**IN THE SUPREME COURT, STATE OF WYOMING**

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| JOHN HENRY KNOSPLER, JR, | ) | |
| | ) | |
| APPELLANT, | ) | |
| | ) | |
| | ) | |
| v. | ) | No. S-15-0158 |
| | ) | |
| | ) | |
| STATE OF WYOMING, | ) | |
| | ) | |
| APPELLEE. | ) | |

# BRIEF OF APPELLANT

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## II. STATEMENT OF THE CASE

### A. NATURE OF THE CASE

This is an appeal from a criminal conviction for second-degree murder, W.S. § 6-2-104, following a jury trial before the District Court of the Seventh Judicial District, the Hon. W. Thomas Sullins presiding.

### B. COURSE OF PROCEEDINGS

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|---|---|
| 7 Oct 2013 | The State's Information alleged that Mr. Knospler violated W.S. § 6-2-104 when he shot and killed James Baldwin. [RoA: Vol. I, p. 8] |
| 22 Nov 2013 | Following a preliminary hearing and an order allowing Attorney Joseph H. Low IV *pro hac vice* admission, Mr. Knospler was arraigned before the district court. [RoA: Vol. I, pp. 7, 62 and 64] |
| 5 Sept 2014 | This Court allowed Mr. Low *pro hac vice* admission before it for this case. |

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|---|---|
| 15 Dec 2014 | Mr. Knospler's jury trial began. [RoA: Vol. VIII, Transcripts of Jury Trial Proceedings (TJTP), Vol. I, p. 97] |
| 23 Dec 2014 | Mr. Knospler was found guilty of second degree murder, in violation of W.S. § 6-2-104, when he killed Mr. Baldwin. [RoA: Vol. VIII, TJTP: Vol VII, p. 1191 (lines 12-17)] |
| 15 May 2015 | The District Court sentenced Mr. Knospler. [RoA: Vol. VII, pp. 1538-1541] |
| 10 June 2015 | Mr. Knospler filed his Notice of Appeal. [RoA: Vol. VII, p. 1543] |
| 6 July 2015 | The Court docketed Mr. Knospler's appeal. |

### C. DISPOSITION OF THE TRIAL COURT

The trial court sentenced Mr. Knospler to serve not less than thirty (30) years, nor more than fifty (50) years, with credit for one hundred nineteen (119) days previously served; to pay two hundred ($200) to the Victims' Compensation Fund; to pay six thousand two hundred eleven dollars and

seventy-five cents ($6,211.75) in restitution to the Wyoming Division of Victim Services; pay ten dollars ($10) to the Court Automation Fund; to pay ten dollars ($10) to the Access to Justice Fund; and, to submit to DNA sampling. [RoA: Vol. VII, pp. 1538-1541]

## D. STATEMENT OF RELEVANT FACTS

3 Oct 2013

During a severe snowstorm, Mr. Knospler and Mr. Baldwin separately patroned the Racks Gentlemen's Club; they had not met before. Both had been drinking; Baldwin passed out at his table and was asked to leave. [RoA: Vol. I, pp. 9-10]

Mr. Knospler was resting in his car for the night, waiting out the snowstorm, when Mr. Baldwin, upon leaving the bar, walked up to Knospler's car, smashed his fist through the driver's side window and began climbing through the opening and atop Knospler, who shot and killed him. [RoA: Vol. I, pp. 107-108; Vol. II, pp. 320-333, see p. 332] Before shooting Baldwin, Knospler tried to drive away but was prevented by a sudden loss of traction in the snow. [RoA: Vol. II, pp. 349-362; Vol. VIII, TJTP, Vol. VI, pp, 1698 (line 17) to p. 1699 (line 20), p. 1700 (line 22) to p. 1716 (line 4)]

At some point during the day, before arriving at the Racks Gentlemen's Club, Mr. Baldwin watched over eight hours of Internet videos, which included videos of adolescent girls and young women having sex with horses, including one where the girl dies after having sex with a horse. [RoA: Vol. II p. 188; and, Vol. III, p. 528, 546-549, 558, 562, 564, 583, 570, 598, 618-619 and 621-622 (p. 621(6th URL from the top of the page))]

