining, okay?

21 A Okay.

22 Q When you arrived and you saw all those police and
23 CSI and helicopters what did you feel?

24 A Really?

25 Q Yes.

1 A I just knew she was gone. I felt it. I knew she
2 was gone. And I was scared to death for my grandkids. I
3 didn't know where they were. And then someone told me they
4 were in the house right behind us where we were standing.

5 Q Did you communicate with a police who was on scene?

6 A No. There was a woman from CPS already there. She
7 showed up shortly after. I ran to the house, and the officer
8 stopped me. And nobody said a whole lot. And I kept yelling,
9 where's my grandkids. And then I found out where they were.

10 Q Did you want to know where your daughter Echo was?

11 A I already knew. I knew.

12 Q Did someone tell you where she physically was at
13 that point?

14 A I said, I need to see my daughter, where is she.
15 They said, she's at UMC. And I believe it was an officer.

16 Q So you knew your grandkids were across the street --

17 A Uh-huh.

18 Q -- and your daughter was at UMC. What did you do at
19 that point?

20 A I said, is she still alive; and they said, yes, you
21 need to be there to hold her hand. So my husband and I
22 immediately drove to UMC.

23 Q And who told you that she was still alive?

24 A An officer.

25 Q But you didn't know if she was still alive at that

1 point?

2 A In my heart I felt just maybe she might be.

3 Q Or hoping that she would be?

4 A Yeah.

5 Q Did you go to UMC?

6 A Yes.

7 Q What did you do when you arrived there?

8 A I ran through the emergency room and went straight
9 up to the desk and said, I need to see my daughter Echo. And
10 there was police everywhere.

11 Q Were you allowed to see her?

12 A No.

13 Q Why not?

14 A They told me to wait.

15 Q What happened after you waited?

16 A Just a couple minutes went by and somebody came out
17 and asked me to come into a room and talked to me. And I
18 said, okay. And she told me Echo had passed, that she didn't
19 make it.

20 Q And that was obviously devastating for you.

21 A Yes.

22 Q Do you have any other children?

23 A No.

24 Q Echo was your only daughter?

25 A Yes.

1 Q After Echo was killed -- she had five children.
2 Where did those children go?

3 A Immediately they stayed with the people across the
4 street for several, several hours, I believe. And then after
5 that they went to my daughter's father's house.

6 Q What's his name?

7 A Donald Lucas.

8 Q Echo's dad?

9 A Yes, Echo's father.

10 Q And he took all five?

11 A He took all five immediately.

12 Q Is he married?

13 A No longer.

14 Q Was he married at the time?

15 A Yes.

16 Q Okay. Did the children -- how long did the children
17 stay with Don Lucas?

18 A All five, or separate?

19 Q That first time, all five.

20 A They were separated immediately. I mean, after one
21 week to the day of the shooting.

22 Q All right. So where did each one go? Let's start
23 with J [REDACTED]. Where did he go?

24 A Friday, the following Friday J [REDACTED] was called -- CPS
25 -- Don called CPS and called the police on J [REDACTED].

1 Q For what reason?

2 A He tried to hang himself with an electrical cord.

3 Q J [REDACTED] did?

4 A Yes.

5 Q So where did J [REDACTED] have to go?

6 A He had to go to CPS -- I'm sorry, no. He went to

7 Child Haven. And then from Child Haven he stayed there and

8 had to go to a mental hospital.

9 Q And how long was he in that hospital?

10 A I want to say three weeks.

11 Q Three weeks. Did you visit him there?

12 A Yes.

13 Q And after he was released from the hospital where

14 did he go?

15 A Back to Child Haven.

16 Q How long was he in Child Haven?

17 A He was in Child Haven I want to say approximately

18 two weeks.

19 Q And just for the record, Child Haven is the place

20 that the County runs where children are taken by CPS; correct?

21 A Yes.

22 Q And where did he go after that?

23 A They found another foster home with Ms. Kim. And he

24 went to another foster home because Papa Don couldn't handle

25 him at the time.

1 Q Because of J[REDACTED]'s behavior?
2 A Yes.
3 Q After the murder?
4 A Yes.
5 Q Now, at some point did J[REDACTED] come and live with you?
6 A J[REDACTED] did not come live with us at -- until
7 recently, like about six months ago.
8 Q And between being put in foster care maybe five or
9 six weeks after your daughter's death until J[REDACTED] was placed
10 in your care was he in and out of different foster homes?
11 A Yes.
12 Q What about J[REDACTED]? Who had custody of J[REDACTED] in those
13 intervening -- or I should say after the death of Echo?
14 A Temporary custody was placed in my ex-husband's
15 hands, my daughter's father, Don Lucas.
16 Q And did J[REDACTED] eventually come and live with you?
17 A He stayed with us three, four days a week, and then,
18 yes, he lived with us from that point on.
19 Q And how long has J[REDACTED] been living with you, then?
20 A Two and a half years.
21 Q And what about J[REDACTED], the middle son? How long has
22 J[REDACTED] been living with you?
23 A Two and a half years.
24 Q And how old is J[REDACTED] now?
25 A J[REDACTED]'s eight.

1 Q So the youngest two children are J[REDACTED], a boy, and
2 J[REDACTED] --
3 A Yes.
4 Q -- who was six months at the time that Echo was
5 killed?
6 A Yes.
7 Q And who are they living with?
8 A Papa Don, Echo's father.
9 Q And have they been living with Papa Don, Don Lucas,
10 since Echo's death?
11 A Yes.
12 Q Do the children that you watch, J[REDACTED], J[REDACTED] and
13 J[REDACTED], get to interact with J[REDACTED] and J[REDACTED] fairly often?
14 A Yes.
15 Q Is it difficult for them being separated from their
16 siblings?
17 A Yes.
18 Q You mentioned some difficult times that J[REDACTED] had
19 had subsequent to his mom's death. Was J[REDACTED] a good student
20 prior to his mom's murder?
21 A Yes.
22 Q Or death. Yes?
23 A Yes.
24 Q What about afterwards?
25 A No.

1 Q What kind of things happened?

2 A J [REDACTED] was kicked out of schools. He was RPC-ed,
3 which is required parent conference. The police were called
4 on him at school.

5 Q For behavioral issues?

6 A Yes.

7 Q And did he have any of that before his mom's death?

8 A No.

9 Q What about J [REDACTED]? Did you notice anything different
10 about J [REDACTED]'s schoolwork after his mom's death?

11 A No.

12 Q Did J [REDACTED] have any trouble sleeping at night?

13 A Yes.

14 Q Tell me about that.

15 A J [REDACTED] had many, many nightmares. He would wake --
16 I'm sorry.

17 Q Go ahead.

18 A Many, many nightmares. He would wake in the night
19 screaming, coming downstairs, and I thought he was awake once
20 he got down the stairs, but he put his fingers to my head and
21 said, bang, bang, Gigi, you're dead.

22 Q Do you mean sleepwalking?

23 A Yes.

24 Q Okay. How often do you think that he had nightmares
25 per week after his mom's death?

1 A At least three to four.

2 Q And sleepwalking, how many instances of that did you
3 see?

4 A Many. Many.

5 Q But that one time with the gun, that was one time?

6 A No.

7 Q Was it -- how many times do you think it happened?

8 A There was many times. I want to estimate -- is it
9 proximately I want to say? Fifteen, twenty.

10 Q Immediately after J[REDACTED]'s mom died did J[REDACTED] have
11 difficulty even getting to sleep?

12 A Yes.

13 Q Tell me about that.

14 A When he would stay with us he would wait till my
15 husband came home, because he was afraid to go to sleep.

16 Q Based upon the changes in J[REDACTED] and J[REDACTED]'s behavior
17 did you have them seek counseling?

18 A Yes.

19 Q Is J[REDACTED] still in counseling?

20 A J[REDACTED] is no longer in counseling.

21 Q How long was in counseling for?

22 A About 15 months.

23 Q Is his behavior better now since he received
24 counseling than it was initially after the murder, death?

25 A It's getting better. It is getting better.

1 Q Is he still having some of the nightmares?
2 A Yes.
3 Q When was the last time?
4 A The last time was when he testified.
5 Q What about J[REDACTED]? Is he still seeking counseling,
6 too?
7 A Yes.
8 Q Is he still currently in counseling?
9 A Yes.
10 Q Has he been receiving counseling ever since his
11 mom's death?
12 A Yes.
13 Q What are they receiving counseling for?
14 A PTSD.
15 Q Posttraumatic stress disorder?
16 A Yes.
17 Q The last child that you have with you is J[REDACTED]. You
18 said he's now eight years old.
19 A Yes.
20 Q Did he have any behavioral changes after his mom's
21 death?
22 A Yes.
23 Q What can you tell us about that?
24 A J[REDACTED] started wetting the bed, wetting his pants.
25 Q Did he ever engage in that behavior before Echo's

1 death?

2 A No.

3 Q Is he still wetting his pants to this day?

4 A Very rarely.

5 Q So he's a bit better?

6 A Yes.

7 Q Has he ever been placed in counseling?

8 A Yes.

9 Q And is he still in counseling?

10 A No.

11 Q How long was he in counseling for?

12 A About 15 months.

13 Q Does J [REDACTED] [sic] ever have any nightmares or night
14 terrors like J [REDACTED]?

15 A Can you repeat that.

16 Q Does J [REDACTED] have any nightmares like J [REDACTED] did?

17 A No.

18 MR. ROGAN: Court's indulgence.

19 BY MR. ROGAN:

20 Q Do you get to see the youngest two children very
21 often -- tat's J [REDACTED] and J [REDACTED] -- yourself?

22 A Not as often as I'd like.

23 Q Are you in a position to comment on whether they've
24 experienced any changes in their behavior since 2012?

25 A No.

1 MR. ROGAN: Thank you.
2 I'll pass the witness, Your Honor.
3 THE COURT: Cross-examination.
4 MR. COFFEE: Court's indulgence.
5 THE COURT: Sure.
6 CROSS-EXAMINATION
7 BY MR. COFFEE:
8 Q 'Morning, Ms. Gaines.
9 A Hi.
10 Q It's very difficult to testify, I would imagine.
11 Yes?
12 A Yes.
13 Q Okay. If you need to take a break at any point, you
14 need to slow down, if I ask anything that's confusing, you
15 stop me, okay?
16 A Okay.
17 Q And we've seen each other throughout the course of
18 this case enough that --
19 A Yes.
20 Q -- you know you can do that; right?
21 A Yes. Thank you.
22 Q Okay. Now, you became aware of marital problems
23 between Troy and Echo around March; is that right?
24 A Yes.
25 Q And that's about the time -- you hadn't met Joe

1 Averman at that point; right?

2 A No.

3 Q But you knew that your daughter had started a
4 relationship with Mr. Averman?

5 A No.

6 Q Do you remember telling a coroner's investigator
7 that your daughter and Troy had been happy until she met her
8 new boyfriend?

9 A No.

10 Q Would looking at a copy of a report from a coroner's
11 investigator maybe help you remember whether you'd said that
12 or not?

13 A Okay.

14 MR. COFFEE: Okay. Permission to approach.

15 THE COURT: You may.

16 MR. COFFEE: Coroner's investigator report, page 3.

17 THE WITNESS: No. No.

18 BY MR. COFFEE:

19 Q Do you remember saying that?

20 A No.

21 Q Okay. You offered to let Echo move into your house?

22 A Yes.

23 Q Until she could work things out with Troy; is that
24 accurate?

25 A No.

1 Q Remember telling the coroner's investigator that it
2 was until she could work things out with Troy?

3 A No.

4 Q Would looking at a copy of the report help refresh
5 your recollection about that?

6 A No.

7 Q There was talk about tattoos and some other
8 activities. You remember that?

9 A Yes.

10 Q Do you remember telling a coroner's investigator
11 that that started after she'd met her new boyfriend?

12 A No.

13 Q Do you remember speaking with a coroner's
14 investigator in regards to this matter?

15 A No.

16 Q You were traumatized by this obviously.

17 A Yes.

18 Q Do you remember saying that in the beginning the
19 relationship between Troy and Echo appeared wonderful?

20 A Yes.

21 Q And that Troy had been a wonderful father to the
22 children?

23 A Yes.

24 Q And they'd been happy, she had had the best of
25 everything, at least early on?

1 A Say that again, please.

2 Q That they'd been happy together and she'd had the
3 best of everything, I think is how you described it; right?

4 A Yes.

5 Q Did you say that it was just the last six weeks that
6 you began noticing problems, problems with the boyfriend? Do
7 you remember anything like that like?

8 A No, I don't recall.

9 Q Did your daughter ever introduce you to Joe Averman?

10 A I'm sorry. I didn't hear you.

11 Q Yes. Did your daughter ever introduce you to Joe
12 Averman?

13 A Yes.

14 Q Was that -- when was that?

15 A It was after she had left Troy.

16 Q And you're aware that Troy stayed there on the
17 weekends?

18 A Yes.

19 Q The children, you said that the three oldest
20 children have been in counseling.

21 A Yes.

22 Q The two youngest you don't know for certain?

23 A No.

24 Q Is that right? I'm sorry. I asked it --

25 A Yes, you're right.

1 Q Okay. And did J [REDACTED] stay with someone named Dorothy
2 Long for a while?

3 A Yes.

4 Q Did you ever speak with Dorothy Long about J [REDACTED]?

5 A Yes.

6 Q J [REDACTED]'s now stayed with you for some time?

7 A Yes.

8 Q You said that you'd learn about Joe Averman on
9 Facebook?

10 A I'm sorry?

11 Q You'd learned about Joe Averman on Facebook? From
12 Facebook, that was how you learned about it the first time?

13 A Yes.

14 Q Okay. So just so we're clear, do you remember what
15 the post was or what the post said?

16 A No. My daughter and I were always on Facebook
17 together.

18 Q Okay.

19 A And we followed each other's posts.

20 Q Okay. And you texted, too; right?

21 A Yes.

22 Q Your daughter texted quite a bit, didn't she?

23 A Always.

24 Q Was that her standard mode of communication, texting
25 back and forth?

1 A And telephone calls. But mostly texting.

2 Q Mostly texting. Were you around the house enough to

3 know -- right way to put this -- what hours everybody kept

4 around the house? Does that make sense?

5 A Yes.

6 Q Okay. Is it fair to say that Troy worked at Yesco

7 Sign Company --

8 A Yes.

9 Q -- for the entire relationship essentially; correct?

10 A Yes.

11 Q And he kept some early-morning hours, 3:00 a.m. or

12 so; is that right?

13 A I don't want to say yes or no. I do believe that

14 they changed periodically.

15 Q Okay. And we're not talking about any specific

16 date. The point is it wasn't a 9:00-to-5:00 job necessarily.

17 A Yes.

18 Q Is that fair?

19 A Yes.

20 Q Okay. And with texting and these voicemails

21 sometimes did that -- you know, there are some people who only

22 like to take phone calls from say 8:00 in the morning till

23 5:00 at night. Was that your daughter, or was she at all

24 hours texting and doing that kind of thing?

25 A All the time.

1 Q All the time. Could be -- could be midnight even;
2 right?
3 A Sometimes.
4 Q Just depended on if she was up or what was going on
5 or if something --
6 A Yes.
7 Q -- caught her attention; right?
8 A Yes.
9 MR. COFFEE: Thank you for coming in for us, Amber.
10 THE WITNESS: Thank you.
11 THE COURT: Any redirect?
12 MR. ROGAN: Yes. Court's indulgence.
13 THE COURT: While you're waiting can you come up and
14 review the jury questions.
15 (Bench conference)
16 MR. ROGAN: We're fine with this. I think you just
17 have to answer with a yes or no, because it's going to open
18 the door to --
19 MS. MERCER: So if you could just preface it with
20 telling her that she must answer only yes or no.
21 MR. COFFEE: We're going to object for the record.
22 MR. ROGAN: What's the basis?
23 MR. COFFEE: [Inaudible] foundation for the
24 speculation by the direct.
25 MR. ROGAN: I think the defense is objecting to this

1 one.

2 THE COURT: Are you objecting?

3 MR. COFFEE: Yeah. The second portion.

4 THE COURT: Sustained. 'Bye.

5 (End of bench conference.

6 THE COURT: Ma'am, a question from the jury.

7 THE WITNESS: Okay.

8 THE COURT: "Were you Facebook friends with Troy,

9 also?"

10 THE WITNESS: No.

11 THE COURT: Any followup, counsel?

12 REDIRECT EXAMINATION

13 BY MR. ROGAN:

14 Q You were asked where the defendant was a wonderful

15 dad. Do you remember that question?

16 A Yes.

17 Q And your answer was yes?

18 A Yes.

19 Q At the beginning of 2012 did you learn that he may

20 not be such a wonderful husband to Echo?

21 A Absolutely, yes.

22 Q Is it your opinion that things got worse between

23 Troy and Echo after June 2012?

24 A Yes.

25 Q Were you privy, were you aware of telephone

1 conversations, did you overhear any telephone conversations
2 between the defendant and Echo?

3 A Yes.

4 Q Was he a nice guy on that when he was talking to her
5 about this?

6 A Absolutely not.

7 Q So that informs your decision about the
8 relationship; correct?

9 A Yes.

10 Q What about texting? Were you aware that the
11 defendant was texting Echo --

12 A Yes.

13 Q -- even while they were separated?

14 A Yes.

15 Q Do you know how often he'd be texting her?

16 A When she was with me?

17 Q Yes.

18 A Constant basis.

19 Q Going back to those tattoos again, showing you
20 State's Exhibit 103, picture of the defendant, Troy White;
21 right?

