

STATE OF MINNESOTA  
COUNTY OF STEARNS

IN DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Jerry Lee Thompson,

Defendant.

Court File No.  
73-CR-08-10136

GENERAL FINDINGS,  
FINDINGS OF FACT  
AND ORDER

The above-entitled matter came on for trial before the Honorable Vicki E. Landwehr, Judge of District Court, on December 8 – 10, 2009 in the County of Stearns, State of Minnesota.

Will R. Brost appeared on behalf of Plaintiff, State of Minnesota. Joseph M. Parise and K. Scott Belfry appeared on behalf of Defendant, Jerry Lee Thompson.

Now, having duly considered the arguments and memoranda of counsel, the testimony and exhibits herein, together with the applicable law, this Court makes the following:

**General Findings**

1. The Court finds the Defendant, Jerry Lee Thompson, guilty of the charge set forth in Count 1 of the Complaint, Attempted Murder in the First Degree – Premeditated.
2. The Court finds the Defendant, Jerry Lee Thompson, guilty of the charge set forth in Count 3 of the Complaint, Attempted Murder in the First Degree with Intent – While Committing a Felony.
3. The Court finds the Defendant, Jerry Lee Thompson, guilty of the charge set forth in Count 4 of the Complaint, Attempted Murder in the First Degree – Intent- While Committing a Felony.

4. The Court finds the Defendant, Jerry Lee Thompson, **guilty** of the charge set forth in Count 5 of the Complaint, Kidnapping to Commit Great Bodily Harm/Terrorize.
5. The Court finds the Defendant, Jerry Lee Thompson, **guilty** of the charge set forth in Count 6 of the Complaint, Burglary in the First Degree – Assault to a Person in the Building or on the Property.
6. The Court finds the Defendant, Jerry Lee Thompson, **guilty** of the charge set forth in Count 7 of the Complaint, Assault in the Second Degree with a Dangerous Weapon.
7. The Court finds the Defendant, Jerry Lee Thompson, **guilty** of the charge set forth in Count 8 of the Complaint, Assault in the Second Degree with a Dangerous Weapon.
8. The Court finds the Defendant, Jerry Lee Thompson, **guilty** of the charge set forth in Count 9 of the Complaint, Violating an Order for Protection While Possessing a Dangerous Weapon.
9. The Court finds that the existence of aggravating factors has been proven beyond a reasonable doubt.

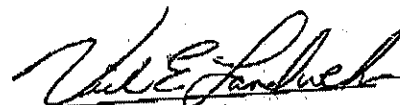
#### **Findings of Fact**

The Court herein incorporates by reference the Findings of Fact set forth in the **Memorandum of Decision.**

#### **Order**

Stearns County Community Corrections is directed to complete a pre-sentence investigation, and sentencing is set for March 25, 2010, at 10:30 a.m.

Dated this 17<sup>th</sup> day of December 2009.



Vicki E. Landwehr  
Judge of District Court

## Memorandum of Decision

### Findings of Fact

1. On April 11, 2008, Judge Skipper Pearson of the Stearns County District Court issued an order for protection against Defendant. The OFP expired on April 11, 2009.
2. The OFP carried the following conditions: Defendant could not commit acts of domestic abuse against Jacquelyn Thompson or their children Jayne and Jaycee Thompson; Defendant could not directly or indirectly contact Jacquelyn, Jayne or Jaycee Thompson, whether in person, with or through other persons, by telephone, letter, or in any other way; Defendant could not knowingly come within 200 feet of Jacquelyn, Jayne or Jaycee Thompson; Defendant could not enter Jacquelyn Thompson's residence at 4508 192<sup>nd</sup> Street, South Haven, MN or any future residence she would possess; Defendant could not come within one mile of Jacquelyn Thompson's residence at 4508 192<sup>nd</sup> Street, South Haven, MN.
3. Defendant was present at the April 11, 2008 hearing when Judge Pearson imposed the OFP. Defendant also received a copy of the OFP either personally or via mail. Defendant therefore knew that the OFP existed.
4. Scott Miller, who owned a business called Interstate Automotive, was familiar with Defendant, and in April 2008, Defendant told Scott Miller that he "had a plan for Jackie." Scott Miller asked about whether Defendant would get back to work soon, and Defendant replied, "It's not going to matter."
5. At approximately 1:29 a.m. on Tuesday, May 27, 2008, William Edwin Tasto, who worked for Yellow Cab, picked up an individual at Anderson Trucking in Stearns County, Minnesota. The individual instructed William Tasto to drop him off at the intersection of County Road 7 and County Road 146 outside a residence with a "For Sale" sign in front of it.