6 Feb 2014

The State engaged John Daily, its forensic expert, to review and interpret the evidence of Mr. Baldwin's encounter with Mr. Knospler. [RoA: Vol. IV, pp. 905-920]

Mr. Daily met with the State's prosecuting attorney, Josh Stensaas, Natrona County Sheriff's Office's lead detective Sean Ellis and Trooper Jason Sawdon of the Wyoming Highway Patrol. Detective Ellis and Trooper Sawdon provided Daily with forensic mapping in 3D and their interpretation of tire mark evidence. [RoA: Vol. II, p. 320; Vol. VIII, TJTP, Vol. VI, p. 1686 (lines 10) to p. 1697 (line 3)] Trooper Sawdon had concluded that Mr. Knospler attempted to drive away before shooting Mr. Baldwin but had lost

traction in the snow. Daily concurred. [RoA: Vol. VIII, TJTP, Vol. VI, p. 1699 (lines 3-20)]

Mr. Daily testified that the State's prosecuting attorney, Josh Stensaas, and Detective Sean Ellis had brought him in because they were having difficulty reconciling the current way they thought the case was being charged. [RoA: Vol. VIII, TJTP, Vol. VI, p. 1697 (line 24) to p. 1698 (line 16)]

26 Feb 2014

Noting that the State had provided initial discovery but was still awaiting the forensic test conclusions from Mr. Daily, Mr. Knospler moved for the disclosure of exculpatory evidence, under *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Bagley*, 473 U.S. 667 (1985), *Kyles v. Whitley*, 514 U.S. 419 (1995) and *Cone v. Bell*, 556 U.S. 449 (2009) [RoA: Vol. I, p. 103-119], in light of his claim of self-defense -- that as Knospler huddled inside his car overnight to wait out the heavy snow storm -- Baldwin smashed his fist through the driver's side window, shattering glass into the car, and began coming through the opening and that Knospler reacted in reasonable fear for his life when he shot Baldwin to stop him. [RoA: Vol. I, pp. 107-108]

24 April 2014

The trial court ordered that all notices of intent to use W.R.E. 404(b) evidence must be filed by 23 June 2014. [RoA: Vol. I, p. 140]

16 May 2014

Following discovery by the State that Mr. Baldwin, on the day leading up to his assault on Mr. Knospler, had searched out and frequented websites involving teen girls and young women having sex with horses (some of the websites were potentially in violation of 18 U.S.C. §§ 2251-2256 (child pornography)), Knospler's MOTION FOR PROTECTIVE ORDER REGARDING CERTAIN DISCOVERY, again provided notice to the State of his claim of self-defense and that he intended to introduce specific instances of conduct (visited particular URLS), under W.R.E. 401, 404(a) and 405(b), to prove Baldwin's pertinent character trait for aggression. [RoA: Vol. I, p. 146-152]

Mr. Knospler's motion for a protective order followed his defense counsel's discussions with the State's prosecuting attorney and the United States Attorney's Office in Cheyenne regarding the problem of his experts needing to view websites that potentially involved federal child-porn contraband images. Federal law, 18 U.S.C. § 2509(m), directs a trial court to bar possession of child pornography even by defense counsel so long as the

government makes the material reasonably available to a defendant. [RoA: Vol. I, p. 151]

In compliance with the trial court's ORDER FOLLOWING MOTIONS HEARING, Mr. Knospler again noticed the trial court and the State of his intention to provide to the jury evidence of specific instances of Mr. Baldwin's past aggressivity and violence, including his escalating criminal background and the URLs noted in Mr. Knospler's Motion for Protective Order Regarding Certain Discovery, as such evidence was relevant to his claim of self-defense and its introduction permitted, under W.R.E. 401, 404(a) and 405(b), to prove aggression. [RoA: Vol. I, pp. 181-182; Vol. V, pp. 974-1203]

Mr. Baldwin's escalating criminal history included many arrests related to vehicular burglary, battery, interference with a police officer, eluding and reckless driving; Baldwin's frenetic searches for bestiality sites on the day of his assault on Mr. Knospler were extensive; and, some of the titles of the URLs are alarming in their brutality. [RoA: Vol. III, p. 528, 546-549, 558, 562, 564, 583, 570, 598, 618-619, 621-622]