22 A Yes.

23 Q And this picture has already been identified as
24 being taken in May of 2012; right?

25 A Yes.

1 Q So do you see tattoos in that photo?
2 A Yes.
3 Q So tattoos were placed on the defendant's body
4 before June of 2012?
5 A Yes.
6 Q Have you formally adopted those children?
7 A Two of them so far.
8 Q Which ones?
9 A J [REDACTED] and J [REDACTED].
10 Q When can you adopt J [REDACTED]?
11 A In June.
12 MR. ROGAN: Pass the witness.
13 THE COURT: Anything else, Mr. Coffee?
14 RECROSS-EXAMINATION
15 BY MR. COFFEE:
16 Q Some of the texts that Troy had sent to Echo during
17 the separation were mean, weren't they?
18 A Yes.
19 Q Nasty?
20 A Yes.
21 Q Ornerly? Yes?
22 A Yes.
23 Q Do you know if he wanted the relationship to end or
24 if he wanted the relationship back together?
25 A I could not tell because of the verbal abuse I heard

1 over the phone and the texts.

2 Q Okay.

3 A To me, no.

4 Q To you, no. Did you have that discussion with your
5 daughter that Troy wants to get back together very
6 desperately? Did you ever have that discussion with your
7 daughter?

8 A Yes.

9 Q And she said that Troy wanted desperately to get
10 back together?

11 A No.

12 MR. COFFEE: She didn't. Okay. Thank you. Nothing
13 further.

14 THE COURT: Anything further?

15 MR. ROGAN: Nothing from the State, Your Honor.

16 THE COURT: Thank you, ma'am. We appreciate your
17 time. Have a nice afternoon.

18 Ladies and gentlemen, at this time we're going to
19 take our morning recess. During this recess you're admonished
20 not to talk or converse among yourselves or with anyone else
21 on any subject connected with this trial, or read, watch, or
22 listen to any report of or commentary on the trial or any
23 person connected with this trial by any medium of information,
24 including, without limitation, social media, texts,
25 newspapers, television, the Internet, and radio, or form or

1 express any opinion on any subject connected with the trial
2 until the case is finally submitted to you.

3 We'll see you in about 10 minutes outside
4 Courtroom 14A.

5 (Court recessed at 11:00 a.m., until 11:07 a.m.)

6 (Jury is not present)

7 THE COURT: Mr. White, have you had a chance to talk
8 to Mr. Coffee about whether you're going to testify?

9 THE DEFENDANT: Not today.

10 THE COURT: But historically, sometime?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Under the Constitution of the United
13 States and under the Constitution of the State of Nevada you
14 cannot be compelled to testify in this case. You understand
15 that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You may at your own request give up this
18 right and take the witness stand and testify. If you do,
19 you'll be subject to cross-examination by the Deputy District
20 Attorney, and anything you may say, be it on direct or cross-
21 examination, will be subject of fair comment when the Deputy
22 District Attorney speaks to the jury in his or her closing
23 argument. Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: If you choose not to testify, the Court

1 will not permit the District Attorney to make any comments to
2 the jury because you've not testified. Do you understand
3 that?

4 THE DEFENDANT: [Inaudible].

5 THE COURT: If you don't testify, they can't make
6 any comment about that. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. If you elect not to testify, the
9 Court will instruct the jury, but only if your attorney
10 specifically requests, as follows. And -- substantially as
11 follows. "The law does not compel a defendant in a criminal
12 case to take the stand and testify, and no presumption may be
13 raised and no inference of any kind may be drawn from the
14 failure of a defendant to testify." Do you have any questions
15 about these rights?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: You are further advised that if you have
18 a felony conviction and more than 10 years has not elapsed
19 from the date you'd been convicted or discharged from prison,
20 parole, or probation, whichever is later, and the defense has
21 not sought to preclude that coming before the jury and you
22 elect to take the stand and testify, the Deputy District
23 Attorney in the presence of the jury will be permitted to ask
24 you the following questions. Have you been convicted of a
25 felony, what was the felony, when did it happen. However, no

1 details may be gone into. Do you understand those?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Thanks.

4 MR. COFFEE: Judge, we've got something outside the
5 presence.

6 THE COURT: Good. I'm listening.

7 MR. COFFEE: All right. There are -- in addition to
8 the text messages that were recovered from the iPhone of Echo
9 Lucas, the morning of the shooting there were two voice
10 messages that were left by the defendant and were recovered by
11 forensic people at Las Vegas Metropolitan Police Department.
12 They were sent -- if the Court gives me just a second -- right
13 in the midst of these 130 text messages that the State had put
14 up in opening, they said there's 130 text messages and various
15 phone calls made during that time, they are set right in the
16 mix of that. We are going to be offering the two voice
17 messages to provide context and in direct rebuttal to the
18 claim that the 130 text messages as a group during this period
19 of time are threats to Echo White, indication he was stalking
20 Echo White, that he wants to kill Echo White. And we've had
21 discussion after discussion about text message and what those
22 text messages might mean. This fills in the gap and gives the
23 complete story as to what's actually going on, and we're going
24 to be offering those audio -- those two audio recordings.
25 And, again, they are the morning of the shooting. One is one

1 minute and a half, another is two and a half minutes. I can
2 play them for the Court if the Court would like. Essentially
3 they say, please, please, I'd just like to reunite with you,
4 I'll be waiting for you. That's the 20-second paraphrase.

5 MS. MERCER: And, Your Honor, the State absolutely
6 objects to that. It's a hearsay statement of the defendant.
7 I don't get to cross-examine him if those statements come in.
8 If he wants to admit those, he should take the stand and admit
9 them.

10 The State hasn't introduced any portion of those
11 voicemails, and the only way that they come in as a completion
12 of a statement that's already been introduced is if I've
13 admitted any portion of them. We intentionally did not omit
14 -- or admit them.

15 Furthermore, there was never a claim that followed
16 the text messages he sent to her throughout the 26th and 27th
17 were berating and demeaning. We specifically indicated in our
18 opening that they started out with, "Echo, I love you. I want
19 to get back together with you," and then grew more angry the
20 closer in time to the murder. These two voicemails --

21 If I could finish, Mr. Coffee.

22 MS. MERCER: These two voicemails were placed at
23 5:00 a.m. and 9:00 a.m. The murder happened at 11:50 a.m.

24 THE COURT: Okay. Mr. Coffee, I don't see a basis
25 to admit these statements.

1 MR. COFFEE: The other thing that I think they're
2 admissible under is there's been a claim that they are
3 hearsay. That's the only objection that I hear that might be
4 appropriate at this point. And I think they go to the
5 defendant's state of mind. His state of mind leading up to
6 the shooting has been at issue since the beginning of the
7 case. The State put it as such. Again, we've seen video up
8 there in the State's opening, 130 texts, and we're talking
9 about texts going back for days. We have had claims and we
10 had claims from a detective -- particularly, Mr. Rogan had
11 asked the detective concerning this T.S. Eliot quote and if
12 that was an indication of intent. It happened well in advance
13 of any of these messages. These are the morning of.

14 So, again, I think they admissible to prove or to
15 show his state of mind and in direct rebuttal to show his
16 state of mind.

17 By the way, I would also inform the Court there's no
18 objection as to authenticity. Before trial we talked about
19 the records from the cell phone being authentic. There's no
20 problem with laying that foundation that they were sent.

21 THE COURT: No. I understood that part.

22 MR. COFFEE: Okay. Just so I was clear on that.

23 MS. MERCER: As to his argument that it goes to the
24 defendant's state of mind, the State out of fairness to the
25 defendant introduced the entire string of conversations

1 between him and his ex-wife, Echo Lucas White, beginning on
2 July 17th of 2012 and ending at that last text message where
3 he sent her a message at 11:26 a.m. There are plenty of
4 messages in there that convey his state of mind that he loved
5 her and he wanted to get back together with her. The
6 voicemail statements are hearsay, and they're cumulative at
7 this point.

8 THE COURT: The objection is sustained.

9 MR. COFFEE: We ask to offer it as a Court's
10 exhibit.

11 THE COURT: Sure. Well, you have to, since you're
12 proposing it, so we've got it as part of your record.

13 MR. COFFEE: And if I might, could I get the basis
14 on the record? Permission to approach?

15 THE COURT: The statements by the defendant are
16 hearsay.

17 MR. COFFEE: And as to the defense's position that
18 they [inaudible] state of mind?

19 THE COURT: There's significant additional evidence
20 related to the defendant's state of mind in the other text
21 messages that have been admitted, and the defendant is not
22 subject to cross-examination related to the content of those.
23 If the defendant were to testify, I would have a different
24 issue. But he's -- at this point I don't think he is.

25 MR. COFFEE: And as to the hearsay exception with

1 state of mind, again, I think -- I think the Court should at
2 least listen to the two statements. I would ask the Court to
3 consider that.

4 THE COURT: I'm happy to listen to them. Play them.

5 MR. COFFEE: Permission to approach?

6 THE COURT: I can hear it.

7 (Defendant's Proposed Exhibit 00 played)

8 MR. COFFEE: That is the first. That is one of two
9 -- there are two points specifically that I think are of
10 importance concerning 102. The State had posted a text
11 message about going to hell or sending you to hell without
12 much context around it. There's not context given in the rest
13 of the text messages. In this voice message he talks about
14 both being on their way to hell, okay. But it is followed
15 shortly after by talk of future plans, specifically, I will be
16 here waiting for you. So this is offered in addition to the
17 other reasons in direct rebuttal to the State's claim that
18 hell is waiting or hell is coming is some kind of direct
19 threat. And that was sent before this text message was sent.
20 So, again, it's offered in direct rebuttal for that.

21 THE COURT: The second voicemail?

22 MR. COFFEE: Court's indulgence.

23 THE COURT: And your sound, by the way, works much
24 better than the D.A.'s, Mr. Coffee.

25 MR. COFFEE: Well, I feel good about that.

1 And then I'm going to have to rely on this, because
2 I thought both of them downloaded, and it looks like only the
3 first downloaded. Court's indulgence. I need to get onto
4 [unintelligible] for just a moment, which may or may not be
5 workable.

6 THE CLERK: For the record, Judge, they're 17 and
7 18, Court's exhibits.

8 THE COURT: Well, they need to be defendant's
9 proposed, not Court's exhibits. They need to be defendant's
10 proposed.

11 MR. COFFEE: Now in the middle of argument can I
12 trouble you to play the other one?

13 MR. ROGAN: Do you have it?

14 MR. COFFEE: After bragging on my sound, the other
15 file downloaded. So we have to use the State's.

16 THE COURT: Okay. So these are OO and PP?

17 THE CLERK: Yes.

18 MR. COFFEE: And as defendant's proposed they
19 automatically become part of the record?

20 THE COURT: As a Court's exhibit sometimes that's
21 problematic.

22 MR. COFFEE: I just wanted to make sure we had them
23 someplace.

24 MR. ROGAN: It's not working.

25 (Pause in the proceedings)

1 MR. ROGAN: Is it the one at 9:41, Scott?
2 MR. COFFEE: Yeah.
3 MS. MERCER: So the first one was the 5:00 a.m. one?
4 MR. COFFEE: Yes.
5 THE COURT: The first one was 00.
6 MR. COFFEE: We've got an exhibit that doesn't play.
7 I make sure we have working copies.
8 THE COURT: Luckily, it's on our video, so --
9 (Defendant's Proposed Exhibit PP Played)
10 THE COURT: Is that the conclusion of the message?
11 MR. COFFEE: That's the conclusion of the message.
12 And, again, for the same reason as with the other message,
13 it's an indication of future plans, which seems to be contrary
14 to the text messages that were going back and forth.
15 We also had testimony from the mother of the victim
16 that Echo used a combination of text and telephone calls to
17 communicate. So this would be a standard mode of
18 conversation.
19 THE COURT: Okay. Anything else?
20 MS. MERCER: Your Honor, I still stand by the fact
21 that this is cumulative. There are text messages wherein the
22 defendant indicates it's his desire to get back with her, that
23 he loves her, that he's hurt, that he's upset that she won't
24 answer the phone, that he's upset that she won't come back to
25 him right this second, that she -- if she really loved him she

1 would end her relationship with Joe and come back to him right
2 now, he's not going to sit around and wait for three days.
3 It's all covered -- everything he said in that voicemail is
4 covered by these text messages.

5 Furthermore, if Mr. Coffee is representing somehow
6 to the Court that the 5:30 a.m. voicemail places into context
7 the text sent at 10:06 a.m., I have a difficult time believing
8 that, because there were dozens of text messages between that
9 voicemail and the 10:06 a.m. text message in which he says,
10 "Get ready for hell."

11 THE COURT: Okay. So I've already ruled. I've
12 listened to them. I don't change my mind. The objection is
13 sustained.

14 So anything else before we get our next witness in?

15 MR. COFFEE: No. And the Court said they would
16 reconsider if Mr. White testified.

17 THE COURT: Absolutely. Because then he would be
18 subject to cross-examination related to those.

19 MS. MERCER: Thank you, Your Honor.

20 MR. COFFEE: And that's going to -- I have to
21 contemplate that a little bit.

22 THE COURT: Well, but that was why I counseled him,
23 so you guys can have that discussion.

24 MR. COFFEE: I understand.

25 THE COURT: Anything else before I have my next

1 witness come in?

2 MR. ROGAN: May I just approach your clerk to return
3 the defense exhibit?

4 THE COURT: You may.

5 MS. MERCER: And may I approach and get things as I
6 need, Your Honor?

7 THE COURT: You may. Who's your next witness?

8 MS. MERCER: It's Brad Burghuis.

9 THE COURT: Bring my jury.

10 And I don't know if you guys know, but my practice
11 is before I ask you if you want to rest I will encourage you
12 to meet with the clerk to make sure that all of the exhibits
13 that you think are in evidence are in fact in evidence.

14 MS. MERCER: Thank you.

15 THE COURT: Okay. So if this is your last witness,
16 I would encourage you to do that. You don't have to do it
17 right now, but --

18 (Jury reconvened at 11:24 a.m.)

19 THE COURT: Counsel stipulate to the presence of the
20 jury?

21 MS. MERCER: Yes, Your Honor.

22 THE COURT: You may be seated. Your next witness.

23 MS. MERCER: Your Honor, the State calls Brad
24 Berghuis.

25 THE COURT: Thank you.

1 BRADLEY BERGHUIS, STATE'S WITNESS, SWORN
2 THE CLERK: Thank you, please be seated. And please
3 state and spell your name for the record.
4 THE WITNESS: My name is Bradley Berghuis.
5 B-R-A-D-L-E-Y B-E-R-G-H-U-I-S.
6 THE COURT: Sir, there's water in the pitcher,
7 there's M&Ms in the dispenser, and if you should need some
8 coffee, the marshal can get you some.
9 THE WITNESS: I'm fine.
10 THE COURT: You may proceed.
11 MS. MERCER: Thank you, Your Honor.
12 DIRECT EXAMINATION
13 BY MS. MERCER:
14 Q Sir, where are you currently employed?
15 A Las Vegas Metropolitan Police Department.
16 Q In what capacity are you currently employed with
17 Metro?
18 A As a police officer.
19 Q Where are you currently stationed?
20 A I'm currently assigned at the airport.
21 Q And how long have you been in that position?
22 A Just over a year.
23 Q Prior to being assigned to the airport, where were
24 you assigned within Metro?
25 A I was a detective assigned to the Computer Forensics

1 Lab and a member of the Secret Service Task Force.

2 Q What is the Computer Forensic Lab?

3 A What is the Computer Forensics Lab?

4 Q Yes. What do you do there?

5 A We actually collect, preserve, analyze and then

6 disseminate reports regarding digital evidence.

7 Q What do you classify as digital evidence?

8 A That could be any device that contains digital data.

9 That can be anything from a digital camera to sophisticated

10 computer systems, mobile phones, etcetera.

11 Q You also mentioned that you were a member of the

12 Secret Service Task Force. What was -- what were your duties

13 within that task force?

14 A It was the same, as a computer forensic examiner,

15 and I would perform federal exams for the feds.

16 Q For agencies like --

17 A Federal exams.

18 Q The Federal Bureau of Investigations or ATF, the

19 federal --

20 A I would work with the FBI, but typically I was doing

21 cases for the Secret Service.

22 Q How long were you assigned to the Computer Forensics

23 Unit?

24 A Eight years, approximately; just shy about a month.

25 Q What kind of education or training did you have to

1 undergo in order to obtain that position within Metro?

2 A Initially it started in December of '05, attending
3 a network hacking class and it continued throughout the eight
4 years I was there. Subsequent to that I went to a Department
5 of Defense training school in Maryland. I've been to numerous
6 training and seminars sponsored by the Secret Service. I've
7 attended classes regarding the tools that we use put on by
8 Guidance Software, AccessData, Cellebrite, Latern, and I've
9 acquired numerous certifications.

10 Q Any idea how many hours worth of education you've
11 undergone at this point?

12 A In excess of a thousand hours towards digital
13 forensics and in excess of four thousand hours for law
14 enforcement.

15 Q Have you ever testified in court regarding your
16 work in the Computer Forensics Unit or as to work that you
17 performed on the Secret Service Task Force?

18 A Yes. I've testified numerous times in state, local
19 and federal court and been certified in all as an expert.

20 Q I want to direct your attention to the specific case
21 that brings you to court today. Were you asked to conduct an
22 examination on a cell phone under Event Number 120727-1826?

23 A Yes.

24 Q And that was a white Apple iPhone?

25 A Yes.

1 Q When you're given a piece of evidence like that,
2 how do you -- what does doing an examination of that item of
3 evidence entail for you?

4 A Typically it follows with a service request and a
5 search warrant, unless a search warrant isn't required. And
6 then we recover the item typically from our local evidence
7 vault for a chain of custody. Once I acquire the phone, I
8 document its condition and its state and then I take the phone
9 and secure it in an RF blocking device. It's often referred
10 to as Faraday box, but all it's doing is it's preserving
11 the integrity of that phone by preventing any RF communication
12 from occurring between that phone and any external source.

13 Q If I could just interrupt you for a second. Why
14 is that important to the work that you do with the digital
15 evidence?

16 A Well, because as we know, mobile phones have
17 numerous communication protocols. They typically use
18 Bluetooth, they use wi-fi, and they also use cellular phone
19 technology, all of which have their own frequencies, and those
20 frequencies are accessible to that phone in our lab unless
21 they're blocked by this device.