6. Jacquelyn Thompson received a phone call at approximately 10 a.m. on Tuesday, May 27, 2008 informing her that the alarm system for her residence had been tripped. On that same day, she checked the call log for a cellular phone that she owned which was, at that time, in the possession of Defendant. The call log displayed that the phone possessed by Defendant had made three contacts to Yellow Cab at approximately 1:37 a.m. on May 27, 2008.
7. Peter Croat lived on County Road 146 and directly south of Jacquelyn Thompson's residence. In May of 2008, Peter Croat had listed his house for sale, and a "For Sale" sign stood in front of his residence. At approximately 4 p.m. on Tuesday, May 27, 2008, Peter Croat looked towards the north end of his property and saw Defendant emerge from the woods between his property and Jacqueline Thompson's property. At the time, Defendant wore a winter jacket and disclosed to Peter Croat that he spent the night in the woods after taking a taxi to Peter Croat's driveway. Defendant repeatedly told Peter Croat that he wished to kill Jacquelyn Thompson and that he had hidden a gun in the woods. Defendant also told Peter Croat that he worried about law enforcement.
8. Scott Miller's business, Interstate Automotive, conducted automobile repairs, tows and similar work. At approximately 10 p.m. on May 27, 2008, Scott Miller towed a vehicle from Anderson Trucking that he identified as Defendant's black Ford Taurus.
9. On May 28, 2008, Stearns County Deputy Craig Pogatchnik met with Jacqueline Thompson at her residence so he could analyze phone records that she had retrieved. Craig Pogatchnik spoke with Defendant on two occasions that day, and Defendant denied coming to Jacqueline Thompson's residence. Defendant also denied calling Yellow Cab from his phone but provided no other explanation for the presence of the phone calls to Yellow Cab on his phone.

10. On Tuesday, August 5, 2008, Jacqueline Thompson entered her garage at approximately 5:40 a.m. so she could drive to her job with the United States Postal Service. She saw a shadow shift behind her white Toyota Scion when she opened the garage door, and Defendant emerged from behind her vehicle with a revolver in his left hand. Defendant aimed the revolver at Jacqueline Thompson and told her to get into her vehicle.
11. Jayme and Jaycee Thompson heard Jacqueline Thompson scream, and Jaycee Thompson then alerted Rebecca Voigt, who, at that time, was preparing for the day in the bathroom of the residence. After identifying Defendant by listening through the door that connected the house and the garage, Rebecca Voigt locked the door, handed a telephone to Jaycee Thompson and instructed her to call 911.
12. After Jacqueline Thompson began to scream, Defendant forcibly gained entry into Jacqueline Thompson's residence while he held a weapon to Jacqueline Thompson's back.
13. Defendant entered the bedroom and found Jaycee Thompson in the closet, speaking on the phone. Defendant pointed the weapon at Rebecca Voigt and, in regards to Jaycee Thompson, asked, "Who is she on the phone with?" Throughout the morning of August 5, 2008, Defendant swung the gun around and would aim it at whomever he addressed, including Rebecca Voigt.
14. Upon seeing Jaycee Thompson on the phone, Defendant aimed the .44 revolver at her and asked who she had called. Rebecca Voigt told Defendant that Jaycee Thompson had called "Grandma", and Jaycee Thompson then hung up the phone after Defendant instructed her to do so.