Mr. Knospler also provided the trial court and the State with the relevance, required by W.R.E. 401,[1] between Mr. Baldwin's pertinent character trait for aggression and his taste for bestiality between horses and girls, pointing to scholarly research in the field of interpersonal violence: CHILDHOOD BESTIALITY: A POTENTIAL PRECURSOR TO ADULT INTERPERSONAL VIOLENCE, 2010 Journal of Interpersonal Violence, Prof. Christopher Hensley University of Tennessee Chattanooga, Dr. Suzanne Tallichet, Morehead State University Kentucky, Erik Dutkeiwica University of Tennessee Chattanooga. [RoA: Vol. 1, pp. 149-151]

12 July 2015

Mr. Daily submitted his forensic report to the State's prosecuting attorney, Josh Stensaas. [RoA: Vol. II, p. 320-333] Daily's report began by reciting that the State had retained him to address two evidentiary issues dealing with Mr. Knospler's mens rea: "Firstly, why didn't Knospler simply

[1] W.R.E. 401 provides: "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

drive away from the confrontation rather than shoot Baldwin? Secondly, did Knospler shoot Baldwin through a closed window or was it already broken?" [RoA: Vol. II, p. 321]

Mr. Daily's report to the State noted the substantial evidence that: (1) Mr. Knospler had tried to drive away from Mr. Baldwin before his car lost its traction because of the heavy snow [RoA: Vol. II, pp. 321-324]; and, (2) that Baldwin had smashed in Knospler's driver's side window with his fist and had inserted his torso inside the car before being shot [RoA: Vol. II, pp. 324-332]. Based on the evidence, Daily concluded:

> In my opinion, based on the evidence I have seen, a reasonable scenario is that Knospler tried to drive away from the confrontation with Baldwin, but was not able to do so because he lost traction on the snowy surface in front of his vehicle as he accelerated away from the parking space.
>
> In my opinion, Baldwin punched out the drive's side glass of the Cavalier, injuring his right hand and entering the passenger compartment far enough to get dicing injuries from the broken tempered glass on his right upper arm. He may have then started to extract himself from the passenger compartment, dragging some of the broken tempered glass with hm. Somewhere in this

extraction, he was shot by Knospler, thus resulting in a gunshot wound of indeterminate range.

[RoA: Vol. II, p. 332]

Mr. Daily's report mirrored Mr. Knospler's claim of self-defense, made months earlier in his 26 Feb 2014 motion for exculpatory evidence.

Soon after Mr. Daily's report to the State, the Seventh Judicial District Attorney Michael Blonigen replaced ADA Josh Stensaas as the State's prosecuting attorney and Mr. Blonigen declined to subpoena Daily to testify at trial. [RoA Vol. VIII, TJTP, Vol. I, p. 2; Vol. II, p. 1697 (lines 1-12)]

Mr. Daily's trial testimony precisely supported his forensic report. [RoA: Vol. VIII, TJTP, p. 1698 (lines 1-20), p. 1706 (line 18) to p. 1707 (line 14), p. 1714 (line 9) to p. 1716 (line 14), p. 1720 (line 1) to p. 1724 (line 10), p. 1730 (line 5) to p. 1732 (line 3), p. 1736 (line 7) to p. 1754 (line 25)]

22 July 2014

Mr. Knospler filed a DEFENDANT'S RESPONSES TO STATE'S MOTIONS (which objected to Mr. Knospler introducing evidence of Mr. Baldwin's taste for bestiality-sex to prove his pertinent character trait for aggression under W.R.E. 404(a) and 405(b)), regarding the relevance between bestiality and

adult interpersonal violence and aggression, [RoA Vol. II, pp. 260-281, see pp. 264-273] As he noted to the trial court, Knospler did not argue that bestiality causes aggression, as the State claimed, but, instead, noted that some scholars suggest a meaningful statistical relationship between childhood bestiality and adult interpersonal violence such that bestiality can be a precursor to such violence. [RoA Vol. II, pp. 266] Knospler argued that preventing the jury from considering such evidence would prevent a jury's determination of whether, under the totality of the circumstances, Knospler acted reasonably in self-defense when Baldwin was coming through the smashed out driver's side window. [RoA Vol. II, pp. 265-269]