22 Q Okay. So once you put it into the RF blocking
23 device, what do you do at that point?

24 A Typically the phone is dead, so we'll charge it
25 inside the box to prepare that phone for examination.

1 Q And then how do you actually go about conducting the
2 examination itself?

3 A Once the phone is charged we will -- or typically
4 we'll access the phone via the passcode, if it's known, or if
5 it's not known then we will attempt to bypass that code if
6 that phone is supported. At that point I will then manipulate
7 or modify the phone's settings to disable the wi-fi, Bluetooth
8 and cellular phone frequencies within the phone. Typically
9 you just put it in airplane mode.

10 Q Why do you do that?

11 A Again, to prevent any exchange of information or
12 data between that device and any external devices.

13 Q Okay. And then once you have placed it in airplane
14 mode or disabled Bluetooth and wi-fi, what do you do at that
15 point?

16 A At that point then it's a matter of determining what
17 forensic tools I'm going to use to access the data on the
18 phone and that usually requires dumping the internal contents
19 out and then performing an examination.

20 Q How do you determine which tool would best suit a
21 specific item of evidence?

22 A Typically the manufacturer provides a list, an
23 extensive list of the phones that they support, and then of
24 course we have our favorite tools that we prefer. In this
25 case there are two tools that we prefer using on this

1 particular brand of phone.

2 Q The brand being the Apple iPhone?

3 A The Apple iPhone. I believe it was model A1387 --

4 Q Okay.

5 A -- 4S.

6 Q That was going to be my next question. And you were
7 actually provided the pass code to this phone, correct?

8 A Yes, I was.

9 Q When you said that there were two favorite tools,
10 what would those tools be?

11 A Our primary tool in the lab is Cellebrite and we
12 also like using Lantern with IOS devices or Apple.

13 Q And are those just two different manufacturers of
14 software that you can use to access the contents of that phone
15 and duplicate it?

16 A Yes. Lantern is made by Katana Forensics and
17 Cellebrite is made by Cellebrite.

18 Q So you mentioned that normally what you would do is
19 export the contents of the phone and then access it?

20 A No, typically after the phone is placed in a safe
21 examining mode, which is airplane mode, I would connect it to
22 our hardware, a computer, or in this case Cellebrite has an
23 intermediary device that you can connect to the phone as well.
24 And in this case we used a laptop and a direct connect USB
25 cable to that phone, which then accesses the contents through

1 the software in a forensic manner.

2 Q Okay. And does the contents of the actual phone
3 remain the same throughout the examination process? In other
4 words, are you just duplicating it or are you actually
5 extracting it from the phone?

6 A There are minor changes to cell phones because we
7 power it on and I manipulate the configuration of that phone,
8 so there will be signs of that activity. But as far as
9 changing any of the data or contents on that phone, no.

10 Q Okay. So the text messages, the call history, the
11 photographs, all of that stuff remains the same?

12 A Yes.

13 Q You don't do anything to alter it?

14 A No.

15 Q How exactly do Cellebrite and Lantern work when
16 you're -- in other words, what format does that information
17 come out of the phone and into that program?

18 A Okay, once the phone is successfully connected and
19 acquired, we will do what we call a dump or basically an
20 extraction of the data within that phone, and then the
21 software will create a report from the extraction process.
22 The reports are typically created in an HTML or .pdf format.

23 Q And is that so that it's interactive, you can click
24 on various links on the left and access different contents on
25 the right?

1 A Yes, because printing it would be pretty insane.
2 Q Why?
3 A Because there would be several thousand pages of
4 documents that may not fit the page.
5 Q With regards to the examination that you did in this
6 case, did you use both Cellebrite and Lantern?
7 A Yes.
8 Q And did you generate .pdf or HTML reports?
9 A In Lantern I created an HTML document or report and
10 with Cellebrite I created .pdf and HTML.
11 MS. MERCER: Permission to publish, Your Honor?
12 THE COURT: You may.
13 BY MS. MERCER:
14 Q Officer, I'm publishing State's Exhibit 85. Does
15 this appear to be a Lantern report regarding text messages --
16 A Yes.
17 Q -- between the owner of the iPhone, which has been
18 identified as Echo White, and an individual by the name of
19 Troy?
20 A Yes.
21 Q And these date back from -- tell me if you need me
22 to zoom in at any time --
23 A No, I'm good.
24 Q -- July 14th, 2012, at 15:23:33?
25 A That's correct.

1 Q And that PDT means Pacific Daylight Time, correct?
2 A Correct.
3 Q All the way up to July 27th of 2012 at 11:26:16
4 Pacific Daylight Time?
5 A Yes.
6 Q 11:26 a.m.?
7 A Yeah.
8 Q And the number associated with that contact is
9 [REDACTED] [REDACTED]-9121?
10 A Yes.
11 Q Okay.
12 A That Pacific PDT, I'm not sure that's going to be
13 accurate for -- I have to see a date after November to see if
14 it still says PDT to be sure that means daylight time --
15 Q Okay.
16 A -- but it could be. That date is daylight time,
17 though.
18 Q And then -- oh, actually, what does this red arrow
19 to the left of the time and date mean?
20 A That indicates an incoming message.
21 Q And when there's a green arrow? It's kind of hard
22 to see on the overhead, but the green arrow means what?
23 A That's an outgoing message.
24 Q And the trash can icon to the left, what does that
25 mean?

1 A That indicates that that message was deleted.

2 Q What does it mean when there's a paperclip seen to
3 the left of the green arrow?

4 A That would indicate an attachment, and then you can
5 see there's a photo there.

6 Q Okay. So any time that there was an outgoing
7 message sent from the owner of this iPhone that contained a
8 photograph, that photograph would be depicted in this report,
9 correct?

10 A I believe so, yes.

11 Q And we can see a few of them contain photographs of
12 children?

13 A There is an exception, of course.

14 Q What would that exception be?

15 A If you go to that page, about the third or fourth
16 one in, MOG or icons, like there, you see those MOGs, they're
17 often -- sometimes the device will interpret that as an image
18 file and it would send it as an attachment or an image or an
19 MMS.

20 Q So when that MOG was used --

21 A In this case it recognized it appropriately.

22 Q Okay. So then you would expect that any time a
23 photograph was sent out there would be that paperclip icon to
24 the left?

25 A Yes.

1 Q And just in case anybody doesn't know, what is an
2 MOG?

3 A It's a pictograph, basically a picture with --
4 typically indicating emotions.

5 Q And we'll go back to that exhibit in just a second.

6 MS. MERCER: Permission to publish, Your Honor?

7 THE COURT: You may.

8 BY MS. MERCER:

9 Q Detective, I'm showing you what's been admitted as
10 State's Exhibit 84 now. Does this appear to be a call history
11 report between that same individual, Troy, and the owner of
12 the white Apple iPhone 4S that you examined in this case?

13 A Yes.

14 Q And if we could just go over those icons again.
15 What does that X mean right there?

16 A Okay. The exclamation means the item hasn't been
17 read and the one with the X means -- I'm not a hundred percent
18 on that. I'd have to refer to the manual.

19 Q Okay. But the red exclamation point means it hasn't
20 been read?

21 A It hasn't been read.

22 Q And the red telephone symbol with an arrow, what
23 does that mean?

24 A That was read; received.

25 Q It was received. So were these exclamation points

1 cancelled calls?

2 A I honestly don't know.

3 Q Okay.

4 A I would have to refer to Cellebrite.

5 Q This is Lantern, actually, correct?

6 A Yes.

7 Q Okay. This green telephone symbol, that means it's

8 an outgoing call?

9 A Yes.

10 Q And over here it shows you how long the call lasted?

11 A Yes.

12 Q And the caller is indicated in the To/From?

13 A Yes.

14 MS. MERCER: Court's indulgence.

15 THE COURT: Sure.

16 BY MS. MERCER:

17 Q You also have the ability to create a report that is

18 a timeline of incoming calls and texts all in one, correct?

19 A Yes.

20 Q And that shows you the chronological order that the

21 calls and texts came in and were sent out?

22 A Yes. It gives you the activity as it occurred.

23 Q Going back to the messages, there's just a few that

24 I want to go over with you. Actually, quite a few. You've

25 had the opportunity to review these text messages, correct?

1 A Yes.

2 Q And in some of these text messages it's clear that
3 they're just discussing things such as the children or needing
4 a ride, correct?

5 A Yes.

6 Q For instance, there's a text out to Troy from the
7 Apple iPhone 4S, Echo's phone. At 7/14/2012 she says, "How
8 are the kids?" Correct?

9 A Yes.

10 Q And then she asked, "How's Cupcake, is she fussy?"

11 A Yes.

12 Q And then in the next text they appear to be making
13 arrangements with regards to transportation?

14 A Yes, they are.

15 Q And that's a text coming in from Troy to that phone?

16 A That's correct.

17 Q And, Officer, just so that we're clear, these
18 reports that are generated by the Lantern software, they go
19 in reverse chronological order, correct? So the most recent
20 texts appear first and then the texts towards the end of the
21 report are --

22 A It does appear that way. I'm not a hundred percent.

23 Q Okay. Well, you would agree with me it says July
24 14th, 2012 on the last page?

25 A Yes.

1 Q And then on this one it's July 27th, 2012, correct?
2 A Yes.
3 Q Moving on to July 17th of 2012, there's an incoming
4 text. Can you see that?
5 A Uh-huh.
6 Q Okay. There's an incoming text from Troy at 23:01.
7 That would be 11:01 p.m.?
8 A Yes.
9 Q "After all that I hope you're alone tonight. If
10 not, we have nothing to talk about tomorrow. I mean it!" And
11 the "I mean it" is in all caps with an exclamation point?
12 A Uh-huh.
13 Q Is that a yes?
14 A Yes.
15 Q Okay. And it says, "If he spent the night, then
16 goodbye."
17 A Yes.
18 Q And then it continues with the text above it that
19 says, "For good!" in all caps with an exclamation point?
20 A Where's the "For good"?
21 Q Right here.
22 A I'm sorry. Yeah.
23 Q It appears to be a continuation of the text?
24 A Yes.
25 Q And it says, "Cause all the YouTube videos and your

1 sad faces and maybe tears mean nothing to me."

2 A Yes.

3 Q "Actions show louder than words."

4 A Yes.

5 Q "I'm pretty sure he's there."

6 A Yes.

7 Q And then the next one is sent about eleven seconds

8 later from the same individual, Troy?

9 A (No audible response).

10 Q Is that a yes?

11 A Yes.

12 Q And it's in all caps this time?

13 A Yes.

14 Q "Don't bother texting or calling me till Friday

15 then. What a waste!"

16 A Yes.

17 Q The next text was sent at 4:27 a.m. on July 18th of

18 2012, correct?

19 A Yes.

20 Q And it says, "I will leave you to your asshole, you

21 leave me to myself."

22 A Yes.

23 Q And it's sent from Troy again?

24 A Yes, it is.

25 Q When it says Troy at the end of those text messages,

1 is that a signature? Does it appear to be a signature that
2 he's enabled on his phone, a personalized signature?

3 A I would be speculating. It is possible that's the
4 case. I don't know without examining his phone.

5 Q And then on -- about nine hours later they're going
6 back -- he's back to discussing the more menial things such as
7 reimbursements and bills?

8 A Yes.

9 Q Then a minute later Echo, the owner of the phone,
10 sends Troy a text that says, "J [REDACTED] looks so cute."

11 A Yes.

12 Q Then on July 19th at 15:35, Echo sent out a
13 photograph to Troy, correct?

14 A Yes.

15 Q And it was sent to other recipients as well?

16 A Yes.

17 Q Is that why it says multiple recipients?

18 A Yes.

19 Q And again, we see the paper clip indicating that a
20 photo was sent?

21 A Yes.

22 Q And that same day at 22:12:49, that's 10:12:49 --

23 A Yes.

24 Q P.M.?

25 A Yeah, that's 2400, you know, military time, 24-hour

1 time.

2 Q Okay, thank you. He sends another text to Echo,
3 Troy sends another text to Echo and it says, "You should send
4 him home right now if you really miss me and then call me."

5 A Yes.

6 Q And her response approximately twenty minutes later,
7 a little less than twenty minutes is, "Stop."

8 A Yes.

9 Q Then on July 20th of 2012, he sent her a text that
10 said, "A single day with Joe. What you're doing in that house
11 on that bed with him and it rises up in me again and I hate
12 you all over again. Troy.

13 A Yes.

14 Q That's at 5:05 a.m.?

15 A Yes, it is.

16 Q And then about thirty seconds later he sends her
17 another one and it says, "So then you say we have to get a
18 divorce. A divorce" -- and it looks like he's trying to say
19 doesn't matter but it says "does it matter. You moving out
20 of the house won't stop the hate. The divorce won't stop the
21 hate."

22 A Yes.

23 Q "You stopping will stop my hate. Please stop it.
24 Please get rid of him. Please get saved. Let us be happy
25 together."

1 A Yes.

2 Q And that's a continuation of that same text that
3 came in a few seconds later?

4 A Yeah. When you exceed 160 characters it will break
5 up the message.

6 Q And then it continues on, "Not together as a couple,
7 live together."

8 A Yes.

9 Q "I have never had so much trouble trying to pay a
10 flippin' bill."

11 A Yes.

12 Q Again, it's a continuation --

13 A Uh-huh.

14 Q -- but it's several hours later?

15 A Yes.

16 Q Then on July 20th at 14:33:16, the owner of the
17 iPhone, which would be Echo, sent a text to Troy that said,
18 "I forgot something at the house, should I go get it real
19 quick -- should I go real quick and get it?" Correct?

20 A Yes.

21 Q And his response to her is, "Just wait."

22 A Yes, it is.

23 Q And then a few hours later at -- well, it's about an
24 hour later, actually -- at 15:28:12 he sent her a text that
25 says, "This sucks, Echo, really! Unbelievable."

1 A Yes.

2 Q And that's signed Troy again?

3 A Yes, it is.

4 Q And then at 5:12:27 p.m., which is documented as

5 17:12:27, he sent her a text that says, "I really wish you

6 would stop so we could get along." And then it says "Do" and

7 then it's followed by an F with some characters?

8 A Yes.

9 Q There's just a percentage sign and an exclamation

10 point?

11 A Yes.

12 Q And her response to him is, "I know why we don't."

13 Correct?

14 A Yes.

15 Q And that's two minutes later. And then he responds

16 with, "Okay. Why?" Correct?

17 A Yes.

18 Q She says, "Because what I'm doing you hate."

19 A Yes.

20 Q And that's at 17:15:39?

21 A Yes.

22 Q And then at 17:17:56 she sends another text message

23 that says, "Stop, please."

24 A Yes.

25 Q And then at 17:20, at 5:20 he sends another one and

1 it says, "Echo, you know what I always say when you say that.
2 I say no, you" -- all capitals -- "stop it!" Fuck! Well, not
3 the fucking part, but I'm really tired of being cheated on so
4 I've increased my vocabulary."

5 A Yes.

6 Q And it's signed Troy?

7 A Yes.

8 Q And then he says, "Bye, cheater."

9 A Yes.

10 Q And that's at 17:20:29?

11 A Yes, it is.

12 Q And then at 17:21:20 he follows up with, "Wait.
13 It's funny, you want me to be nice but all the while you want
14 to fuck some other guy. Do you suck his dick, too?" And it's
15 signed Troy?

16 A Yes.

17 Q And then at 17:22:32, a minute later, "Don't fucking
18 worry, I'm fucking done. Troy."

19 A Yes.

20 Q And again, these are all on July 20th of 2012?

21 A Yes, they are.

22 Q And the following day she sends a text message at
23 11:31 a.m. that says, "Yeah, right."

24 A Yes.

25 Q Then moving ahead a couple more days on July 23rd,

1 2012, there's an outgoing text from Troy to this phone at
2 4:23:42 a.m.?

3 A Yes.

4 Q "Every name in the book without anything from you,
5 but no, I am the asshole. Thanks for nothing. Thanks for
6 fucking him in my bed. Thanks for fucking destroying me and
7 everything about me. Troy."

8 A Yes.

9 Q "I hate you for choosing him over me. Troy."

10 A Yes.

11 Q And those text messages are sent on the 23rd of
12 July, 2012?

13 A Yes, they are.

14 Q Then at 10:15, about six hours later, she texted him
15 and said, "Hey." Right?

16 A Yes.

17 Q And then he responds with, "Yeah." Right?

18 A Yes.

19 Q And then she responds with, "Can I call you?"

20 A Yes.

21 Q And the defendant says, "Sure." Correct?

22 A Yes.

23 Q Then on July 24th or later on July 23rd at 10:28
24 a.m. she sends him a bunch of emoji with broken hearts,
25 correct?

1 A That's correct.

2 Q And she follows that with a text message at 10:32:35

3 that says, "You don't want to talk to me?"

4 A Yes.

5 Q And then she followed it up about ten minutes later

6 with a text that says, "Okay, I'm going to leave you alone."

7 A Yes.

8 Q And then later on that evening at 6:28:58, she sent

9 a photo of a baby girl?

10 A Yes.

11 Q To him and other recipients, correct?

12 A Yes.

13 Q And then at approximately 10:00 p.m., at 21:59:22,

14 she sends a text that says, "I thought you were going to call

15 me after prayer."

16 A Yes.

17 Q And then the next day about 24 hours later she says,

18 "Any chance you would talk to me tomorrow?"

19 A Yes.

20 Q And it says, "I'm hoping for a" -- quotation

21 'friendly'-- close quotation, "perspective if at all possible.

22 I know you don't owe me anything and I deserve nothing, but

23 if you would just hear me out one last time I would meet you

24 somewhere or anything, any chance at all?"