15. Defendant left the bedroom and forced Jacquelyn Thompson to accompany him by pulling her hair. Upon entering the living room, Defendant threw Jacqueline Thompson over a dog gate and continued pulling her towards the garage by her hair.
16. Once in the garage, Defendant instructed her to enter the passenger side of the vehicle, which faced the entrance to the house. When Defendant proceeded around the Scion to enter the driver side of the vehicle, Jacqueline Thompson ran to the door that led to the house.
17. Jacqueline Thompson opened the door and dove in, and she heard a single shot fire as she crossed the threshold. Jaycee Thompson, who had just relocated to the living room from the bedroom, heard the gun shot and saw Jacqueline Thompson lying in the hallway that led from the garage.
18. Jacqueline Thompson is five feet and two inches tall. Bureau of Criminal Apprehension Investigator Joshua Bergeron's forensic investigation team removed the bullet approximately four feet and one inch up the door frame.
19. Jacqueline Thompson re-entered the bedroom after the single gunshot, and Rebecca Voigt handed a loaded .22 pistol to Jacqueline Thompson. Rebecca Voigt then closed the bedroom door and pushed her arm and foot in front of the door to prevent the re-entry of Defendant. Defendant forced his way into the bedroom and aimed the weapon at Rebecca Voigt when he re-entered the bedroom.
20. Once Defendant arrived at the threshold of the closet, Jacquelyn Thompson attempted to fire the .22, but the gun did not fire. Defendant wrestled the .22 away from Jacqueline Thompson while Jayme Thompson leapt onto Defendant and began to strike his back.
21. After wrestling the .22 pistol away from Jacqueline Thompson, Defendant brought her out to the garage for a second time. Jacqueline Thompson intentionally left behind the keys to her

- Toyota Scion to delay Defendant, which caused the pair to re-enter the home for a third time. Defendant sent Jacqueline Thompson back into the bedroom to retrieve her keys. When Jacqueline Thompson could not find them, Defendant instructed her to find the spare set. Rebecca Voigt then grabbed the keys, which she had removed from the bedroom, and gave them to Defendant, and Defendant and Jacqueline Thompson then left the residence.
22. Defendant aimed the revolver at Jacqueline Thompson with his left hand and steered the Toyota Scion with his right hand as he drove away from Jacqueline Thompson's residence. During the drive away from her residence, Jacqueline Thompson dialed 911 and let the phone sit in her lap, which allowed for the conversations between Defendant and her to be recorded by the system that monitors 911 calls.
23. The 911 recordings of August 5, 2008, show Defendant's frenzied and upset state of mind. Defendant repeatedly threatened law enforcement that he would shoot Jacqueline Thompson if the officers following the Toyota Scion did not cease following the vehicle.
24. After driving around the city of Kimball, Defendant slammed on the brakes of the Toyota Scion, causing a collision between that vehicle and Deputy Nathan Stewart's squad car. Just prior to slamming on the brakes, Defendant stated, "I came here prepared for this."
25. The collision between Jacqueline Thompson's Toyota Scion and Deputy Nathan Stewart's vehicles disabled the Scion and forced it to a stop shortly thereafter. Defendant lost control of the .44 revolver during the collision, and, once the Scion had come to a stop, Jacqueline Thompson was able to escape from the vehicle. Defendant was subsequently shot by Wright County Deputy Matthew Treichler.
26. The State has proven beyond a reasonable doubt that Defendant attempted to cause the death of Jacqueline Thompson by firing at her; that Defendant considered, planned, prepared for, or

determined to commit the act before he committed it; that Defendant acted with the purpose of causing Jacqueline Thompson's death or believed that his act would have that result; that Defendant's act took place on or about August 5, 2008, in Stearns County, Minnesota; that Defendant took a substantial step toward the First Degree Murder of Jacquelyn Thompson that went beyond mere preparation; and that Defendant's actions took place on or about August 5, 2008, in Stearns County, Minnesota.