15 Aug 2014

Mr. Knospler filed a DEFENDANT'S NOTICE TO INTRODUCE EVIDENCE OF THE CHARACTER OR PERTINENT TRAITS OF CHARACTER OF THE ALLEGED VICTIM, PURSUANT TO WYOMING RULES OF EVIDENCE 404(A)(2) AND 405(B). [RoA: Vol. II, p. 334-347]

Mr. Knospler argued that W.R.E. 401, 404(a)(2) and 405(b) , under *Edwards v. State*, 973 P.2d 41, 45-46 (Wyo. 1999) and *Drennen v. State*, 2013 WY 118, ¶ 18, 311 P.3d 116, 122 ¶ 18 (Wyo. 2013), allowed him to introduce

specific instances of Mr. Baldwin's character or pertinent traits of character for aggression and violence, as an essential element of his self-defense claim. [RoA: Vol. II, pp. 341-347]

28 Aug 2014

Mr. Knospler filed a SUPPLEMENT TO DEFENDANT'S NOTICE TO INTRODUCE EVIDENCE OF THE CHARACTER OR PERTINENT TRAITS OF CHARACTER OF THE ALLEGED VICTIM, PURSUANT TO WYOMING RULES OF EVIDENCE 404(A)(2) AND 405(B). [RoA: Vol. III, pp. 510-624]

As specific instances of Mr. Baldwin's conduct to prove he was the first aggressor, under W.R.E. 405(b), Mr. Knospler sought to introduce evidence of Baldwin's *escalating* criminal history, including his escalating arrests for vehicular burglary, battery and interference with a police officer, eluding and reckless driving; Knospler also sought to introduce some of the URLs that Baldwin viewed on the day of his assault on Knospler, which would serve as part of the basis of his expert witness opinions that Baldwin's bestiality can be a precursor to aggression and violence. [RoA: Vol. III, p. 528, 546-549, 558, 562, 564, 583, 570, 598, 618-619, 621-622]

19 Nov 2014

Six months beyond the trial court's 23 June deadline for seeking to introduce W.R.E. 404(b) evidence, and near the eve of trial, the State moved to introduce new 404(b) evidence provided by three people who worked at Racks Gentlemen's Club on the night of 3 Oct. 2013: Westy Gill, Chris Syverson and Crystal Mize. The State's motion recited that Casper police officers had reinterviewed them on 17-18 Nov and Gill and Syverson would testify that Mr. Knospler talked about cocaine and marijuana and Mize would testify that Knospler talked about killing people. [RoA: Vol. I, p. 140; and, Vol. IV p. 791-797; and, Vol. VI, p. 1222]

28 Nov 2014

Mr. Knospler's counsel met with Natrona County Sheriff Office Investigator Dave Hulshizer (that office retained exclusive control of the URLs that Mr. Baldwin had viewed on 3 Oct 2013), who identified which human/animal sex websites could be sent to Knospler's experts for review without subjecting them to potential federal criminality due to potentially adolescent sexual content. [RoA: Vol. VI, p. 1222] That was done so that defense counsel could determine, upon the advice of Investigator Hulshizer, which of the URLs did not arguably present adolescents having sex with animals so that the experts could pull up the "safe" bestiality URLs from

which to base their expert opinion on what those websites implied (in terms of aggression) for those with such tastes. Those safe websites were identified to Dr. Hickey and Dr. Tallichet. [RoA: Vol. IV, pp. 841-842]

Early Dec 2014

Mr. Knospler secured two psychology experts, Dr. Hickey and Dr. Tallichet, who could opine to the relationship between bestiality interests, as reflected by the URLs, and aggression as a character trait. [RoA: Vol. VI, p. 1222, 1462 and 1463]