25 A Yes.

1 Q And that was sent to Troy?
2 A Yes.
3 Q And then she sent out a picture of a little boy
4 sitting on a sofa, what appears to be a sofa?
5 A Yes.
6 Q And that continues on to the next page of the
7 report. It looks like it was sent at 15:17:43?
8 A Yes.
9 Q To the defendant and multiple recipients?
10 A Yes.
11 Q And that would be 3:17:43, is that right, P.M.?
12 A Yes.
13 Q And then a few minutes later she sends out a picture
14 of a baby girl, correct?
15 A Yes.
16 Q And then at about ten o'clock that night she
17 received some incoming text messages from Troy again on the
18 25th and they say, "Never mind. Bye."
19 A Yes.
20 Q And there's three text messages that appear to have
21 the same content?
22 A Yes.
23 Q And then she sent out a text that says, "The boys
24 want to talk with the sad face."
25 A Yes.

1 Q And then the defendant responded with, "We'll see"
2 and signed "Troy."
3 A Yes.
4 Q Then about five minutes later she sends a text that
5 says, "I didn't want to hang up mad. Sad face."
6 A Yes.
7 Q 22:05:49, she sends another one to him that says,
8 "I tried to call you."
9 A Yes.
10 Q And then another one, "I tried to call you back
11 twice."
12 A Yes.
13 Q And that was sent about a minute later?
14 A Yes.
15 Q And then on July 26th of 2012 at about twenty-five
16 after midnight he sent a text to her, correct?
17 A Yes.
18 Q And it says, "What I was going to say is if you're
19 not -- come on, hurry, hurry, what I was going to say is you
20 seem like you're wishy-washy in your decisions."
21 A Yes.
22 THE COURT: Would this be a good time to break for
23 lunch?
24 MS. MERCER: It would.
25 THE COURT: Ladies and gentlemen, we're going to

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

10 We'll see you at 1:15 outside Courtroom 14A. Have a
11 nice lunch.

12 (Jury is not present)

13 THE COURT: Counsel, anything outside the presence?

14 MS. MERCER: No.

15 MR. COFFEE: Not yet.

16 THE COURT: Okay, see you after lunch.

17 (Court recessed from 11:59 a.m. until 1:15 p.m.)

18 (Jury is present)

19 THE COURT: Counsel stipulate to the presence of the
20 jury?

21 MS. MERCER: Yes, Your Honor.

22 MR. COFFEE: So stipulated.

23 THE COURT: You may be seated. If we could resume
24 with Mr. Berghuis.

25 MR. COFFEE: Can we approach for just a moment?

1 THE COURT: Sure.

2 Mr. Berghuis, while you're walking up here, I'd like

3 to remind you you're still under oath.

4 Come on up, counsel.

5 (Bench conference)

6 MR. COFFEE: Before the witness passes, I want to

7 make sure that I complete my record on the offer that we made.

8 I've got a couple of cases cites and some things. I can

9 complete it afterwards. I don't know if the Court is going to

10 revisit the ruling, but I do want to be able to at least make

11 a full record of that.

12 THE COURT: Okay.

13 MR. COFFEE: Thanks.

14 (End of bench conference)

15 THE COURT: You were on your examination.

16 MS. MERCER: Yes. May I proceed, Your Honor?

17 THE COURT: You may.

18 DIRECT EXAMINATION (Continued)

19 BY MS. MERCER:

20 Q Officer, I probably should have asked you this

21 earlier on in your testimony. You currently work graveyard

22 with the Las Vegas Metropolitan Police Department, correct?

23 A Yes, I do.

24 Q So you're probably a little bit sleepy?

25 A Yes, this is my normal sleep time.

1 Q Earlier on I had asked you some questions about
2 icons in these records.

3 MS. MERCER: Permission to publish, Your Honor?

4 THE COURT: You may.

5 BY MS. MERCER:

6 Q With regards to State's Exhibit 84, I had asked you
7 some questions about the icons to the left of the time of the
8 calls placed.

9 A Yes.

10 Q Did you have a chance to review your notes with
11 regards to the meanings of those icons?

12 A Yes. I did that at lunch.

13 Q What does the X mean?

14 A It's a cancelled call. And the exclamation is a
15 missed call.

16 Q Cancelled as in declined?

17 A No. It was partially dialed and then cancelled.

18 Q Okay. And the --

19 A Or it was dialed and cancelled.

20 Q I'm sorry. And the X means what?

21 A It's cancelled.

22 Q I mean the exclamation point.

23 A Oh, the exclamation means it's a missed call.

24 Q So just unanswered?

25 A Yes.

1 Q And the red telephones?

2 A That's an outgoing phone call.

3 Q Outgoing or incoming?

4 A Outgoing.

5 Q Red?

6 A Red. And the green is incoming.

7 Q Okay. Officer Berghuis, I think there might be some

8 confusion. I'm going to zoom in on this icon. The arrow

9 above that red phone is incoming, correct?

10 A Oh, I'm sorry, that's incoming. Right.

11 Q And the arrow on the green is outgoing?

12 A Is outgoing. That's correct.

13 Q I'm not going to bore the jury by going through

14 every line of these text messages, but in your review of the

15 text messages it appeared pretty obvious that the couple was

16 going through an up and down relationship?

17 A Yes.

18 Q Having some issues off and on?

19 A Yes.

20 Q Discussing getting back together off and on?

21 A Yes.

22 Q And with regards to calls placed between -- this

23 report of the call history contains calls between Troy White

24 and Echo Lucas White beginning on July 26, 2012 at 9:21:03

25 Pacific Daylight Time --

1 A Yes.

2 Q -- in the morning?

3 A Yes.

4 Q And it ends with calls received on July 31st, 2012

5 at 10:43:40 Pacific Daylight Time?

6 A That's the cancelled call.

7 Q Okay. And you would agree with me that there are

8 numerous incoming calls from Troy to Echo Lucas' phone in that

9 time period, correct?

10 A Yes, there's a significant number of calls.

11 Q Easily over a hundred?

12 A I believe so.

13 Q And if we could just go through the messages to show

14 what pictures were sent to the defendant. I'm on page 3 of

15 Exhibit 85. No pictures. Page 84 -- or page 4, page 5, page

16 6, page 7, page 8, page 9, 10, 11, 12, 13, 14, and not until

17 page 15 do we have a single picture sent to the defendant,

18 correct?

19 A Yes.

20 Q And that's a picture of the baby girl?

21 A Yes.

22 Q Page 16 there's two photos of the kids?

23 A Yes.

24 Q No pictures of tattoos?

25 A No.

1 Q Page 17, no more pictures?
2 A Yes.
3 Q Page 18, no more pictures. Page 19, one picture of
4 a baby?
5 A Yes.
6 Q Page 20, no pictures. Page 21, no pictures. And
7 then the last page is just the final page that contains no
8 data, correct?
9 A Yes.
10 Q So there were no pictures of Echo making out with a
11 new boyfriend sent to the defendant?
12 A No.
13 Q And no pictures of tattoos?
14 A No.
15 Q There are just some text messages that I want to go
16 over with you really quickly from July 26th and they begin at
17 12:25:15. This is State's Exhibit 85 again. There is an
18 outgoing text from Echo to the defendant and it says, "You
19 don't know her like I do. It's a country song; kind of
20 reminds me of us." Correct?
21 A Yes.
22 Q And then she sends another text message about two
23 minutes later that says, "Have you heard it?"
24 A Yes.
25 Q And then she sends a text message, "Just text,

1 please." And that's sent at 12:34:56, correct?

2 A Yes.

3 Q Now I'm referring you to State's Exhibit 84, the

4 last page of that exhibit. There's a missed call from Troy

5 White at 12:29:15 p.m., correct? Or an incoming call from

6 Troy?

7 A At 12:29:15, yes. Or, wait a minute, let me see

8 that again. The symbols are hard to see.

9 Q Would it be easier if I approached with it?

10 A Yeah.

11 MS. MERCER: May I approach the witness, Your Honor?

12 THE COURT: You may.

13 BY MS. MERCER:

14 Q So that was an incoming call from the defendant at

15 12:29?

16 A Yes.

17 Q And then there's another text that says, "Just text,

18 please." And that's at 12:35:43?

19 A Yes.

20 Q And it's in all caps?

21 A Yep.

22 Q In other words, she appears to be saying to him,

23 don't call me, just text me?

24 A Yes.

25 MS. MERCER: Court's indulgence.

1 BY MS. MERCER:

2 Q I think when we left off before the lunch break I
3 had stopped with a text message on the 26th when Troy texted
4 her indicating that she was being wishy-washy. Do you recall
5 that line of questioning?

6 A Yes.

7 Q Going on to the text messages at about noon on the
8 26th, Troy White sent a message at 12:39 p.m. on the 26th that
9 says, "This is like torture to have your wife who walked out
10 on you so close to coming back and she won't come back yet, so
11 I will leave you alone so that someday you will." Correct?

12 A Yes.

13 Q And then a few minutes later he said, "I wish you
14 wanted to be together this weekend. Goodbye, Echo, until you
15 finally made a decision. Hopefully after today you still want
16 all you said you did."

17 A Yes.

18 Q And then later on in the day they're discussing more
19 menial tasks such as rides to places and bills, things like
20 that, correct? And that's about 4:04:31 p.m.?

21 A Yes.

22 Q And then at 16:04 -- actually at 16:04:31 he says,
23 "Still want to? We will be going to church and stuff. Would
24 you be interested in going out with me this weekend before we
25 start going back to church?" Correct?

1 A Yes.

2 Q She responds with, "I can't, I'm babysitting for my
3 dad." And that's at 16:05?

4 A Yes.

5 Q And it continues on, "Sorry, I escape my kids only
6 to deal with more."

7 A Yes.

8 Q And then two minutes later the defendant says, "I
9 mean, can we make it work? I'm thinking that if we were
10 getting together then it would be fun for you and I to party
11 one last time and then hit church and begin."

12 A Yes.

13 Q And then at 16:44, which is 4:44 p.m., he says, "I
14 love you."

15 A Yes.

16 Q At 17:06, "Hopefully."

17 A Yes.

18 Q 17:06: "Goodnight."

19 A I can't see that.

20 Q I'm sorry.

21 A Yes.

22 Q And then at 3:30 in the morning he texts, "If you
23 still love me at all, you will call me one more time for me to
24 say one last thing to you." Correct?

25 A Yes.

1 Q And around that time he started making outgoing
2 calls to her?

3 A Yes. You can look at the call log.

4 Q And then she responds with, "Stop, Stop, Stop," in
5 all caps?

6 A Yes.

7 Q He responds at 3:33, "If you love me at all, you'll
8 call me one more time for me to say one last thing to you."

9 A Yes.

10 Q 3:34 a.m., she responds with, "Stop, Stop, Stop,"
11 again in all caps?

12 A Yes.

13 Q And he persists, "If you love me at all, you'll call
14 me one more time for me to say one last thing to you."

15 A Yes.

16 Q And that's at 3:34?

17 A Yes.

18 Q 3:39: "I hope you're happy. The other day in the
19 store you said you were not."

20 A Yes.

21 Q 3:50: "I think your time set back up. I've given
22 you enough time to make a decision. You say you want your
23 marriage back but you prove otherwise. If you really wanted
24 your marriage back, if you wanted just to come back to me
25 instead of having to have more time with Joe." Correct?

1 A Yes.

2 Q And those messages were sent at 3:50 a.m. and 3:51

3 a.m.?

4 A Yes.

5 Q And then he says, "Goodbye."

6 A Yes.

7 Q And then at 3:59 he follows up with, "By the way,

8 you should be sad instead of mad at me. You just destroyed

9 everything. Who knows, maybe some day you can try and put it

10 back together."

11 A Again, yes. Yes.

12 Q And then at 4:24:38 he sends a text message, "Don't

13 sit there and jerk me around and then go out and hang out with

14 Joe. You know when you're done with him and you're done with

15 the lifestyle that you're living right now then you can come

16 see me."

17 A I'm sorry, where is that at?

18 Q Sorry. Right here at 4:24:38.

19 A Okay, yeah. You were cutting it off. Sorry.

20 Q And then at 4:28 in the morning he says, "I will be

21 coming by the house this morning around 6:00 or 7:00. I will

22 text you when I'm on my way. I will be coming" -- and I think

23 he's trying to say whether you call the police or not, but it

24 says "what do you call the police or not."

25 A Yes.

1 Q And that's at 4:28?

2 A Yes.

3 Q And then it says, "It's my house. If I want to come
4 home to my house and see my kids, I will. So if you're
5 sleeping I will wake you up. It doesn't matter. I have
6 something to say to you."

7 A Yes.

8 Q And that's at 4:29?

9 A Yes.

10 Q So clearly he knows the children are there, correct?

11 A Yes, I would assume.

12 Q And then he ends with, "And then I will leave" and
13 it's 4:29 --

14 A Yes.

15 Q -- correct?

16 A Yes.

17 Q And then at 5:13 he sends her a text, "Whatever.
18 Too much of a coward to answer your phone so you think all
19 we'll have to do is argue, argue, argue no stop. And then
20 san (sic) Joe come back to me. And that's the bottom line" --
21 I think he's meaning to say 'cause but it says, "case you said
22 that's what you wanted to do. Troy." And that's at 5:14?

23 A Yes.

24 Q And then 5:15:53, he sends a text, "No, I'm not
25 coming by the house later. I changed my mind because I have

1 to kiss your ass all the time. You'll end up leaving the
2 house and that's not best for the kids."

3 A Yes.

4 Q And that's at 5:14 and 5:15?

5 A You're cutting it off. Can you slide it down?

6 Q I'm sorry.

7 A Thank you. Yes.

8 Q And then he continues on, "And you're not thinking
9 about them, only about yourself and Joe, and I have to kiss
10 your ass."

11 A Yes.

12 Q And then at 5:31 he indicates that he called and
13 left her a voice mail and wants her to listen to it?

14 A Yes.

15 Q And at 5:31, "Thank you, goodbye. Troy."

16 A Yes.

17 Q And he continues to text her throughout the morning,
18 correct?

19 A Yes, he did.

20 Q And around 8:00 or 9:00 those text messages grew a
21 little angrier; is that fair to say?

22 A Yeah. Yes. It does seem to be working up.

23 Q And she repeatedly tells him things along the lines
24 of, "I can't talk to you right now. OMG!! Please stop. I
25 shouldn't have said a word. Exactly why I didn't for so long.

1 Please stop, I'm begging you." And that's at 9:41:42?

2 A Yes.

3 Q At 9:58 a.m., he sent her a text that says,

4 "Obviously you're full of s---, you don't care about me, you

5 don't love me. You know what, I would put up everything to

6 be able to talk to you." Right?

7 A I'm sorry, I can't see where you're referring to.

8 Q Right here at 9:58: "Obviously you're full of s---"

9 A Oh, yes, I see.

10 THE COURT: You've got to leave it steady so people

11 can read with you, please.

12 MS. MERCER: Sorry.

13 BY MS. MERCER:

14 Q Okay, can you see that now?

15 A Yes.

16 Q And that was at 9:58 in the morning?

17 A Yeah, that's correct.

18 Q And then at 9:59:19 he says, "But you're not -- but

19 no, not you, you're so f----- selfish that you can't get him

20 out of the f----- house to talk to me, to get you to say that

21 you love me, what you said."

22 A Yes.

23 Q Two seconds later, "You missed everything. Yeah,

24 right. Troy."

25 A Yes.

1 Q 9:59: "I f---- dare you to call me. Call me, I
2 dare you. You can't handle the truth."
3 A Yes.
4 Q "Call me" -- at ten o'clock?
5 A Yes.
6 Q Two seconds later, "Call me if you're laughing."
7 A Yes.
8 Q Two seconds later, "Call me if you love me." Right?
9 A Yes. I'm sorry.
10 Q She says, "I'm not calling you," and the not and the
11 calling and the you are all capitalized, correct?
12 A Yes.
13 Q And then he continues persisting trying to get her
14 to call him?
15 A Yes, that's correct.
16 Q And then at 10:06 he sent her a text that said,
17 "Then you don't love me."
18 A Yes.
19 Q And the next message is, "Get ready for hell."
20 A Yes.
21 Q And then at 10:23:53, "Now who's the coward?"
22 A Yes.
23 Q 10:24: "You never apologized for calling me a
24 coward."
25 A Yes.

1 Q "You will see."
2 A Yes.
3 Q At 10:24?
4 A Yes.
5 Q And that's the next message after he said you never
6 apologized for calling me a coward?
7 A Yes, it is.
8 Q 10:25: "You are the coward."
9 A Yes.
10 Q "You're so afraid to talk to me, coward, and your
11 fucking boyfriend. Have him meet me now."
12 A Yes.
13 Q That's 10:25:51?
14 A Yes.
15 Q 10:26:07: "I fucking dare you. Troy."
16 A Yes.
17 Q 10:26: "You've got nothing to say?"
18 A Yes.
19 Q 10:27, he sends another message to her, "Cause
20 you're a cheater."
21 A Yes.
22 Q 10:27:19, she says, "Leave me alone" in all caps?
23 A That's correct.
24 Q 10:28: "You say you want me back when you spend
25 another night with him."

1 A Yes.

2 Q Two seconds later, "You're a liar. Troy."

3 A Yes.

4 Q "You're a whore. Troy."

5 A Yes.

6 Q And that's two seconds later as well?

7 A Yes.

8 Q "You want him? Well, fuck both of you. Troy."

9 A Yes.

10 Q 10:29:21: "Fucking chicken shit. Troy."

11 A Yes.

12 Q 10:30: "I'm done with your empty promises, your
13 empty talk."

14 A Yes.

15 Q 10:330: "You say you want to come back. I welcome
16 you. Then you want time" --

17 A Yes.

18 Q Question mark, question mark, question mark. "Fuck
19 him some more. Troy."

20 A Yes.

21 Q 10:33: "Fuck you, then. Troy."

22 A Yes.

23 Q "Either you want me or him, it's that simple, but
24 you choose him ... Troy."

25 A Yes.

1 Q 10:34:23: "Thanks for leading me on."
2 A Yes.
3 Q 10:35:51: "You get no time. You either want to
4 leave him and have all you missed that you told me in the
5 store Wednesday or hang on to him. You proved what you want.
6 Troy."
7 A Yes.
8 Q 10:36: "You are a liar. Troy."
9 A Yes.
10 Q And then at 10:51 she says, "You've driven me crazy.
11 Stop." And the stop is in all capitals?
12 A Yes.
13 Q 7/27/2012 at 10:52, he says, "Oh, really? Well, I'm
14 already there. Troy."
15 A Yes.
16 Q 10:52:34: "You fucking tell me you're going to come
17 back to me and then you don't. You need your fucking time
18 with Chelsea. That's fucking driving me crazy. Troy."
19 A Well --
20 Q When you read between the lines?
21 A Yeah, you're definitely reading between the lines,
22 but it seems accurate.
23 Q It's F dot, dot, dot, dot?
24 A Yeah, it seems accurate.
25 Q Polite way of cussing?

