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### Summary of State v. White, 130 Nev. Adv. Op. 56

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## CRIMINAL LAW

### **Summary**

The Court determined whether a person could burglarize his or her own home.

### **Disposition**

A person cannot commit burglary of a home when he or she has an absolute right to enter the home.

### **Factual and Procedural History**

Echo Lucas and Troy White were a married couple living together with five children in White's house. The couple separated in June 2012. The couple agreed that White would live in the house with the children on weekends, and Lucas would live there with the children during the week. White held on to his house key for use on the weekends. Lucas' new boyfriend, Joseph Averman, moved into the house with Lucas and the children in late June.

According to Averman, White would arrive at the house on Friday afternoons and leave on Sundays. While White was at the house on the weekends, Lucas and Averman stayed elsewhere. White was not happy that Lucas was dating Averman and he began sending her threatening text messages and phone calls.

On Friday July 27, 2012, White came to the house early and asked to speak with Lucas. Lucas informed White that he was early and that they could talk later. She ended up agreeing to talk to him for a few minutes. During the conversation, White shot Lucas in the stomach and then shot Averman multiple times as he went to the room to help. Averman recovered, but Lucas died.

The State filed a criminal complaint against White, charging him with, *inter alia*, burglary while in possession of a firearm. White filed a pretrial petition for writ of habeas corpus arguing that he could not be charged with burglary because the home was his residence. The State filed a response in opposition. The district court granted White's petition and the State appealed.

### **Discussion**

*A person cannot commit burglary of a home when he or she has an absolute right to enter the home*

Here the Court quotes NRS 205.060(1), which states that "a person who, by day or night, enters any house, . . . or other building, . . . with the intent to commit grand or petit larceny, assault or battery on any person or any felony, . . . is guilty of burglary."<sup>2</sup> The Court acknowledged that Nevada's burglary statute is subject to two reasonable interpretations: (1) the

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<sup>1</sup> By Michael Bowman.

<sup>2</sup> NEV. REV. STAT. § 205.060(1) (2013).

Legislature intended to abolish the common law requirement of breaking in to the home of another for burglary, or (2) the Legislature incorporated the requirement by not expressly mentioning one's own residence as a possible place for burglary. In resolving this issue, the Court considered: the legislative intent of the statute, California's approach to whether one can burglarize his own residence, and the purposes of making burglary a crime under common law.

The common law "shall be the rule of decision in all courts of this territory . . . [and] should remain in force until repealed by the legislature."<sup>3</sup> Common law burglary sought to protect the occupant's right to enjoy one's home peacefully.<sup>4</sup> Under the common law, a person could not be convicted of burglary for entering his own residence, even with the intent to commit a felony therein.<sup>5</sup> Furthermore, "[t]his rule applied not only to sole owners of homes, but also to joint occupants," meaning that "[t]he important factor was occupancy, rather than ownership."<sup>6</sup>

Over the years, the Nevada Legislature has been moving away from the common law definition of burglary. Currently, burglary only requires an entry with the intent to commit certain specified offenses.<sup>7</sup> Breaking in is no longer required for burglary in Nevada.<sup>8</sup> Additionally, the burglary does not have to occur at night and the entry does not have to be a forcible entry.<sup>9</sup> Notwithstanding these changes, the Court stated that the common law principle that burglary law is meant to protect occupancy or possessory rights remains in effect.

The Court noted that the policies behind burglary statutes support the conclusion that a person having an absolute right to enter a home cannot burglarize his or her own home. Burglary law is "based primarily upon a recognition of the dangers to personal safety . . . that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence."<sup>10</sup>

The Court agreed with the California Supreme Court in that a person with an absolute right to enter a structure cannot commit burglary of that structure.<sup>11</sup> The Court held that the Legislature retained the idea that: "(1) burglary law is designed to protect a possessory or occupancy right in property, and (2) one cannot burglarize his own home so long as he has an absolute right to enter the home." Therefore, the Court held that "while ownership may be one factor to consider, the appropriate question is whether the alleged burglar has an absolute, unconditional right to enter the home."

*The district court did not err in granting White's pretrial petition for a writ of habeas corpus*

As applied to this case, the Nevada Supreme Court held that "the district court did not err in dismissing the charge against White for burglary while in possession of a firearm because he had an absolute right to enter the residence." Furthermore, White maintained his absolute right to enter the residence even though he agreed to stay elsewhere during the week. Additionally, because White retained his keys and entered the residence on a weekly basis to stay with his

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<sup>3</sup> Vansickle v. Haines, 7 Nev. 249, 285 (1872).

<sup>4</sup> People v. Gauze, 542 P.2d 1365, 1366 (Cal. 1975).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> State v. Adams, 94 Nev. 503, 505, 581 P.2d 868, 869 (1978).

<sup>8</sup> *Id.*

<sup>9</sup> Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1113 (2002); NEV. REV. STAT. § 205.060(1) (2013).

<sup>10</sup> *Gauze*, 542 P.2d at 1368 (internal quotation marks omitted).

<sup>11</sup> *Id.* at 1367.

children on the weekends, he couldn't be prevented from entering the residence. This conclusion aligns with the general policy underlying burglary statutes, which is to protect against intruders, not people committing crimes in their own residences.

### **Conclusion**

Because the Legislature has not eliminated the common law notion that a person with an absolute unconditional right to enter a structure cannot burglarize that structure, the Nevada Supreme Court held that the district court did not err in granting White's petition for a writ of habeas corpus.