2 Dec 2014

The trial court filed its ORDER PARTIALLY GRANTING & PARTIALLY DENYING DEFENDANT'S ANTICIPATED MOTION; W.R.E. 404 & 405 EVIDENCE MOTION, THE OBJECTIONS TO DEFENDANT'S NOTICE TO INTRODUCE EVIDENCE OF THE CHARACTER OF THE ALLEGED VICTIM PURSUANT TO WYOMING RULES OF EVIDENCE 404(A)(2) & 405(B) & PLAINTIFF'S MOTION IN LIMINE REGARDING EVIDENCE OF THE VICTIM'S CHARACTER. [RoA: Vol. IV, p. 825-830] The Order denied Mr. Knospler an opportunity to introduce evidence of Mr. Baldwin's escalating criminal history or his 18-counts for vehicular burglary. [RoA: Vol. IV, p. 829-830] The Court based its denial of admissibility of Mr. Baldwin's

criminal history on the Court's holding in *Braley v. State*, 741 P.2d 1061, 1069 (Wyo. 1987), that criminal histories may be relevant if they illustrate that the victim engaged in life-threatening behavior, or in behavior which may have resulted in serious bodily harm. [RoA: Vol. IV, p. 828, ¶8]

3 Dec 2014

Mr. Knospler moved *in limine* to exclude the newly alleged W.R.E. 404(b) evidence alleged by Gill, Syverson and Mize. [RoA: Vol. IV, pp. 832-834]

5 Dec 2014

The trial court ORDER FOLLOWING PRETRIAL CONFERENCE required the parties to exchange witness statements, pursuant to W.R.E. 26.2, by 8 Dec 2014. [RoA: Vol. IV, pp. 838]

8 Dec 2014

The trial court filed its ORDER IN LIMINE CONCERNING VICTIM CHARACTER EVIDENCE RELATED TO HIS VIEWING PORNOGRAPHIC WEBSITES. The Order denied Mr. Knospler an opportunity to introduce evidence of Mr.

Baldwin's viewing of the bestiality-related websites to prove character or pertinent traits of character for aggression. [RoA: Vol. IV, pp. 841-842]

Unbeknown to Mr. Knospler's defense counsels, Eric Hickey, Ph.D. (one of Mr. Knospler's two proposed psychological experts) had emailed one defense counsel his first written or recorded statement regarding his expert opinion that persons who sexually prey on children and animals and who use excessive amounts of alcohol are more likely than others to act aggressively. [RoA: Vol. VI, p. 1223]

10 Dec 2014

Mr. Knospler submitted his WITNESS LIST, which included the Vitaes of Dr. Hickey and Dr. Tallichet, who were prepared to testify as experts regarding the linkage between bestiality and aggression and violence, if the trial court reconsidered its ruling to bar the introduction of such expert testimony to prove Mr. Baldwin's pertinent character trait for aggression and violence. [RoA: Vol. IV, 847-920, pp. 857-885, 886-904]

Mr. Knospler's defense counsel discovered Dr. Hickey's emailed statement and immediately emailed the State's attorney notice of that written statement, made two days earlier. [RoA: Vol. VI, p. 1223]

Suzanne Tallichet, Ph.D., emailed Mr. Knospler's defense counsel her first written or recorded statement regarding her expert opinion as to Mr. Baldwin's predisposition to be an aggressor based on his selection of pictures and videos (depicting girls and women engaged in sexual contact or sexual intercourse mostly with horses but some with donkeys and dogs); that such depictions of bestiality on Baldwin's phone can be reasonably presumed to be solely for his sexual gratification and that youthful offenders are more likely to engage in interpersonal violence as adults. [RoA: Vol. VI, 1462]

Mr. Knospler's attorneys immediately emailed the State's attorney notice of Dr. Tallichet's that written statement, as well.

11 Dec 2014

Mr. Knospler filed a MOTION FOR EXCEPTION AND OFFER OF PROOF regarding the trial court's decision to bar the introduction W.R.E. 404(a) and 405(b) evidence. [RoA: Vol. IV, pp. 922-929] The offer of proof noted that Dr. Tallichet and Dr. Hickey were prepared to testify as experts for Knospler and that he had the right to introduce their testimony, pursuant to *Stalcup v. State*, 2013 WY 114, ¶19 and ¶29, 311 P.3d 104, 110, ¶19 and 112, ¶29 (Wyo. 2013), that "it is common for those individuals that view bestiality

pornography to be aggressive in nature and commit violent crimes, that pornography with animals is abuse of animals and satisfies a predisposition to dominate others and to be in control[.]" [RoA: Vol. IV, pp. 925]