1 A Yes, ma'am.

2 Q And then he says, "I will say it again, you're

3 driving me crazy already because you tell me you want me back

4 and then you stay with Joy." (sic).

5 A Yes.

6 Q "You stay with Joe." And that's signed Troy at

7 10:52?

8 A Yes.

9 Q 10:53, she tells him again, "Leave me alone."

10 A Yes.

11 Q 10:55: "Why are you doing this?"

12 A Yes.

13 Q 10:56: "Why can't you make a decision?"

14 A Yes.

15 Q And then she responds at 10:56 with, "Why are you"

16 question mark, question mark, question mark and a bunch of sad

17 faces?

18 A Yes.

19 Q And then he says, "Why can't you answer your phone?"

20 A Yes.

21 Q 10:56?

22 A Yes.

23 Q And then he calls her a chicken shit again?

24 A Yes.

25 Q She says, "I don't want to talk to you at all" and

1 it's A-l-l-l-l-l!!!!!"

2 A Yes.

3 Q Followed up with, "Not at all."

4 A Yes.

5 Q And then he calls her a coward again?

6 A Yes.

7 Q At 10:57 he says, "Afraid to face the truth."

8 A Yes.

9 Q And then she says, "Yeah, I'm a coward. Whatever.

10 Leave me alone."

11 A Yes.

12 Q And that's at 10:57?

13 A That's correct.

14 Q And then the text messages continue on, calling her
15 names and a coward and cussing, correct?

16 A Yes.

17 Q And I'm showing you page 4 of State's Exhibit 85
18 for the record, and the times on those range from 10:57:16 to
19 11:02, correct?

20 A Yes.

21 Q A.M.?

22 A Yes.

23 Q Showing you page 3 of that same exhibit, they
24 continue on in the same fashion?

25 A Yes, they do.

1 Q And the times are 11:02:28 to 11:06:08 in the
2 morning?

3 A Yes.

4 Q Showing you page 2, and I realize the number at the
5 top says 1 of 21, but there's an additional page stapled to
6 the front that's not numbered. Is that accurate?

7 A That is correct.

8 Q Showing you page 2 of State's Exhibit 85, the text
9 messages continue on in that same fashion?

10 A Yes, they do.

11 Q At 11:11 he sent her a text that said, "For the
12 record, if you ever do it again, you should wait until you're
13 done with somebody until you tell the other person that you're
14 ready for that." And then it's "F---- Troy."

15 A Yes.

16 Q And then at 11:12 he says, "Fuck you, bitch whore."

17 A Yes.

18 Q And at 11:12:21 he says, "Skank slut."

19 A Yes, he does.

20 Q And then he makes some sexually explicit comments
21 or texts at 11:12:31, 11:12:57, and continues on with the same
22 general comments, correct?

23 A Yes.

24 Q And the last text message that he sent her was at
25 11:26:16 --

1 A Yes.

2 Q -- and it says, "But now you're all pissed off,
3 now you think I'm an A....." or asterisk, asterisk, asterisk,
4 "whatever, again." And it says, "Or just wait and see."

5 A Yes.

6 MS. MERCER: I'll pass the witness, Your Honor.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. COFFEE:

10 Q Do you remember the text that the district attorney
11 spoke of a moment before concerning being a coward? Do you
12 remember that question?

13 A Uh, I would prefer if you referred to it rather than
14 recollecting.

15 Q I was going to say the same thing. You go through
16 cell phone information?

17 A Yes.

18 Q You are a detective or were a detective at the time?

19 A Yes.

20 Q You detect things?

21 A Yes. Analyze, yes.

22 Q Analyze. You look for clues?

23 A Right.

24 Q For example, there might be a whole bunch of script
25 inside a text phone that doesn't have much to do with anything

1 and it may not be particularly important, right?

2 A Well, it depends on what you're making reference to.

3 Q And that's the point. You're looking for things
4 that might be important of evidentiary value; is that fair?

5 A That's fair.

6 Q The reports in these cases you said are sometimes
7 700 pages, 1,000 pages, maybe several thousand pages?

8 A That's correct.

9 Q And if we went through several thousand pages a
10 piece at a time, there might be a lot of information that may
11 not be related to much; is that fair?

12 A That is fair.

13 Q Okay. I want to talk to you in general -- well,
14 let's start with the coward thing and then we'll come back
15 to some general comments. Okay. At about eleven o'clock,
16 10:57:46 Troy texts that he's not a coward and then calls
17 the person on the receiving end a coward. Is that right?

18 A I don't know how he's inferring it, but that's what
19 was texted.

20 Q That's what was texted back and forth.

21 A Right.

22 Q And that was kind of the point. And he had done the
23 same thing a few minutes earlier, right? You can see the time
24 there.

25 A Uh-huh.

1 Q Yes?

2 A Yes.

3 Q Okay. You don't know the context of the background
4 of the relationship, for example; is that fair?

5 A Nothing more than what I read.

6 Q Okay. And you're trying to piece things together
7 from what you've read?

8 A That is correct.

9 Q Okay. And she had actually texted him, one of those
10 green outgoing arrows a few minutes before that, "Yeah, I'm a
11 coward. Whatever. Leave me alone." Right?

12 A Yes.

13 Q And it looks like coward had been used before also,
14 right?

15 A It appears, yes.

16 Q And it looks like the first time that coward is
17 texted comes after a text that says, "I don't want to talk
18 to you at all, not at all." Right?

19 A Yes.

20 Q He had said "chicken shit" before that. Right?

21 A Yes.

22 Q This is all part of a single conversation. "You
23 can't answer your phone." Right?

24 A Yes.

25 Q And there's this. "Why are you" -- and those are

1 emoticons, right?

2 A Yes, sir.

3 Q Emoticons are supposed to show emotion. That's how
4 we do it in the technology age, I suppose, right?

5 A Right.

6 Q Okay. And that's the emoticon for sad. Is that
7 accurate?

8 A Yes, it is.

9 Q "Why are you sad?" Now, you went through all these
10 other texts with the district attorney a moment ago. You are
11 a detective. You've got a pretty good idea why he's sad,
12 don't you?

13 A Yeah. Yes.

14 Q He's upset about his relationship breaking down,
15 right?

16 A Yes.

17 Q Now, the reports here -- you generated two reports.
18 One was the Latern report. Or two pieces of software were
19 used?

20 A Yes. I used two different forensic applications.

21 Q Okay. One was Latern Forensics; yes?

22 A Yes.

23 Q And that is the one that has been provided to the
24 jury as State's Exhibit 85?

25 A Yes.

1 Q The other was a cell phone report called Cellebrite,
2 right?

3 A That's correct.

4 Q And Cellebrite organizes the information a little
5 differently; is that fair?

6 A Yes, it is. Very fair.

7 Q Now, this piece of evidence that's been shown to the
8 jury and given to the jury are messages to and from the name
9 Troy, is that right?

10 A Yes, it is.

11 Q And these are only messages to and from Troy; is
12 that fair?

13 A That's fair.

14 Q It doesn't show text messages with her mother and
15 Echo, for example, correct?

16 A No. That is strictly filtered.

17 Q Joe Averman and Echo, for example?

18 A No.

19 Q Other friends, for example?

20 A The only time it would show others is if it was a
21 message as part of multiple recipients.

22 Q And we're going to get an example of that. I'm glad
23 you brought that up. There are some text messages that went
24 to multiple recipients and they had some pictures in them;
25 yes?

1 A Yes.

2 Q And an example of that, and this is going to be on
3 page 14, would be a text message that was sent on the 25th at
4 3:21 p.m., correct?

5 A Yes.

6 Q One of those multiple recipients, even though it
7 says multiple recipients, is Troy White. Is that fair?

8 A Yes, it is.

9 Q And there were some messages in-between there.
10 There are three photos that are sent in a sequence of a few
11 voice messages. Is that accurate? And the timing, we'll go
12 through the timing in a moment here. It's over a couple days.

13 A Okay. Yeah, there are text messages --

14 Q In-between?

15 A Yeah.

16 Q That's exactly what we're going to talk about, okay.
17 Let's start on the 23rd at 10:28 p.m., okay?

18 A Okay.

19 Q And there's some more of those emoticons, right?

20 A Yes.

21 Q Outgoing text message. And these are the emoticons
22 for broken heart; yes?

23 A Yes.

24 Q Indicating perhaps somebody's heart is breaking?

25 A It appears that way.

1 Q Okay. And there's another text message to Troy that
2 says, "You don't want to talk to me." Yes?

3 A Yes.

4 Q And that's from Echo, and there's another message
5 that says, "Okay, I'm going to leave you alone." And that's
6 again from Echo to Troy, right? You can see the green arrow?

7 A Yes.

8 Q There's no text messages in-between until a baby
9 picture is sent. Is that right?

10 A Yes.

11 Q And that went to multiple recipients about eight
12 hours later; yes?

13 A Yes.

14 Q And then there's some more messages a few hours
15 later. "I thought you were going to call me after prayer."
16 And that's from Echo to Troy?

17 A That's -- Yes.

18 Q "Any chance you would talk to me tomorrow?" From
19 Echo to Troy. Yes?

20 A Yes.

21 Q "I'm hoping from a friendly perspective if at all
22 possible. I know you don't owe me anything." And we can see
23 the rest there. And again, from Echo to Troy, right?

24 A Yes.

25 Q And then additional kid pictures --

1 A Yes.

2 Q -- or an additional kid picture anyway, right?

3 A Yes. That may be to the previous -- if you go to
4 the previous page.

5 Q Sure.

6 A That may be from that text. This one.

7 Q Yes.

8 A See, it carried over.

9 Q Very good. And that's what happens with the way
10 these things were laid out. Sometimes if you can't see a
11 number or you can't see a time, you can look on the previous
12 page and you can figure out what number and time it was lined
13 up with that text, is that right?

14 A Yes.

15 Q And then there's another child photo that's sent
16 after from Echo to Troy, right?

17 A Yes.

18 Q So it looks like during this period that started --
19 these are bottom to top, right? -- that started on the 23rd
20 at 10:00 p.m.; let's just say there.

21 A Okay.

22 Q Until the 25th at -- I'm sorry, it was 10:00 a.m.,
23 until the 25th at 15:21, at 3:30 p.m., so a couple days. The
24 only person texting is Echo texting to Troy. Yes?

25 A Yes, except they can be deceptive here. Now, the

1 one that you're looking at with multiple recipients there on
2 that page at the bottom, and you go to the next page --

3 Q Okay.

4 A -- it's probably just one message but she's sending
5 three images or multiple images. See, if you go back up.

6 Q Oh.

7 A And so if you look at the time frame you can see
8 that was probably groups of messages being sent in blocks.
9 So this previous photo which belongs to that, and then we go
10 to the 24th. So it looks like that was just one message. You
11 see how it's got another one on the 25th and then another one
12 on the 25th, but the time frame is in close proximity. You've
13 got to remember based on -- I can't tell you if she was using
14 wi-fi or cellular, and depending on the size of that image and
15 the data connection or the speed at which she's connected, it
16 may take time to upload that image in order to send it in that
17 text, which may result in this view here. Those are probably
18 all one message but it's broken up.

19 Q Probably all. And when you say probably all, we're
20 talking about the two photographs, there's a four minute gap
21 in-between; yes?

22 A Yeah. So if you sat there and connected three
23 photos to one message.

24 Q Understood. I'll walk through it just so I can keep
25 myself straight, okay?

1 A Sure.

2 Q Okay, a four minute gap between. And what we might
3 have is it takes some time to upload the messages or download
4 the messages.

5 A Right.

6 Q Might have two sent at once; yes?

7 A Right.

8 Q Or they might have been sent a couple minutes apart.
9 It kind of depends on wi-fi service. And the report isn't
10 that accurate on that, it doesn't distinguish necessarily?

11 A No, it's not clear.

12 Q Okay. Now, these are messages, again, to Troy that
13 the State has admitted, and there were also phone calls from
14 a Lantern report that the State had admitted, and that is
15 State's 84. Do you remember that?

16 A I testified to a lot --

17 Q I know.

18 A -- so I would need you to clarify.

19 Q Okay. Let's --

20 MR. COFFEE: Permission to approach?

21 THE COURT: You may.

22 BY MR. COFFEE:

23 Q We agree State's 85 is a list of phone calls, right?

24 A Yeah.

25 Q And those are from multiple people?

1 A Yes.

2 Q Or to multiple people. You can look on (inaudible).

3 A Or from. To or from. Right.

4 Q Yeah, incoming or outgoing.

5 A Right.

6 Q The appropriate notation is there, right? Yes?

7 A Yes, sir.

8 Q Okay. I'm going to zoom in, okay. The morning the

9 27th, the morning of the shooting at seven minutes before

10 10:00 there is a call coming in from Troy; yes? I know it's

11 hard to see the emoticon.

12 A It's blurry. Unfortunately that icon is blurry so

13 it's difficult to tell if that's an arrow pointing to the

14 phone or pointing away.

15 Q The phone is red, which would indicate --

16 A Incoming.

17 Q -- I think as we said in previous testimony

18 incoming.

19 A Yeah.

20 Q Okay. So there's a phone call coming in from Troy

21 and it lasts two minutes and fifty-four seconds.

22 A Yeah.

23 Q Now, some of these reports, the Cellebrite report

24 separates things out or can separate things out in a different

25 way?

1 A Yes, they do.

2 Q For example, you might be able to look at all the
3 messages that she sent out as a group and group it that way,
4 for example, right?

5 A Yes.

6 Q And you might be able to look at all the incoming
7 messages not by participant but by the messages; yes?

8 A Yes.

9 Q Okay. I want to go back to the Lantern report real
10 quick. I'm not going to ask you about anything specific, at
11 least not yet. Okay. Those garbage cans indicate deleted
12 messages; yes?

13 A Yes, sir.

14 Q And this is -- this is the report that we said is
15 just calls from Troy, not from anybody else?

16 A Yes.

17 Q Just calls from Troy or text messages from Troy,
18 let's be accurate, or to Troy, correct?

19 A That's correct.

20 Q And it goes on -- it looks like it goes on for about
21 a page here, right?

22 A There's a significant number of deleted messages.

23 Q Let's look at the next page. Also deleted, right?

24 A Yes, sir.

25 Q And the next page?

1 A Deleted. Yeah.

2 Q And the multiple recipients you'd have to delete
3 every recipient for it to get completely deleted, for that
4 trash can to show up. Is that how it works?

5 A I can't say. I don't know.

6 Q Okay. As far as the messages itself, again deleted,
7 right?

8 A Yes.

9 Q Including, for example, the broken heart messages
10 and the emoticon messages the way you've talked about, right?

11 A Yes, sir.

12 Q Another page. Deleted; yes?

13 A Yes.

14 Q And another page --

15 A Yes.

16 Q -- deleted. And another page. And another page?

17 A Yes.

18 Q Another page?

19 A Yes.

20 Q And these included messages that Echo had sent and
21 Troy had received, in addition to messages that Troy had sent
22 and Echo had received; yes?

23 A Yes.

24 Q And there was discussion in there about a meeting.
25 Do you remember that? It said can we just meet, can we just

1 talk. Do you remember that?

2 A I believe so, yes.

3 Q Okay. And there was discussion about you said
4 Wednesday you wanted to get back together. Do you remember
5 that? And you don't now. You're still with him, you're still
6 with that man; something along those lines. Do you remember
7 that?

8 A Something -- that seems familiar.

9 Q Okay, sure. All of those messages are deleted.
10 Now, when we get to the morning of the event, the morning of
11 the shooting -- indulgence -- and I'm sorry, it's actually
12 twelve o'clock the day before, "Just text, please." "Just
13 text, please." Those are outgoing messages at around 12:30
14 the day before to Troy White. Is that right?

15 A Yes.

16 Q Do you know who is with Echo when she is sending
17 these messages to Troy White asking Troy White to just use
18 text rather than call?

19 A No.

20 Q Do you know if Joe Averman was there?

21 A I have no idea who was there.

22 Q Have you examined a cell phone from Joe Averman in
23 any way, shape or form?

24 A No.

25 Q Have you examined a cell phone from Troy White in

1 any way, shape or form?

2 A No.

3 Q The only cell phone that you looked at that you were
4 asked to examine is Echo's phone. Is that fair?

5 A That's correct.

6 Q Now, the deleted messages, I'll pick a date. For
7 example, it had begun by the 23rd, right, deleting the
8 messages?

9 A It does appear that way, yes.

10 Q And continued through the morning or through the
11 night of the 26th. Is that accurate?

12 A Yes.

13 Q I want you to take a look at -- Well, let me ask yo
14 this. You may remember, my guess is you're probably going to
15 have to take a look at something.

16 MS. MERCER: Uh --

17 MR. COFFEE: Sorry.

18 THE COURT: Thank you.

19 MR. COFFEE: It's the most convenient place for me
20 to set stuff. I apologize. It's as messy as my house.

21 BY MR. COFFEE:

22 Q The Cellebrite report. We can look at messages sent
23 and messages received, and you broke it down that way; yes?

24 A Yes.

25 Q From say the 23rd until the 26th, can you tell me on

1 the sent messages if Echo was deleting anyone else's messages
2 besides Troy's?