27. The State has proven beyond a reasonable doubt that Defendant attempted to cause the death of Jacqueline Thompson; that Defendant considered, planned, prepared for, or determined to commit the act before he committed it; that Defendant acted with the purpose of causing the death of Jacquelyn Thompson or Defendant believed that act would have that result; that Defendant entered the residence of Jacqueline Thompson without her consent and in knowing violation of an OFP that prohibited his entry; that Defendant assaulted Jacqueline Thompson in the garage appurtenant to the residence by aiming a revolver at her and firing a .44 revolver at her as she tried to flee him; that Defendant committed these acts with intent to cause fear in Jacqueline Thompson of death or immediate bodily harm; that Defendant assaulted Jaycee Thompson and Rebecca Voigt by aiming a revolver at them while in close proximity; that Defendant intended to place Jaycee Thompson and Rebecca Voigt in fear of immediate bodily harm or death; that Defendant's actions took place on August 5, 2008, in Stearns County; that in firing upon Jacquelyn Thompson as Defendant attempted to remove her from her residence at gun point that Defendant did an act that was a substantial step toward, and more than mere preparation for, the commission of Murder in the First Degree; and that Defendant's act took place on or about August 5, 2008, in Stearns County.

28. The State has proven beyond a reasonable doubt that Defendant attempted to cause the death of Jacqueline Thompson; that Defendant considered, planned, prepared for, or determined to commit the act before he committed it; that Defendant acted with the purpose of causing the death of Jacquelyn Thompson or Defendant believed that act would have that result; that Defendant, using threats and a loaded revolver, removed Jacquelyn Thompson from one place to another without her consent; that Defendant acted for the purpose of committing great bodily harm against Jacquelyn Thompson; that Defendants actions took place on or about August 5, 2008; that Defendant did not release Jacqueline Thompson in a safe place; that in shooting at Jacquelyn Thompson Defendant did an act that was a substantial step toward, and more than mere preparation for, commission of Murder in the First Degree; and that Defendant's actions took place on August 5, 2008.

29. The State has proven beyond a reasonable doubt that Defendant, using threats and a loaded revolver, removed Jacquelyn Thompson from one place to another without her consent; that Defendant acted for the purpose of committing great bodily harm against Jacquelyn Thompson; that Defendants actions took place on or about August 5, 2008; and that Defendant did not release Jacqueline Thompson in a safe place.

30. The State has proven beyond a reasonable doubt that Defendant entered the residence of Jacqueline Thompson without her consent and in knowing violation of an OFP that prohibited his entry; that Defendant assaulted Jacqueline Thompson in the garage appurtenant to the residence by aiming a revolver at her and firing a .44 revolver at her as she tried to flee him; that Defendant committed these acts with intent to cause fear in Jacqueline Thompson of death or immediate bodily harm; that Defendant assaulted Jaycee Thompson and Rebecca Voigt by aiming a revolver at them while in close proximity to them; that

Defendant intended to place Jaycee Thompson and Rebecca Voigt in fear of immediate bodily harm or death; and that Defendant's actions took place on August 5, 2008.

31. The State has proven beyond a reasonable doubt that Defendant assaulted Rebecca Voigt by aiming a revolver at her at least two times during his entries into Jacquelyn Thompson's residence; that Defendant intended to cause fear in Rebecca Voigt of immediate bodily harm or death; that Defendant used a loaded revolver, which is a weapon capable of producing death or great bodily harm; and that Defendant's actions took place on August 5, 2008 in Stearns County, Minnesota.

32. The State has proven beyond a reasonable doubt that Defendant assaulted Jaycee Thompson by aiming a revolver at her in point blank range; that Defendant intended to cause fear in Jaycee Thompson of immediate bodily harm or death; that Defendant used a loaded revolver, which is a weapon capable of producing death or great bodily harm; and that Defendant's actions took place on August 5, 2008 in Stearns County, Minnesota.