12 Dec. 2014

Despite the 23 June cut-off date to file for W.R.E. 404(b) evidence, the trial court granted the State's 17 November motion to introduce the testimony of Gill, Syverson and Mize. [RoA: Vol. IV, pp. 941-949]

Pursuant to the trial court's Order of 2 Dec 2014, which granted leave for Mr. Knospler to seek exception to that order outside the presence of the jury, Knospler filed a SUPPLEMENTAL MOTION FOR EXCEPTION AND OFFER OF PROOF regarding the relevance of Mr. Baldwin's escalating criminal history as W.R.E. 404(a) and 405(b) evidence to prove his aggressive character trait. Knospler argued that Baldwin's history of *escalating* criminality, culminating in his 18-counts of vehicular burglary, served as the basis for the expert opinions regarding his character traits for aggression or violence, in accord with *Stalcup v. State*, 2013 WY 114, ¶19 and ¶29, 311 P.3d at 110, ¶19 and 112, ¶29 (Wyo. 2013), to prove he was the first aggressor. [RoA: Vol. IV, pp. 950-953]

Critical to the motion was the notion that Baldwin's pertinent character trait for aggression, as it manifested in his assault on Knospler, can best be proved, under W.R.E. 404(a)(2) and 405(b), by his *escalating* criminality that began with simple shop-lifting and *escalated* to 18-counts related to vehicular burglary; that Baldwin's *escalating* criminality made the existence of his aggression (which is of consequence to the determination of the reasonableness of Knospler's claim of self-defense) more probable than it would be without the evidence, satisfying the demands of W.R.E. 401, 404(b)(2) and 405(b).

15 Dec 2014

Prior to the start of trial, and following the State's allegation that defense counsel had violated the trial court's discovery order that opposing parties exchange witness statements by 8 Dec. [RoA: Vol. VIII, TJTP, Vol. I, p. 161 (lines 22-24)], the trial court orally precluded the introduction of Dr. Hickey's and Dr. Tallichet's expert opinion evidence, in part, as an apparent sanction for Mr. Knospler's defense counsel for violating its Pretrial Conference Order to provide opposing parties witness statements. [RoA: Vol. III, TJTP, Vol. I, pp. 157 (line 15) to p. 178 (line 17), see particularly p. 172 (lines 3-12)]

While the trial court recited that "There was a filing on August 15[2] that that identified the URL record, but there was no specific identification of the proposed evidence until last Wednesday and Thursday of last week, the week before trial," [RoA: Vol. VIII, TJTP, Vol. I, p. 171 (lines 15-19)], the URLs *were* the specific identification of the proposed evidence. Because of the temporariness of some of the websites involved (some failed to pull up for NCSO Investigator Hulshizer on 28 Nov (*see* 28 Nov. entry above)) and because anyone (other than authorized law enforcement) accessing any website with child-pornography is subject to federal prosecution, the entitled URLs are the best specific proposed evidence and were sufficient upon which to base an expert opinion (see entitled URLs). [RoA: Vol. III, pp. 618-622 (particularly p. 621 (6th URL from the top of the page)]

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[2] See 28 Aug 2014: SUPPLEMENT TO DEFENDANT'S NOTICE TO INTRODUCE EVIDENCE OF THE CHARACTER OR PERTINENT TRAITS OF CHARACTER OF THE ALLEGED VICTIM, PURSUANT TO WYOMING RULES OF EVIDENCE 404(A)(2) AND 405(B), FOR THE PURPOSE OF PROVING MR. BALDWIN WAS THE FIRST AGGRESSOR & THAT MR. KNOSPLER ACTED IN SELF-DEFENSE. [RoA: Vol. III, p. 510, Exhibit 3]

Mr. Knospler's jury trial began. [RoA: Vol. VIII, TJTP, Vol. I, p. 97]