3 A I would want to look at my report, but I seem to
4 recollect it was other messages being deleted.

5 MR. COFFEE: Permission to approach?

6 THE COURT: You may.

7 BY MR. COFFEE:

8 Q And we're going to look at -- I said the sent
9 messages, so we will start with that. Court's indulgence.
10 Let's start here on the 23rd.

11 A Okay.

12 Q Start taking a look for me --

13 A Well, yeah, like I said, as I recollect she deleted
14 messages from other people as well.

15 Q There are numerous messages we can agree that
16 weren't deleted from other people -- that were sent to other
17 people; yes?

18 A Yes.

19 Q And as we start looking, oh, the 23rd she might have
20 deleted a message that she sent to her mother; yes?

21 A Yeah.

22 Q But she's keeping messages from Juicy Joe. Is that
23 accurate?

24 A Yes, that is.

25 Q And shortly afterwards she's deleting, and this is

1 the 23rd, the 24th, the 25th, deleting the correspondence with
2 Troy White. Is that true?

3 A Yes.

4 Q And again, this was broken down by just messages
5 that were sent. Let's talk about messages that were received.
6 And that would be designated as an in box, right?

7 A Yes.

8 Q Would looking at a copy of the in box report refresh
9 your recollection as to whether the same thing was going on
10 with the messages that were incoming?

11 A We have to be careful about isolating deletions.
12 We don't know when the deletions occurred. There's no way to
13 identify when those occurred. There was activity, clearly,
14 after the victim was killed and whoever had possession of that
15 phone could have easily deleted messages after the fact. I'm
16 not comfortable saying when they were deleted.

17 Q You haven't been asked when they were deleted.

18 A Well, we're making dates here. We're going to
19 dates.

20 Q And if I tell you there's been testimony in this
21 courtroom that the iPhone was seized at the scene of this
22 homicide shortly after the homicide, would it --

23 A That would be news to me.

24 Q What's that?

25 A That would be news to me.

1 Q That would be news to you. And would it be Metro's
2 policy to go through and delete things from the phone once
3 they've got it at a crime scene? That wouldn't be their
4 policy, would it?

5 A Absolutely not.

6 Q Okay. We have had that testimony that the phone
7 was seized at the scene. Does that make you more comfortable
8 about the deletions?

9 A So we can say safely those deletions occurred before
10 that time.

11 Q Yes.

12 A That's basically it.

13 MR. COFFEE: Permission to approach?

14 THE COURT: You may.

15 BY MR. COFFEE:

16 Q And I went ahead and jumped ahead a few pages.

17 A Yes, sir.

18 Q There are texts from a number of people on the 25th,
19 correct?

20 A Yes.

21 Q And these are from Tom's cell, from mom, from Juicy
22 Joe?

23 A Yeah.

24 Q How many fit on a page?

25 A I have no idea. A significant number.

1 Q Okay. More texts, Juicy Joe, mom.

2 MS. MERCER: Your Honor, he's reading into the
3 record a report that's not been admitted into evidence, so.

4 MR. COFFEE: I'm asking if there's more text from
5 Juicy Joe and mom that weren't deleted. I'm sorry.

6 THE COURT: The objection is overruled.

7 BY MR. COFFEE:

8 Q More text from Juicy Joe and mom not deleted, right?

9 A Correct.

10 Q Long portions in this report without deletions of
11 incoming text, right?

12 A Yes.

13 Q And then when you start to find on -- what's the
14 date?

15 A That's the 26th.

16 Q When you start to find deletions again on the 26th,
17 those deletions are text coming in from Troy, right?

18 A Yes. Unfortunately I can't tell you when they were
19 deleted.

20 Q Looking more at the 26th, there were a number of
21 texts from Troy and it appears that they are virtually all
22 deleted on the 26th, right?

23 A It does appear that way.

24 Q Now, on the 27th the deletions stopped on the
25 morning of the 27th, is that right?

1 A That's correct.

2 Q Okay. We use phones for text messaging and all
3 kinds of things that we didn't ten years ago; yes?

4 A Yes.

5 Q It's been a growing field, a burgeoning field; yes?

6 A Hugely.

7 Q But we still use them to carry the human voice, too,
8 don't we?

9 A Yes.

10 Q And one of the things that you looked at when you
11 did your forensic report here, whether or not there were voice
12 mail messages on Echo's phone?

13 A Yes.

14 Q Were there voice mail messages on Echo's phone?

15 A Yes.

16 Q Messages from Troy?

17 A Yes.

18 Q Without going into the content, did you listen to
19 those messages?

20 A I don't recall the messages.

21 Q You were looking for things of evidentiary
22 significance. We've talked about that beforehand.

23 A Most of what I did was provide the information for
24 the lead detective, which would be the homicide detective.

25 Q So the buck may not stop with you on this one, the

1 buck may stop with him?

2 A Yeah. I did not -- I cannot say I listened to every
3 voice message on that phone.

4 Q I want to talk to you about two in particular, all
5 right?

6 A All right.

7 Q The district attorney asked some questions about --
8 MS. MERCER: Objection, Your Honor. May we please
9 approach?

10 THE COURT: Sure.

11 (Bench conference)

12 THE COURT: He's already said he's not going to talk
13 about the substance of the messages. If he's talking about
14 time, that's okay. But substance, he's already said you're
15 not going to talk about, right?

16 MR. COFFEE: Right.

17 MS. MERCER: I didn't hear him say that. I just
18 wanted to make sure he's not going to do anything that would
19 violate the Court's previous ruling. I didn't hear him --

20 THE COURT: He's already said we're not going to
21 talk about the substance. He said it twice. All right?

22 MS. MERCER: Okay. Well, Mr. Rogan has been
23 whispering in my ear, so I can't hear everything.

24 THE COURT: Stop whispering in her ear. Let her do
25 her job.

1 MR. ROGAN: I can't do anything (inaudible).
2 (End of bench conference)
3 THE COURT: Mr. Coffee, you can continue.
4 MR. COFFEE: Thank you.
5 BY MR. COFFEE:
6 Q You're familiar -- you've examined enough of these
7 phones that you're probably familiar with this UTC time
8 nomenclature?
9 A Yes, I am.
10 Q And that's seven hours different than our time,
11 depending on if it's daylight savings time or not?
12 A That's correct. It has to be daylight savings
13 time --
14 Q Okay.
15 A -- which is defined as the second Sunday in March
16 at 2:00 a.m. through November -- Sunday, the first Sunday in
17 November at 2:00 a.m.
18 Q We can agree in July the clock would be seven hours
19 ahead for UTC?
20 A Yes.
21 Q So, for example, 12:30:01 UTC would be 5:30 a.m.
22 Pacific Time?
23 A That's correct. That would be the day before.
24 MR. COFFEE: Court's indulgence.
25 //

1 BY MR. COFFEE:

2 Q There was a question from the district attorney a
3 few moments ago -- and again, this is State's Exhibit 85.
4 And this is at 5:31 a.m., around the time we just spoke about
5 a minute ago?

6 A Yes.

7 Q "I love you. I sent you a voice mail. I would love
8 for you to listen to it since it's sincere, it isn't mean, it
9 isn't angry. You need to listen to it, please." That was a
10 text that he sent, correct?

11 A Yes.

12 Q And when you did your forensic examination of the
13 cellular phone, you found a text message corresponding or a
14 voice message corresponding to that time. Is that accurate?

15 A I don't know. I would have to look at the report.

16 MR. COFFEE: Permission to approach?

17 THE COURT: You may.

18 THE WITNESS: That's 12:30 UTC, that would be 5:30
19 a.m., from "Headache." The message is two minutes long and
20 it's message 102AMR.

21 BY MR. COFFEE:

22 Q And you were actually able to retrieve that message?

23 A Yes, we were.

24 Q Okay. Going through this, having refreshed your
25 recollection, I'm going to ask you about another one in a

1 minute, so why don't we go ahead and refresh your recollection
2 now for that, also.

3 A Okay. There's another one prior. Oh, I'm sorry,
4 yeah, it's after.

5 Q Okay. Now, Headache, the phone number for Headache,
6 just so there's no confusion, matches the phone number for
7 Troy White, correct?

8 A That's correct.

9 Q And at 5:30 a.m. Pacific Standard Time there was a
10 voice message sent that corresponded to what we see there from
11 Troy White to Echo's phone; yes?

12 A Yes.

13 Q You were able to retrieve the message; yes?

14 A Yes.

15 Q It lasted two minutes and thirty-four seconds?

16 A Yes.

17 Q If it has any forensic value, that would be
18 something for the detective; you don't remember if you
19 listened to it or not?

20 A I cannot recall.

21 Q Okay. Shortly afterwards, and the time -- again,
22 let's talk about UTC one more time -- 4:41:27 UTC, that would
23 be 9:41 a.m. Pacific Standard Time; yes?

24 A 4:41. Is it 04:41?

25 Q Yeah.

1 A That would be 4:41 a.m. We'd have to subtract seven
2 hours.

3 Q Oh, no, no. I'm sorry. It's a good question. No,
4 it's 4:41 p.m. My mistake.

5 A Okay. Yes, then it would be we would subtract from
6 4:41 p.m. It would be 9:00 a.m.

7 Q 9:00 a.m. Pacific Standard Time there was a second
8 voice message and that was AMR103 or 103AMR?

9 A Yes.

10 Q That was also retrieved from Echo Lucas' cell phone;
11 yes?

12 A That would be from the victim's cell phone, right?

13 Q Yes.

14 A Yes.

15 Q And that message lasted fifty-nine seconds?

16 A Well, I would have to look, but yeah, if you're
17 reading it from --

18 MR. COFFEE: Permission to approach?

19 THE COURT: You may.

20 THE WITNESS: Yeah, p.m. Yeah, 59 seconds.

21 BY MR. COFFEE:

22 Q Fifty-nine seconds at just before 10:00 a.m.; 20
23 minutes before 10:00 a.m., right?

24 A I would say that's correct.

25 Q And again, that was a message that you were actually

1 able to extract; yes?

2 A Yes.

3 Q And whether there's any evidentiary content would be

4 something for the detective?

5 A It was provided. Yes.

6 Q It was provided?

7 A Yes. That audio message is available, yeah. It's

8 part of the report.

9 Q That's where he's going to ask if the audio message

10 is available?

11 A If you look, it's a hyperlink, so it can be clicked

12 on and listened to. It's part of the report, which is another

13 reason why we don't just print it out.

14 Q Is there data sometimes that gets lost between the

15 conversion of Lantern and the conversion of Cellebrite?

16 A It is possible that there are -- parsing of data is

17 done differently and in the course of parsing the data it is

18 possible that data can be interpreted differently.

19 Q Is it possible that an entire text might get lost?

20 A Yes. I have seen where one or the other has not

21 provided all the text messages in the database file, and it's

22 another reason why in cases like this I will do -- use two

23 different tools to try to recover as much data or all the data

24 as possible.

25 Q You do what you can to get as much data as possible.

1 What's done with it is left to the detective?

2 A That's correct.

3 Q I want to talk to you specifically about a call at

4 -- on 7/23/2012 -- or I'm sorry, a text message, all right?

5 A All right.

6 Q And it was at 9:12 p.m. UTC, which would be what

7 time for us Pacific Standard Time?

8 A 9:12 UTC, was that A.M. or P.M.?

9 Q P.M.

10 A P.M., so it would be 2:00 p.m. our time.

11 Q Do you remember there being a test message that

12 stated, "K" -- from Echo to Troy, "K, I understand you don't

13 want to talk at all. Sad face. I don't blame you. Sad face.

14 I'm going to leave you alo--." And it ends, it doesn't say

15 alone, it just says a-l-o. Do you remember that?

16 A No.

17 Q Of course not. If I approach and let you take a

18 look, would that help you refresh your recollection?

19 A Well, I mean, sure. Absolutely.

20 Q Okay. And I went ahead and highlighted it so we'll

21 know where it is.

22 A Okay. All right.

23 Q Can we agree -- I want you to take a look, you're

24 familiar and you can do it a lot quicker than I can, at the

25 Lantern report.

1 A Uh-huh.

2 Q Does that refresh your recollection as to whether
3 or not that showed up on the --

4 A Well, according to this, this is a deleted text
5 message.

6 Q To Troy?

7 A It was sent to Troy, yes.

8 Q Okay. Can you look at the Lantern report and tell
9 me if that same text message is in there?

10 A Well, I would rather look at the HTML, and I'll tell
11 you why.

12 Q Okay.

13 A Because there are two kinds of messages that occur
14 between phones and Cellebrite does not distinguish between
15 them. There is a thing called iMessages, which is proprietary
16 to Apple and their times are written differently in the code.
17 Their time is based on Mac Absolute Time, which is the number
18 of microseconds since January 1, 1970. So what Lantern does
19 is it segregates iMessages -- or I'm sorry, what -- yeah, let
20 me see if I can get this, if I recall this correctly. They
21 segregate the iMessages from your normal text messages that
22 would go through a foreign service, such as AT&T, because
23 their time zones are based on Unix time. And Unix time starts
24 their epoch at a different date and time. So for them it's --
25 I'm sorry, for Unix it's January 1, 1970 and for Mac it's

1 January 1, 1980.

2 Q Apple iMessages proprietary; yes?

3 A Right. So they will show up as -- so a message
4 that's on here may be segregated in the Lantern report
5 differently.

6 Q Hold on, before we get too far down the road, okay?

7 A Okay.

8 Q Can I send an iMessage from an iPhone to, say, my
9 Android phone?

10 A No.

11 Q If I told you there was testimony that Troy White
12 had a Huawei phone, Chinese -- that's a Chinese brand, right,
13 kind of a Chinese knock-off phone?

14 A Yes, it is. It's a smart phone.

15 Q It's a smart phone. Can I send an iMessage to a
16 Huawei phone?

17 A You can send a message but it will not go through
18 just the Apple servers. It's going to have to go through
19 third party servers, and hence the Unix servers and then the
20 Unix time stamps, which is why they're segregated in the
21 Lantern report. It's a matter of how they want to parse out
22 their data in their reports. If you look, they are different,
23 very different in the way they present the data in their
24 reports. So I would need to look at the entire Lantern report
25 to see if this was a strictly iMessage or not. And, you know,

1 I'm not saying it is, I'm just saying I would have to do that.

2 Q If it was sent to a Huawei phone it might be an
3 iMessage, are you saying that?

4 A Well, no, not if she has an Android. It would need
5 to be another iPhone.

6 Q Okay. And we've had testimony that it was an
7 Android phone, so let's assume it's not an iMessage. That's
8 a safe assumption, right?

9 A Yeah.

10 Q Okay. And the timing should match up between the
11 two reports, right?

12 A It should, yes.

13 Q Can you look and see if the Lantern report has that
14 call we were talking about?

15 A Again, I would rather look at the Lantern's time
16 line. There's a time line that was done with Lantern. And
17 again, I would like to look at the Lantern report before I
18 start saying one has it and one doesn't.

19 Q Okay. The only question, and you might have
20 additional information, I understand, and you want to be very
21 thorough for us. We appreciate that.

22 A But it is possible one report will have data that
23 another will not.

24 Q The report admitted by the District Attorney's
25 Office, the Lantern report that was provided for the jury,

1 that's the only thing I'm asking about now, not HTML's, not
2 anything else.

3 A Oh, okay.

4 Q What I've got in my hand, State's 85. Do you follow
5 me so far?

6 A Yes, sir.

7 Q Can you tell me if that message is in State's 85?
8 We can agree that it doesn't appear to be, right?

9 A No. It would be right here.

10 Q Okay. The point being, while the Lantern report
11 is fairly complete, it's not necessarily a hundred percent
12 complete. True?

13 A Yes.

14 MR. COFFEE: Pass the witness.

15 THE COURT: Redirect?

16 MS. MERCER: Yes, just briefly.

17 REDIRECT EXAMINATION

18 BY MS. MERCER:

19 Q Detective, on direct examination I started asking
20 you questions about the time stamps on the text messages and
21 call histories. Do you recall that?

22 A Yes.

23 Q Do you do anything to verify, when you're examining
24 a phone, do you do anything to verify that the times listed in
25 the reports are accurate?

1 A Yes.

2 Q What do you do?

3 A What we'll do is go to the actual hexadecimal values
4 of the text message and we'll grab those text values and we
5 would then interpret them to a decimal value. And at that
6 point then we would look at that decimal value and convert it
7 to Gregorian calendar time based on that decimal value, such
8 as like I was saying, in an iMessage they use a different time
9 stamp value than Unix servers. So we would have to take that
10 numerical value and convert it from the date of what they call
11 their epoch, which is the time they start their clock, and
12 then we would be able to determine the time. And basically I
13 randomly check the dates and times of the time stamps on the
14 text messages to verify that they're being correctly
15 interpreted.

16 Q And you do that every time you examine a phone?

17 A Yes, but I don't do every single one of them.

18 Q You don't go through every single text --

19 A No.

20 Q -- but you grab a sampling every time you process
21 the phone to make sure that the timing is accurate?

22 A Yes. And I do find anomalies.

23 Q And when you find anomalies, you document that
24 somewhere, correct?

25 A Right. And it's another reason why we do -- in a

1 case like this we will do multiple examinations on a single
2 phone because there are times -- in this case that phone has
3 a database called a sms.db, where for whatever reason one of
4 the tools doesn't completely parse out all the text messages
5 within that database file.

6 Q Okay. And with regards to Lantern versus Cellebrite,
7 which one is easier to navigate as a lay person?

8 A Oh, Lantern, much easier.

9 Q Okay. Someone who is not as adept at going through
10 the contents of cell phones might rely on Lantern?

11 A I like to give Lantern as a companion with
12 Cellebrite because Cellebrite is more technically challenging,
13 I think, than Lantern.