33. The State has proven beyond a reasonable doubt that an Order For Protection was in place; that Defendant violated the conditions of the OFP; that Defendant knew of the existence of the OFP; that while violating the OFP, Defendant possessed a dangerous weapon, specifically a loaded revolver, which is a weapon capable of producing death or great bodily harm; and that Defendant's violations of the OFP occurred on August 5, 2008.

34. The State has proven beyond a reasonable doubt that aggravating factors exist.

### Discussion

a. **Underlying offenses.**

The evidence and testimony presented at trial require that Defendant be found guilty of the charges against him. While the defense did not dispute the allegations leading to the charges contained in Counts 5 – 9, the State carried its burden of proof on Counts 1, 3 and 4 as well.<sup>1</sup>

The conduct of Defendant mandates a finding of guilt. Three months prior to August 5, 2008, Defendant emerged from the woods neighboring Jacqueline Thompson's residence after spending the night there. Circumstantial evidence indicates beyond a reasonable doubt that Defendant took a taxi to an area in close proximity to Jacqueline Thompson's residence and then tripped her alarm system in what the Court would characterize as a practice run for the August 5, 2008 incident. At the time of this first incident, Defendant made several threatening statements directed towards Jacqueline Thompson, including explicit assertions that he wished to kill her.

Defendant's conduct on the day of these offenses crimes is even more telling. Defendant walked through the woods on August 5, 2008, with a headlamp on his head and gained access to Jacqueline Thompson's garage at a time that he had reason to know she would be leaving for work. He carried a revolver with him into the garage and later fired a shot in the immediate vicinity of Jacqueline Thompson as she attempted to flee from him. The bullet planted itself in a door frame approximately four feet and one inch above the floor. This occurred at approximately the same time that Jacqueline Thompson dove through the door frame's threshold as she attempted to escape. If she had been located in front of the door frame, Jacqueline Thompson, who stands five feet and two inches tall, would have been struck in her torso. Defendant's act of firing a revolver in such close proximity to Jacqueline Thompson constitutes a substantial step towards the commission of her premeditated murder.

<sup>1</sup> Count 2 was dismissed by the State prior to the date of trial.

Defendant's conduct in traveling to and spending the night in close proximity to Jacqueline Thompson's residence on May 27, 2008, combined with his conduct and statements on August 5, 2008, including his firing of a weapon at Jacqueline Thompson, establish Defendant's premeditated intent to kill Jacqueline Thompson and mandate findings of guilt on Counts 1, 3 and 4.

**b. Aggravating factors.**

The State seeks an upward departure from the Minnesota Sentencing Guidelines pursuant to Minn. Stat. § 244.10 based upon the following aggravating factors:

1. Whether Defendant's offense(s), or a portion thereof, occurred within the victim's home.
2. Whether Defendant's offense(s) occurred within the actual presence of the victims' children.
3. Whether Defendant used a firearm to commit the offenses.
4. Whether Defendant's offense(s) was (were) committed in a particularly serious manner.

Aggravating factors must be based on specific facts that render a crime more serious than is typical. The underlying offenses in this case are very serious crimes by themselves.

The purpose of the Minnesota Sentencing Guidelines is to establish rational and consistent standards in order to reduce sentencing disparity. Minnesota Sentencing Guidelines I. Minnesota Sentencing Guidelines II.D.2(b) sets forth "a nonexclusive list of reasons which may be used as reasons for departure." Minnesota Sentencing Guidelines cmt. II.D.201; *State v. Spain*, 590 N.W.2d 85, 89 (Minn. 1999). The reasons for departure from the guidelines "are intended to describe specific situations involving only a small number of cases." *State v. Schantzen*, 308 N.W.2d 484, 487 (Minn. 1981). "The purposes of the sentencing guidelines will not be served if the trial courts generally fail to apply the presumptive sentences found in the guidelines." *Spain*, 590 N.W.2d at 88. Aggravating factors must be based on specific facts to a crime that are

significantly "more serious than typical" and there must be substantial and compelling circumstances in the record to justify a departure. *Rairdon v. State*, 557 N.W.2d 318, 326 (Minn. 1996). The district court needs only one valid basis to support an upward departure. See *State v. Jeno*, 352 N.W.2d 82, 85 (Minn.App. 1984).