Mr. Knospler filed a MOTION TO INTRODUCE NEW W.R.E. 404(A)(2), 405(B) AND 406 EVIDENCE OF THE DECEDENT'S CHARACTER TRAIT FOR AGGRESSION & VIOLENCE; AND MOTION FOR EXCEPTION & OFFER OF PROOF. [RoA, Vol. IV, p. 965] The new evidence was in the form of CERTIFIED COPIES OF THE GREEN RIVER POLICE REPORTS underlying Mr. Baldwin's arrest for his numerous vehicle burglaries, eluding arrest and reckless driving; the new evidence was that, while attempting to elude the police, Baldwin blew through intersections at high-speed at night with his lights off, after being caught burglarizing numerous vehicles. [RoA, Vol. V, p. 971] Mr. Knospler argued that driving at high-speed through intersections at night with his lights off was life-threatening behavior or behavior which may have resulted in serious bodily harm, sufficient to meet the trial court's Order of 2 Dec. that criminal histories are relevant if they illustrate life-threatening behavior, thus satisfying *Braley v. State*.

18 Dec 2014

Crystal Mize testified to the jury that Mr. Knospler had told her "that it didn't matter to him if someone gets in his way he'll – he'll take care of

them, he'll shoot them, he'll stomp their face in the ground, stop their face in the concrete, it doesn't mater to him." [RoA: Vol. VIII, TJTP, Vol. VI, pp. 1016 (lines 7-12)]

22 Dec 2014

The State rested. [RoA: Vol. VIII, TJTP, Vol. VI, p. 1655]

Mr. Knospler filed a MOTION FOR JUDGMENT OF ACQUITTAL, under W.R.Cr.P. 29, that Mr. Baldwin was the aggressor, Mr. Knospler had established a *prima facie* case that he had acted in self-defense and the State had failed to prove beyond a reasonable doubt that he had not acted in self-defense. [RoA: Vol. VI, p. 1655-1659; Vol. VIII, TJTP, pp. 1213-1215; Vol VI, p. 1213-1215] Knospler, noting *Wilkerson v. State*, 2014 WY 136, ¶2 fn 1, 336 P.3d 1188, 1189, ¶2 fn 1 (2014), preserved the issue that a defendant's presentation of evidence at the close of the State's case-in-chief does not waive Fifth or Fourteenth Amendment rights. [RoA: Vol. VIII, TJTP, Vol. VI, p. 1688]

Mr. Knospler also filed a MOTION TO STRIKE CERTAIN TESTIMONY; MOTION TO RECONSIDER; AND RENEWAL OF MOTION TO EXCLUDE ANY EXPERT TESTIMONY THAT MR. BALDWIN "FELL INTO MR. KNOSPLER'S CAR" AFTER BEING

SHOT (the State's attorney's newly announced theory at trial, one which was unsupported by any expert opinion or evidence) [RoA: Vol. VI, 1218-1238], moving the trial court to reconsider its 12 Dec 2014 ruling and strike Ms. Mize's W.R.E. 404(b) testimony. [RoA: Vol. VIII, TJTP, Vol. VI, pp. 1227-1237]

That motion to reconsider recited that because the State had alleged a discovery order violation regarding exchange of witness statements by 8 Dec. and the trial court had precluded the introduction of Dr. Hickey's and Dr. Tallichet's expert testimony, in part, on that alleged violation, the trial court had been obligated, before imposing such a sanction, to first determine whether the State suffered any prejudice and determine the feasibility of curing any prejudice and impose the least severe sanction possible, under *Willoughby v. State*, 2011 WY 92, ¶26, 253 P.3d 157, ¶26 (Wyo. 2011), and *State v. Naple*, 2006 WY 125, ¶24, 143 P.3d 358, 365 ¶24 (Wyo. 2006), [RoA: Vol. VI, pp. 1228-1236]

23 Dec 2014

Mr. Knospler submitted his requested jury instructions, which included requested instructions # 16-18, which were declined by the trial court. [RoA: Vol. VI, pp. 1335 to 1429]

Requested Jury Instruction # 16 recited:

> A person may defend his home or habitation against anyone who manifestly intends or endeavors in a violent or riotous manner, to enter that home or habitation and who appears to intend violence to any person in that home or habitation. The amount of force that the person may use in resisting such trespass is limited by what would appear to a reasonable person, in the same or similar circumstances, necessary to resist the violent or unlawful entry. A person is not bound to retreat even though a retreat might safely be made. A person may resist force with force, increasing it in proportion to the intruder's persistence and violence if the circumstances apparent to him are such as would excite similar fears and a similar belief in a reasonable person. If the person kills under the influence of such fear, the homicide is not a felonious homicide but is justified.