14 Q Okay. Had you noticed any anomalies in the timing
15 or date stamps, you would have indicated that in this report,
16 correct?

17 A Yeah. And then I would have exported out the
18 database file and manually parsed it out, which I'm capable
19 of doing.

20 Q Okay. So the dates and times are accurate?

21 A Yes.

22 MS. MERCER: No further questions.

23 THE COURT: Anything further, Mr. Coffee?

24 MR. COFFEE: Just one thing.

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RECROSS-EXAMINATION

BY MR. COFFEE:

Q The call log was admitted as State's 84, the Lantern report; yes?

A Yes, sir.

Q Does that show the voice mail that was left at 5:30:01 a.m. Pacific Standard Time?

A What was the time again?

Q 5:30:01 a.m. Pacific Standard Time.

A And the date was what, the 23rd?

Q The 27th.

A 5:01?

Q 5:30:01.

A Oh, 5:30. No.

Q And does it show the voice mail sent at 9:41:27 a.m.?

A Now, this is a call log. This is -- again, the data is organized differently.

Q Okay.

A So voice mails would be under the voice mail section. I would want to look at the Lantern report and see if -- because they break it down differently. Again, we're looking at a section of one report and trying to find that data that may be located in another section of that same report.

1 Q And back to just what's admitted, the call log
2 that's been admitted in court here --
3 A Oh. No, it's not on there.
4 Q -- doesn't reflect those two?
5 A No.
6 Q So there might be calls that were left as voice
7 messages that don't show up on the call log?
8 A Yes.
9 MR. COFFEE: Okay, thank you. Nothing further.
10 THE COURT: Anything further?
11 MS. MERCER: No, Your Honor.
12 THE COURT: Thank you, sir. We appreciate your
13 time.
14 Counsel, can you approach?
15 THE WITNESS: Do you want this?
16 THE COURT: Leave that on the bench. The marshal
17 will take it.
18 MR. COFFEE: They'll be tracking us down if we don't
19 have it.
20 (Bench conference)
21 THE COURT: You said you wanted to make an additional
22 record about the voice mail.
23 MR. COFFEE: Uh-huh.
24 THE COURT: That was your last witness, so you're
25 going to check the exhibits with the clerk, right?

1 MR. ROGAN: Yes.

2 THE COURT: So I'm going to take a break. You're
3 going to make your record. You're going to check. Then
4 you're either going to rest or you're not. And then you're
5 going to do whatever you're going to do.

6 MR. COFFEE: Okay.

7 THE COURT: Okay.

8 MR. ROGAN: Okay.

9 (End of bench conference)

10 THE COURT: Ladies and gentlemen, we have a couple
11 of administrative things to do. During this recess you are
12 admonished not to talk or converse among yourselves or with
13 anyone else on any subject connected with this trial, or read,
14 watch or listen to any report of or commentary on the trial
15 or any person connected with this trial by any medium of
16 information, including without limitation social media, text,
17 newspapers, television, the Internet and radio, or form or
18 express any opinion on any subject connected with the trial
19 until the case is finally submitted to you.

20 We'll see you in about ten minutes outside Courtroom
21 14A.

22 (Jury is not present)

23 THE COURT: Mr. Coffee, you wanted to make an
24 additional record related to the admissibility of the two
25 voice mail messages you just discussed with Detective

1 Berghuis.

2 MR. COFFEE: Yes, just briefly, Judge, because I
3 have to get this on the record at some point. This is in
4 large part in deference to Howard Brooks, who may be handling
5 the appeal at some point, I've been instructed.

6 THE COURT: I understand. I have no problem with
7 you making a full and thorough record.

8 MR. COFFEE: We had offered to admit two voice
9 messages. They've been played. They should be in the
10 record someplace at this point. We've had some extensive
11 discussion --

12 THE COURT: We were to mark them as double O and
13 double P. Did that happen?

14 THE CLERK: Yes.

15 THE COURT: Okay.

16 MR. COFFEE: We've had some extensive discussion
17 concerning the voice messages. The State went through piece
18 by piece, line by line on direct with the cell phone person
19 and in particular actually talked about voice messages being
20 sent. So again, I think for completeness sake that it
21 supports argument and we'll refer to the record later on that.

22 There are two cases that I'd like to point to. One
23 is a federal case. It is Carver v. United States from 1897,
24 way before we had text messaging, and it involved a dying
25 declaration. Essentially the overview or the ALR overview of

1 Carver is that when the State is permitted in the prosecution
2 of murder to prove a conversation between the accused and the
3 deceased, the former is entitled to prove his version of it
4 under a rule where part of the conversation has been put into
5 evidence by one party the other party may explain, verify or
6 contradict it. And our position is that is what the messages
7 did. As far as a federal basis, we would cite the Sixth
8 Amendment right to present a defense, applicable to the states
9 through Fourteenth Amendment, and would say that we think we
10 have a constitutional right also to present the evidence,
11 given the other evidence that is in the record at this point.

12 We'll submit with that, but I wanted to make sure
13 that I had it on the record.

14 THE COURT: Absolutely.

15 Any additional record by the State?

16 MS. MERCER: No, Your Honor.

17 THE COURT: Okay. So my decision related to the
18 hearsay exclusion still operates. There may be ways to get
19 around that that you've discussed.

20 So, Ms. Mercer and Mr. Rogan, it is now your time to
21 go over with the clerk to make sure that all of the exhibits
22 that you think are in evidence are in fact in evidence,
23 because when we come back from the break I'm going to ask you
24 for your next witness and you're going to say either yes, I
25 have another one, or no. Then I'm going to ask if you rest,

1 and it's important that all of your evidence be in before you
2 rest.

3 Anything else before I take a short break, before
4 you meet with the clerk?

5 MR. ROGAN: No.

6 MR. COFFEE: No.

7 THE COURT: Okay.

8 (Court recessed from 2:32 p.m. until 2:46 p.m.)

9 (Jury is present)

10 THE COURT: Counsel stipulate to the presence of the
11 jury?

12 MS. MERCER: Yes, Your Honor.

13 MR. COFFEE: Yes, Judge.

14 THE COURT: You may be seated. Your next witness?

15 MS. MERCER: Your Honor, at this point the State
16 rests.

17 THE COURT: Okay. Does the defendant have additional
18 evidence to present at this time?

19 MR. COFFEE: The defense does. The defense would
20 call Nova Jaramillo.

21 NOVA JARAMILLO, DEFENDANT'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated, and please
23 state and spell your name for the record.

24 THE WITNESS: My name is Nova Jaramillo. That's
25 N-O-V-as in Victor-A. Last name Jaramillo, J-A-R-A-M-I-L-L-O.

1 THE COURT: Miss, there's water in the pitcher and
2 there are M&Ms in the dispenser. And if you should need
3 coffee, ask the marshal.

4 THE WITNESS: Thank you.

5 THE COURT: You may proceed, Mr. Coffee.

6 DIRECT EXAMINATION

7 BY MR. COFFEE

8 Q Ma'am, how are you employed?

9 A I am currently a funeral arranger with Simple
10 Cremation.

11 Q How were you employed in 2012?

12 A I was a part-time investigator with the Clark County
13 Coroner's Office.

14 Q And as part of your employment with the Clark County
15 Coroner's Office, did you have the occasion to investigate the
16 death of Echo Brooke Lucas?

17 A I did.

18 Q Now, what does a coroner investigator do?

19 A A coroner investigator basically investigates any
20 deaths, whether it be natural, a homicide, a suicide.

21 Q Do you make reports?

22 A Yes, I do.

23 Q And is it important being accurate in the reports?

24 A It is.

25 Q Fair?

1 A Yes.

2 Q And complete?

3 A Correct.

4 Q Do you remember making a report in regards to this

5 case?

6 A I do specifically recall making the report, yes.

7 Q Do you remember speaking with a Amber Gaines?

8 A I do.

9 Q And she was the mother of Echo Lucas?

10 A That's correct.

11 Q I'm going to ask you two specific questions about

12 things that were said to you, okay?

13 A Okay.

14 Q Did Ms. Gaines tell you that Echo Lucas and her

15 husband were happily married until she met her new boyfriend?

16 A She did.

17 Q And did she tell you that she had offered to let

18 them live together until she could work things out with her

19 husband; meaning, Echo Lucas could work things out with her

20 husband?

21 A Yes.

22 MR. COFFEE: Thank you for coming in for us.

23 THE COURT: Cross-examination?

24 MR. ROGAN: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. ROGAN:

Q Ma'am, it's true that when you spoke to Amber Gaines it was in the quiet room at UMC, correct?

A That's correct.

Q And that's where they take family members of people who have just been through a traumatic experience at the hospital?

A Correct.

Q At the time that you went and spoke with Amber Gaines, was she with her husband Michael? Is that right?

A I was addressed that he was the stepfather.

Q I'm sorry, stepfather.

A Yes.

Q Okay. All right.

A That's how it was addressed, yes.

Q Thank you. And when you went and spoke with them, had you been told that they, meaning Amber and Michael or the stepfather, had already been informed of Echo's passing?

A I was under the impression, yes, that they had already been informed of her demise.

Q And that actually wasn't true, was it?

A Uh-uh.

Q Is that a no?

A No.

1 Q So when you went in there and you began asking these
2 questions about -- to further your investigation, you were
3 actually the first person to tell them that Echo had passed?
4 A That's correct.
5 Q That was a shock to them, wasn't it?
6 A It was, absolutely. They were distraught by it.
7 Q That's not your job in those circumstances?
8 A In that circumstances, no.
9 Q And you said that they were shocked?
10 A Yes, they were shocked.
11 Q And they started --
12 A They were distraught.
13 Q Distraught. They started sobbing?
14 A Absolutely.
15 Q So based upon your observation of the circumstances
16 at the time you were conducting your investigation, would it
17 be fair to assume that perhaps they wouldn't remember a
18 conversation with you?
19 A Repeat that.
20 Q Given the circumstances, would it be fair to say
21 that perhaps Amber and her stepfather wouldn't remember the
22 specifics of the conversation with you?
23 A I would say it could be fair.
24 Q Okay. When you drafted your report, you detailed or
25 told what each individual had said, correct?

1 A Correct.

2 Q And you talked to other people in addition to Amber

3 Gaines, right?

4 A It was the Metro, Las Vegas Metro Police Department

5 detective that I spoke with, and then there was, you know, the

6 mother, the stepfather and the sister that were there.

7 Q Okay. So there's other people that are involved.

8 A Correct.

9 Q All right. And when you put that in your report,

10 you don't intend your report to be verbatim as to what each

11 person said exactly, it's not in quotations, right?

12 A Right, it's not in quotations.

13 Q Okay. It's a summary of your conversation with the

14 person?

15 A Of the conversation. That's correct.

16 Q And Mr. Coffee asked you some questions about

17 whether you remembered Amber saying certain things, correct,

18 just now?

19 A Yes, what was in my report is what I recall.

20 Q Right. Do you remember also Amber saying to you

21 that the husband was jealous and had a temper?

22 A I don't recall if it was those exact same words,

23 but in some sort, yes.

24 Q Okay. In fact, you wrote in your report, "She

25 stated the husband was jealous and had a temper"?

1 A Correct.

2 MR. ROGAN: Thank you. Nothing further.

3 THE COURT: Anything further, Mr. Coffee?

4 REDIRECT EXAMINATION

5 BY MR. COFFEE:

6 Q You included in your report that you were actually

7 the one that notified Ms. Gaines and her husband of Amber's

8 death; yes?

9 A That's correct. Yes.

10 MR. COFFEE: Okay, thank you. Nothing further.

11 THE COURT: Anything further, Mr. Rogan?

12 MR. ROGAN: No, Your Honor.

13 THE COURT: Thank you, Miss. Have a very nice day.

14 THE WITNESS: Thank you.

15 THE COURT: Next witness.

16 MR. COFFEE: Dena Cabral.

17 DENA CABRAL, DEFENDANT'S WITNESS, SWORN

18 THE CLERK: Thank you. Please be seated and please

19 state and spell your name for the record.

20 THE WITNESS: My name is Dena Cabral. D-E-N-A

21 C-A-B-R-A-L.

22 THE CLERK: Thank you.

23 THE COURT: And, Miss, there's water in that pitcher

24 if you should need it and M&Ms in this dispenser. If you

25 should need coffee, ask the marshal.

1 THE WITNESS: Thank you.

2 THE COURT: Mr. Coffee.

3 DIRECT EXAMINATION

4 BY MR. COFFEE:

5 Q Ms. Cabral, do you know the gentleman sitting at
6 counsel table here?

7 A I do.

8 Q Who is that?

9 A Troy White.

10 Q How do you know Troy White?

11 A We were friends. We met in church.

12 Q I'm sorry, you're going to need to speak up a little
13 bit. I know it's tough.

14 A Sorry, I'm nervous. We were friends.

15 Q Okay. And you had met in church, you said?

16 A Yes.

17 Q Now, was there anybody else in the friendship?

18 A I was friends with Echo and I was married to Joe.

19 Q There we go. You are Joe Averman's ex-wife?

20 A Yes.

21 Q When were you and Joe married?

22 A We started dating in 2002. We were married in 2004,
23 August 1st.

24 Q And when were you divorced?

25 A Our divorce was finalized April 18th, I believe, of

1 2012.

2 Q Now, as Joe's wife, were you able to see Joe and
3 Troy interact?

4 A Yes.

5 Q Were they friends?

6 A They were very good friends.

7 Q For how long?

8 A At least probably five years, minimum, I would say.

9 Q Okay. Had you all met at Potter's House?

10 A We did.

11 Q Did you go to each other's house?

12 A Yes.

13 Q Go to dinners, those kind of things?

14 A Yes.

15 Q I want to -- Were you friends with Echo?

16 A We were very good friends.

17 Q Do you miss her still? Yes?

18 A Yes.

19 Q I want to move forward to 2012 if I might, all
20 right?

21 A Okay.

22 Q Did there become a time when you found out about a
23 relationship between Joe Averman and Echo Lucas?

24 A Yes.

25 Q When was that?

1 A Well, I knew in March that he had started seeing
2 somebody but I didn't know who it was, and then in June he
3 called me and he told me that they were seeing each other.

4 Q Did you believe him?

5 A No, not at first. I laughed. And I was like, oh,
6 she's sitting in front of you, you're looking at her, you're
7 seeing her?

8 Q What did he do?

9 A He said no, because we had made a promise to each
10 other raising our children that if it got serious with
11 somebody we would tell the other.

12 Q Did he prove to you that it was Echo that he was
13 seeing?

14 A Yes.

15 Q How did he do that?

16 A He handed her the phone.

17 Q And she verified the relationship?

18 A Yes. She apologized.

19 Q When did this conversation take place?

20 A It had to have been in June, mid-June.

21 Q Before that there was a relationship but you didn't
22 know who it was with?

23 A Correct.

24 Q Did you become aware that Joe moved in with Echo?

25 A I did.

1 Q Was Joe working at the time?

2 A Not to my knowledge. He wasn't giving me any
3 assistance financially, so I'm assuming he wasn't. He said
4 that Troy and Echo had let him stay with them.

5 MR. ROGAN: Objection, hearsay.

6 THE COURT: Overruled.

7 BY MR. COFFEE:

8 Q Go ahead.

9 A Joe had told me that Troy and Echo had allowed him
10 to stay with them.

11 Q Did that seem strange to you that Troy had allowed
12 him to stay with them when you found out about the
13 relationship?

14 A Well, knowing Troy, he was trying to help his friend
15 and I don't think he understood the impact it would have when
16 he began to let Joe stay with them.

17 Q Do you know if Troy knew about the relationship in
18 March?

19 A No, not to my knowledge. He had no idea.

20 Q There's been some discussion about relationships and
21 when intimacy started. When they started dating in March, do
22 you think they were just holding hands until June, is that
23 what was going on?

24 MR. ROGAN: Objection, speculation.

25 THE COURT: Ma'am, we don't want you to guess or

1 speculate, but if you have information of your personal
2 knowledge, we're entitled to it.

3 THE WITNESS: Joe made it clear that he was seeing
4 somebody. He wasn't sure where it was going to go, but there
5 was a lot of chemistry between the two of them.

6 BY MR. COFFEE:

7 Q And a romantic relationship, did he make that clear?

8 A My children made that clear that they saw --

9 MR. ROGAN: Objection, calls for hearsay.

10 THE COURT: Sustained.

11 BY MR. COFFEE:

12 Q Did you think Joe was more than just friends with
13 this person? Was that the impression you had?

14 A Yes, definitely.

15 Q Was there any doubt in your mind about that?

16 A I apologize, repeat that, please.

17 Q I'm sorry. Was there any doubt in your mind about
18 that?

19 A No. He made it very clear he had started seeing
20 somebody and they were dating.

21 Q And this is in March?

22 A Yes, before our divorce, in front of the divorce --
23 we went to go to a paralegal, in front of there. When we
24 were signing the papers he made it very clear he was seeing
25 somebody.

1 Q You said you were divorced in April. Is March
2 around the time your marital problems started?

3 A No. Joe and I had had some marital problems.

4 Q Okay, we'll just leave it at that. You knew Joe,
5 you were married to him; yes?

6 A Yes.

7 Q Do you have an opinion as to whether or not Joe is
8 an honest person?

9 A Joe is a compulsive liar.

10 MR. COFFEE: Thank you. Nothing further.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. ROGAN:

14 Q Ma'am, you belong to the Potter's House church?

15 A Yes, I do.

16 Q And you've been going there for quite some time?

17 A Yes, I have.

18 Q And you're still a member there?

19 A Yes, I am.

20 Q Do you remember referring to your husband as a
21 backslider?

22 A Yes.

23 Q What's a backslider?

24 A That's somebody that has come to the church, they
25 understand God's word. They've made a decision to serve God

1 in their own free will, and then at some point they've
2 declared that by getting baptized and made a decision that
3 they're going to do God's will for their life. And at some
4 point after that decision was made decided to go back to their
5 sin.