**i. Invasion of victim's zone of privacy.**

Any invasion of Jacqueline Thompson's zone of privacy serves as a lesser-included offense of three crimes committed by Defendant. Specifically, Defendant committed the crime of Violating an Order for Protection While Possessing a Dangerous Weapon, which required, among other elements, a finding that Defendant entered Jacqueline Thompson's residence. Additionally, the crime of Burglary in the First Degree – Assault to a Person in the Building or on the Property required that, among other elements, a finding that Defendant entered Jacquelyn Thompson's residence without her consent and committed an assault on an individual therein. The crime of Attempted Murder in the First Degree - Intent – While Committing a Felony (Burglary) similarly required that Defendant enter Jacqueline Thompson's residence without consent and commit a subsequent assault, among other elements.

Defendant needed to enter Jacquelyn Thompson's zone of privacy to commit these three crimes. Therefore, the Court declines to find the aggravating factor of invasion of zone of privacy for those offenses, since "[t]he reasons used for departing must not themselves be elements of the underlying crime." *State v. Blanche*, 696 N.W.2d 351, 378-79 (Minn. 2005).

**ii. Presence of children.**

While Defendant assaulted Rebecca Voigt, the State has not proven beyond a reasonable doubt that the assault against her was committed in the actual presence of her children Gavin and Mason. When Defendant assaulted Rebecca Voigt by aiming the .44 revolver at her on two

occasions, her son Gavin remained in the living room and Mason remained in an adjacent room with the door shut. The State did not prove beyond a reasonable doubt that the children heard or saw Defendant commit an assault against their mother.

However, another consideration for the presence of children is whether the victim was particularly vulnerable because he or she felt compelled to remain in a dangerous situation to fulfill a duty to children. See *State v. Johnson*, 450 N.W.2d 134, 135 (Minn. 1990); see also *State v. Vance*, 765 N.W.2d 390, 394-95 (Minn. 2009). Rebecca Voigt feared for her children's safety during Defendant's intrusion into the residence on August 5, 2008. Furthermore, Rebecca Voigt remained with her children in the house after Jayme and Jaycee Thompson had left the residence, and she also left the bedroom and spoke with Gavin Voigt in the living room after Defendant exited into the garage for the first time. This evidence demonstrates Rebecca Voigt's responsibility to her two sons, Gavin and Mason. This responsibility made Rebecca Voigt particularly vulnerable, which supports the finding of an aggravated factor for the presence of children.

Gavin and Mason Voigt weren't the only children present during Defendant's commission of the offenses. Jayme and Jaycee Thompson both heard Defendant fire a gun in the garage of the residence, and they witnessed Defendant aim a .44 revolver at their mother, pull her hair and throw her over a dog gate.

The commission of these offenses in front of Jayme Thompson constitutes an aggravating factor. Defendant may have violated the OFP in regards to Jayme Thompson, but the commission of that offense did not include inflicting the fear experienced by Jayme Thompson from witnessing the attempted murder and kidnapping of her mother.