6 Q And so at the time of your divorce, it's fair to say
7 that Joe was a backslider and had been for some months?

8 A Yes.

9 Q And that's what you considered him to be at that
10 time?

11 A He was more than just a backslider, but yes.

12 Q And you separated in 2011?

13 A Yes.

14 Q And you had an agreement with Joe that if things
15 became serious, for the sake of your children if things became
16 serious with a new partner that they -- you, each other, would
17 inform the other person? Do you understand my question?

18 A Yes.

19 Q Okay.

20 A Yes, we did have that agreement.

21 Q All right. So he informed you in June of 2012, mid-
22 June, you said, that things had become serious with Echo and
23 he was abiding by his promise to you to inform you of that?

24 A Yes. He told me that the person that he had been
25 seeing --

1 Q Yes? It's just yes or no. I'm sorry, ma'am.
2 A Yes.
3 Q He informed you of that. Okay. The defense
4 attorney will have a chance to ask some more questions, okay?
5 A Okay.
6 Q You were asked questions by the defense attorney
7 about things that Joe had told you. Do you remember that?
8 A Yes.
9 Q Do you remember Joe telling you that the defendant
10 had once said to Joe, If you're fucking my wife, I'm going to
11 kill you?
12 A That's what Joe said he said.
13 MR. ROGAN: Thank you.
14 THE COURT: Mr. Coffee.
15 REDIRECT EXAMINATION
16 BY MR. COFFEE:
17 Q Did you think Joe was abiding by his promises to
18 you?
19 A His promises?
20 Q Yeah, his promise to be honest about his new
21 relationship. Did you feel like he treated you honestly?
22 A At that very moment, yes. Not up until that moment.
23 Q Not up until that moment. He hid it from you from
24 March?
25 A Yes.

1 Q With one of your best friends?
2 A Yes.
3 Q Did Mr. White tell you that he had hoped to
4 reconcile with his wife?
5 A Multiple times.
6 Q Was there any question about that?
7 A About his desire to reconcile?
8 Q Right.
9 A No. He wanted his family back. He wanted his wife
10 back.
11 Q And Joe was in Troy's house, though?
12 A Yes.
13 MR. COFFEE: Okay, thank you. Nothing further.
14 THE COURT: Any further cross-examination?
15 MR. ROGAN: No, Your Honor.
16 THE COURT: Okay, thank you, Miss. We appreciate
17 your time. Have a very nice day.
18 THE WITNESS: Thank you.
19 THE COURT: Next witness?
20 MR. COFFEE: The defense rests.
21 THE COURT: Before you rest, can you come check the
22 exhibit list --
23 MR. COFFEE: Absolutely.
24 THE COURT: -- to make sure all of the exhibits you
25 think have been admitted are in fact admitted.

1 Can you turn on the white noise, Jill.

2 (Pause in the proceedings)

3 THE COURT: Mr. Coffee, have you had an opportunity

4 to check the exhibits?

5 MR. COFFEE: I have, Judge.

6 THE COURT: And?

7 MR. COFFEE: They appear to be in order.

8 THE COURT: So do you rest?

9 MR. COFFEE: We do.

10 THE COURT: Okay. Does the State have any rebuttal?

11 MR. ROGAN: The State has no rebuttal witnesses.

12 THE COURT: All right. Ladies and gentlemen, at

13 this time the evidence is closed. We will be hearing closing

14 arguments on Thursday morning at 9:30 or so, as soon as you

15 can get here. So at this time -- hold on a second, let me

16 confirm that before I leave you. Yeah, 9:30 or so.

17 At this time you are admonished not to talk or

18 converse among yourselves or with anyone else on any subject

19 connected with this trial, or read, watch or listen to any

20 report of or commentary on the trial or any person connected

21 with this trial by any medium of information, including

22 without limitation social media, text, newspapers, television,

23 the Internet and radio, or form or express any opinion on any

24 subject connected with the trial until the case is finally

25 submitted to you.

1 So we'll see around 9:30 on Thursday morning and
2 then we'll hear closing arguments and have the jury
3 instructions.

4 MR. COFFEE: Can we approach for just a moment
5 before we let them go?

6 THE COURT: You can. Hold on a second. Apparently
7 I messed up.

8 (Bench conference)

9 MR. COFFEE: With settling instructions it's going
10 to take a little while to make a record. We have to do that
11 Thursday morning.

12 THE COURT: Yeah, but I've only got three things,
13 four things, two calendar calls and a motion at 8:30.

14 MS. MERCER: Okay.

15 MR. COFFEE: Okay, we just wanted to make sure.

16 MS. MERCER: We weren't sure if you were accounting
17 for that.

18 MR. COFFEE: We just wanted to make sure we had --

19 THE COURT: Yeah.

20 MS. MERCER: Okay, thank you.

21 MR. COFFEE: Thanks.

22 (End of bench conference)

23 THE COURT: The lawyers don't think I can estimate
24 time well. So we'll see you about 9:30 on Thursday morning.
25 Have a nice evening. Have a nice day tomorrow. And if you

1 haven't filed your taxes, remember to do so.

2 (Jury is not present)

3 THE COURT: So, counsel, I had estimated it would
4 take fifteen minutes or so to settle jury instructions. Do
5 you think it will take a half hour?

6 MR. ROGAN: Possibly.

7 THE COURT: So I'll see you at 9:00 on Thursday
8 morning.

9 MS. MERCER: Okay.

10 MR. ROGAN: That's perfect. Thank you.

11 THE COURT: Nine o'clock.

12 MR. COFFEE: I think that's very optimistic.

13 THE COURT: You don't understand, Mr. Coffee.

14 MR. COFFEE: I do. I do. And that's one of the
15 reasons I wanted to make sure all my cites are good, too,
16 because on a lot of things we can probably just submit it on
17 the cites that we've put in.

18 THE COURT: Right. And what I plan to do is you're
19 going to email me your version. I have the State's version
20 they've previously given me, along with the instruction I read
21 you earlier that's been added. I will get your set and then
22 I'm going to put together a working set. We will email it to
23 you hopefully first thing Thursday morning, which in our life
24 is 6:45.

25 MR. COFFEE: Okay.

1 THE COURT: And then you will have it prior to
2 arriving here at nine o'clock so that we can settle it. Once
3 we settle it, I'll number it and all the jurors will have
4 copies.

5 MR. COFFEE: Okay. And just because we're going
6 to go through instructions, I'm going to ask the Court's
7 preference on something. There are a couple points of law
8 that we are suggesting that are very short. For example, that
9 physical contact need not be necessary for provocation. Does
10 the Court prefer those in single instructions or incorporate
11 in a longer instruction? Does that make sense?

12 THE COURT: I like them in single instructions.

13 MR. COFFEE: Okay.

14 THE COURT: That's my preference, to have each
15 little soundbite in a single instruction.

16 MR. COFFEE: Okay, good enough.

17 THE COURT: I will need a clean laptop from the
18 State when you come on Thursday morning because you will have
19 to submit it. You'll have to look at it and make sure it's
20 okay, so that they'll have something to listen to the 9-1-1
21 video and the other items. And then if you plan to use a
22 PowerPoint as part of your closing argument, I will need
23 copies of that either electronically or on paper provided to
24 each other and the clerk when you get here so that you can
25 exchange them and I have a record of them.

1 Were there any other issues that we discussed during
2 the trial at any point that you need to supplement your record
3 on for any reason?

4 MS. MERCER: I don't think so.

5 MR. ROGAN: Not that I know of.

6 THE COURT: I've tried to make notes and give you a
7 chance to make a record each time, but that doesn't mean I
8 forgot -- I mean, I didn't forget.

9 MR. COFFEE: No, and I'm --

10 THE COURT: Sometimes I do forget.

11 MR. COFFEE: I'm used to the old school when we
12 used to do it this way and I'm pretty good about catching it.
13 I think we're good.

14 THE COURT: Why are you standing there?

15 THE MARSHAL: I have something to tell you, Judge.

16 THE COURT: Hold on. Don't leave.

17 (Off-record colloquy - Court and Marshal)

18 THE COURT: Okay. Some of the jurors have mentioned
19 that one of the other jurors, who is a pharmaceutical
20 salesman, is texting during trial.

21 MS. MERCER: Oh, wow.

22 THE COURT: My guess is he's trying to keep up on
23 his sales work.

24 MR. ROGAN: Yeah.

25 MS. MERCER: Probably.

1 THE COURT: But we will make an inquiry of him on
2 Thursday morning when he comes in just to confirm that.
3 Which number is he?
4 THE MARSHAL: Number 6.
5 THE COURT: No, he's not an alternate. So we'll
6 make that inquiry when he comes in.
7 MR. COFFEE: What were the two alternate numbers
8 again?
9 MS. MERCER: It was 9 and 14.
10 MR. ROGAN: 9 and 14.
11 THE COURT: 9 and 14.
12 MR. COFFEE: 9 and 14. Okay.
13 THE COURT: 9 is the first alternate, 14 is the
14 second alternate.
15 MR. COFFEE: Very good.
16 MR. ROGAN: Your Honor, before we move on, Mr.
17 Coffee pointed out to me that I don't -- he doesn't think that
18 I included the attempt murder instructions in the copy I sent
19 to you.
20 THE COURT: Hold on a second. Let me go to my --
21 MR. COFFEE: You didn't.
22 MR. ROGAN: So I'll need to get those to you.
23 THE COURT: Because I've already cleaned up the
24 instructions you gave me and put them in the format I prefer,
25 which is different than what you gave me but is --

1 MR. ROGAN: Okay.

2 THE COURT: Hold on, I'm going, I'm looking.

3 MR. COFFEE: No, they're not there. There's also no
4 voluntary instruction.

5 MS. MERCER: That's because we had prepared ours to
6 send to you and then Jeff brought some up, too.

7 MR. COFFEE: Oh.

8 THE COURT: Nope, they're not there.

9 MR. ROGAN: Okay. I think there's just --

10 THE COURT: And it also looks like -- I thought you
11 were going to put a flight instruction in.

12 MR. ROGAN: There should be a flight instruction
13 there.

14 MS. MERCER: We usually place that at the end of our
15 instructions or towards the end.

16 THE COURT: Here's the instruction that's in. Mr.
17 Coffee, tell me -- some people like a different one. It says:
18 It is a constitutional right of a defendant in a criminal
19 trial he may not be compelled to testify. Thus, the decision
20 as to whether he should testify is left to the defendant on
21 the advice and counsel of his attorney. You must not draw any
22 inference of guilt from the fact that he does not testify, nor
23 should this fact be discussed by you or enter into your
24 deliberations in any way.

25 This is the version most people ask for. It is

1 slightly different than the version I talked to your client
2 about when I counseled him earlier.

3 MR. COFFEE: It's fine.

4 THE COURT: Is that what you want or you want a
5 different one?

6 MR. COFFEE: If we could add a line that if anybody
7 has an issue with it, they should talk to Mr. Negrete, but
8 other than that, we're good.

9 THE COURT: Okay, yeah. There it is. The flight
10 instruction is okay. That's really far back.

11 MR. ROGAN: It doesn't matter to me if you want to
12 move it up. That's fine, too.

13 THE COURT: I may change the order.

14 MR. ROGAN: That's fine.

15 THE COURT: But email me any, with your citations on
16 the bottom of them or wherever you want, because I'm going to
17 read them and then remove them.

18 MR. COFFEE: Yeah. I plan on sending a clean copy
19 and a cited copy.

20 THE COURT: It doesn't matter. You can only send
21 the one.

22 MR. COFFEE: Okay. I've got lengthy arguments
23 attached to some.

24 THE COURT: It doesn't matter --

25 MR. COFFEE: Okay.

1 THE COURT: -- because I have this cool feature
2 called block and delete.

3 MR. COFFEE: Mr. Coffee and I are going to go back
4 right now and we're going to go over our instructions together
5 and email what we've got to the Court, all right?

6 THE COURT: Okay.

7 MR. COFFEE: Very good.

8 THE COURT: But he's right, you don't have a
9 voluntary, you don't have an attempt.

10 MR. ROGAN: Right. We're not proposing a voluntary,
11 but we're going to go talk about that right now.

12 THE COURT: Well, but on your verdict form -- Oh,
13 you're right, it's not in there on the verdict form.

14 MR. COFFEE: We're going to be requesting one,
15 obviously.

16 THE COURT: Is it a lesser included?

17 MR. COFFEE: It's -- yes, in a weird way. I mean,
18 I've called it a lesser included in a lot of cases. It's a
19 lesser offense of murder because it's degrees that's --

20 THE COURT: I understand. I don't want to get into
21 a lesser included, lesser related discussion. If you guys
22 want me to submit on the voluntary, which is what you said in
23 opening statement --

24 MR. COFFEE: Yes.

25 THE COURT: -- then I'm pretty sure I'm going to do

1 it. But I need the information, and if you have a modified
2 verdict form I need that as well.

3 MR. COFFEE: We will.

4 MR. ROGAN: Thank you, Your Honor.

5 THE COURT: Anything else?

6 MR. ROGAN: No.

7 MS. MERCER: No, that's it.

8 THE COURT: Don't .pdf them. Send them in Word.

9 MR. ROGAN: Yes.

10 MR. COFFEE: Oh, yeah. Yeah, we're .tif. Who came
11 up with this .tif format that I get everything from the
12 Clerk's Office from and I can't read anything or do anything?

13 THE COURT: Well, that's because they're images.

14 MR. COFFEE: Oh, I hate that. All right, see you,
15 counsel.

16 (Court recessed at 3:15 p.m. until Thursday,
17 April 16, 2015, at 9:30 a.m.)

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<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Tate Sanborn	--	--	8/20/21	17/21
Amber Gaines	45	67	74	76
Bradley Burghuis	89	134	164	167

* * *

DEFENDANT'S WITNESSES

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EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
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DEFENDANT'S EXHIBIT NO.

EE - NN	5
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CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

10/15/15

DATE

From: Jeffrey Rogan <[REDACTED]@clarkcountynvda.com>
To: betsgonz <[REDACTED]@aol.com>
Cc: Scott Coffee <[REDACTED]@ClarkCountyNV.gov>; Elizabeth Mercer <[REDACTED]@clarkcountynvda.com>
Subject: State v. White - Conferred Jury Instructions
Date: Tue, Apr 14, 2015 6:06 pm
Attachments: Conferred Jury Instructions 03.docx (127K)

Good evening,

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

In the attached document:

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

Thank you,
-Jeff & Scott

Jeffrey S. Rogan
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, NV 89155-2212
W. [REDACTED] 2779
F. [REDACTED] 2997



1 INST

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DISTRICT COURT
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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-vs-

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TROY WHITE,

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Defendant.

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INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14

MEMBERS OF THE JURY:

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17

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

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

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INSTRUCTION NO. _____

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

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

INSTRUCTION NO. _____

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

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

COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

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

COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

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

COUNT 3 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

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

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1 COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

11 COUNT 5 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

21 COUNT 6 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

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

3 COUNT 7 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

13 COUNT 8 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

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

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

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

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INSTRUCTION NO. _____

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

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

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INSTRUCTION NO. _____

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

NRS 200.010

INSTRUCTION NO. _____

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

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

Defendant's objection:

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

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

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

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

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

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

10
11 State’s position

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

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

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

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

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

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

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

1 *Moser v. State*, 91 Nev. 809, 812, 544 P.2d 424, 426 (1975).
2 *Keys v. State*, 104 Nev. 736, 738, 766 P.2d 270, 271 (1988).
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INSTRUCTION NO. _____

There are two types of malice; they are:

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

NRS 200.020

INSTRUCTION NO. _____

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

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

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

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

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

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

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

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

INSTRUCTION NO. _____

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

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

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

INSTRUCTION NO. _____

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

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

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

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INSTRUCTION NO. _____

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

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

INSTRUCTION NO. _____

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

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

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

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

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INSTRUCTION NO. _____

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

NRS 200.010; 200.030(2)

INSTRUCTION NO. _____

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

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

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

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

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

INSTRUCTION NO. _____

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

Attempt murder does not require premeditation and deliberation.*

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

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

State's position:

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

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

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

NRS 200.010; 200.020; 193.330

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

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INSTRUCTION NO. _____

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

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

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INSTRUCTION NO. _____

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

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

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

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INSTRUCTION NO. _____

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

NRS 202.350(1)(d)(3)

INSTRUCTION NO. _____

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

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

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

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

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

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

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

INSTRUCTION NO. _____

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

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

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

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

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INSTRUCTION NO. _____

As used in these instructions:

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

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

“Physical injury” means:

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

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

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INSTRUCTION NO. _____

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

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

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

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

INSTRUCTION NO. _____

The Defendant is presumed 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 crime charged and that the Defendant is the person who committed the offense.

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. _____

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

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

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INSTRUCTION NO. _____

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

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INSTRUCTION NO. _____

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

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INSTRUCTION NO. _____

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. _____

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 from the evidence which you feel are justified in the light of common experience, 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.

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INSTRUCTION NO. _____

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

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INSTRUCTION NO. _____

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

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

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

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INSTRUCTION NO. _____

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 foreperson. 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.

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

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INSTRUCTION NO. _____

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 to 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.

GIVEN: _____

DISTRICT JUDGE

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8 Plaintiff,)
9 -vs-)
10 TROY WHITE,)
11 Defendant.)

CASE NO: C-12-286357-1
DEPT NO: XI

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant TROY WHITE, as
15 follows:
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17 **COUNT 1** – MURDER WITH USE OF A DEADLY WEAPON

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

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

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COUNT 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

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

COUNT 3 – CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON

(please check the appropriate box, select only one)

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

COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

(J [REDACTED] W [REDACTED])

COUNT 5 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

(J [REDACTED] W [REDACTED])

COUNT 6 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

(J [REDACTED] W [REDACTED])

COUNT 7 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

(J [REDACTED] W [REDACTED])

COUNT 8 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

(J [REDACTED] W [REDACTED])

DATED this ____ day of April, 2015

FOREPERSON