Defendant assaulted Jaycee Thompson. She heard the gunshot in the garage and suffered the same terror experienced by her sister Jayme Thompson; Jaycee Thompson also suffered the fear of imminent bodily harm or death when Defendant aimed the .44 revolver at her in point blank range. While the assault against Jaycee Thompson does not constitute a lesser offense of Defendant's attempt to murder Jacqueline Thompson and vice-versa, the fear that Jaycee Thompson experienced at hearing the gunshot was similar to the fear she experienced when Defendant assaulted her. This prevents the finding of an aggravating factor even though Defendant attempted to murder and kidnap Jacqueline Thompson in Jaycee Thompson's presence because a "district court may not base an upward departure on facts that, while not necessary to satisfy the elements of the offense in question, were nonetheless contemplated by the legislature when it set the punishment for the offense being sentenced." *State v. Edwards*, 774 N.W.2d 596, 602 (Minn. 2009).

**iii. Use of a firearm to commit the offenses.**

The use of a firearm to commit these offenses herein constitutes an aggravating factor, at least with respect to counts 5 through 9.

**iv. Commission of the offenses in aggravated, atypical manners.**

Defendant's conduct in committing these offenses constitutes an aggravating factor due to the threat posed to individuals that Defendant did not victimize. Gavin and Mason Voigt were not located in the garage when Defendant fired the shot and were not in the bedroom when Defendant assaulted Jaycee Thompson and Rebecca Voigt. However, Defendant swung the gun around throughout the morning of August 5, 2008 while he came in and out of the house on three separate occasions. A bullet from the revolver, including the one that Defendant fired in the garage, had the potential to strike unintended targets in other rooms.

Gavin and Mason Voigt were both located on the first floor of the house, with the former located in the living room and the latter in an office that had been converted into a bedroom. At the time Defendant discharged the .44 revolver in the direction of the house, Gavin Voigt was located in a room across the house from the door that was struck by Defendant's fired shot. The Supreme Court of Minnesota has "repeatedly held that the risk to bystanders is an appropriate factor for courts to consider when determining the seriousness of a crime." *Edwards*, 774 N.W.2d at 607.

In violating the OFP, Defendant forcibly entered Jacquelyn Thompson's residence by breaking through a door between the home and garage. Among other provisions, the OFP prevented Defendant from coming within one mile of Jacquelyn Thompson's residence, and it also prevented Defendant from having any contact with Jacquelyn, Jaymee or Jaycee Thompson. Defendant violated the terms of the OFP in an atypical manner by busting through a locked door while he carried a loaded .44 revolver, assaulting one of the parties of the OFP and attempting to murder another party to the OFP.

Defendant assaulted Rebecca Voigt and Jaycee Thompson by threatening them with a loaded .44 revolver. While this conduct is heinous, the use of a firearm is an element of Assault in the Second Degree with a Dangerous Weapon and, therefore, is not an aggravating factor.

In committing Burglary in the First Degree - Assault to a Person in the Building or on the Property, Defendant forced entry into the home while armed with a .44 revolver, assaulted two individuals and attempted to murder a third individual. Thus, his actions went far beyond the elements of the offense and constitute an aggravating factor.

Defendant's kidnapping of Jacqueline Thompson resulted in Defendant exposing police officers to a risk of injury and causing an accident between a squad car and the Toyota Scion that

he drove. Since a kidnapping typically does not include a high-speed collision and threats to law enforcement, Defendant committed Kidnapping to Commit Great Bodily Harm/Terrorize in an aggravated manner.

Furthermore, Defendant committed the three attempted murder charges in an aggravated, atypical manner. In committing these offenses, Defendant put at risk his own two children, the 16-year-old Jayme and 12-year-old Jaycee, as well as Rebecca Voigt and her two young children.

#### Conclusion

For the reasons outlined above, Defendant is found guilty of the charges set forth in Counts 1 and 3 - 9 of the Complaint. Additionally, Defendant's commission of his crimes in the actual presence of children, the use of a firearm to commit the offenses, and the particularly serious manner of the crimes constitute aggravating factors. The Court, while finding the existence of aggravating factors, reserves any determination as to whether or not those factors should be used to depart from the sentencing guidelines; the Court acknowledges that the presence of aggravating factors does not mandate a sentencing departure.

  
V.E.L.