[RoA: Vol. VI, p. 1355]

Requested Jury Instruction # 17 recited:

"Habitation" means any structure that is designed or adapted for overnight accommodation, including, but not limited to, buildings, modular units, trailers, campers, tents and vehicles.

[RoA: Vol. VI, p. 1356]

Requested Jury Instruction # 18 recited:

A person who unlawfully and by force enters or attempts to enter another's home or habitation is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

[RoA: Vol. VI, p. 1356]

The State requested Jury Instruction #27, which the trial court gave over Mr. Knospler's objection. [RoA: Vol. VI, p. 1279]

Jury Instruction #27 recited:

In considering the claim of self-defense in this case, you must first determine whether the Defendant was the aggressor in this case or whether Mr. Baldwin was the aggressor in this case. Some sort of physical aggression or a threat of imminent use of deadly force is required before a person will be considered an aggressor. Verbal provocation without more is generally insufficient to justify an initial aggressor. If you find that the Defendant was the aggressor in this case, you should consider his duty under Instruction 28. If you find

that Mr. Baldwin was the aggressor you should review the Defendant's actions under instruction 29.

[RoA: Vol. VI, p. 1279]

23 Dec 2014

Mr. Knospler's jury found him guilty of second degree murder, in violation of W.S. § 6-2-104, when he shot and killed Mr. Baldwin. [RoA: Vol. VIII, TJTP: Vol VII, p. 1191 (lines 12-17)]

8-9 Jan 2015

Mr. Knospler filed a MOTION FOR NEW TRIAL AND A SUPPLEMENT TO MOTION FOR NEW TRIAL. [RoA: Vol. VI.. pp. 1443 -1463]

The motion for new trial argued that Mr. Knospler's right to a meaningful opportunity to present a complete defense, as required by the Fourteenth Amendment of the United States Constitution and Article 1, Sec. § 6 of the Wyoming Constitution, was denied when the trial court: (1) denied him the right to present to the jury evidence that Mr. Baldwin was the aggressor, under W.R.E. 404(a)(2) and 405(b), by precluding him from introducing evidence of Baldwin's escalating criminality and expert opinion evidence that bestiality is a precursor of aggression; (2) when it denied him

requested jury instructions # 16-18; and, (3) when it gave the State's requested jury instruction #14 [RoA: Vol. VI, p. 1279]), (which became instruction # 27 [RoA: Vol. VI, p. 1414]), that the jury must first determine who was the aggressor when determining the reasonableness of self-defense.

## III. ARGUMENTS

**ISSUE I**: Should Mr. Knospler have been allowed to present to the jury, under W.R.E. 404(a)(2) and 405(b), evidence of decedent James Baldwin's escalating criminal history and 18-counts of vehicular burglary to prove his pertinent character trait for aggression?

### STANDARD OF REVIEW

A trial court's evidentiary rulings are reviewed for an abuse of discretion. The ultimate issue to decide in determining whether there has been an abuse of discretion is whether the court could have reasonably concluded as it did. To establish reversible error, an appellant must show both error and prejudice in the form of a reasonable probability that, without the error, the verdict might have been different. *See Lawrence v. State*, 2015 WY 97, [¶10 (Wyo. 2015)

However, to the extent that a claim argues the exclusion of evidence violated the Constitutional right to present a complete defense, pursuant to the compulsory process of the Sixth Amendment to the United States Constitution or the Due Process clause of the Fourteenth Amendment, review is *de novo*. *Smith v. State*, 2009 WY 2, ¶35, 199 P.3d 1052, 1063, ¶35 (Wyo. 2009).

Generally, an error that violates a constitutional right of the accused is presumed to be prejudicial, unless the reviewing court is able to declare its belief that the error is harmless beyond a reasonable doubt. On direct appeal, the State must prove that the constitutional errors at trial did not contribute to the verdict and the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt. *See Vigil v. State*, 2004 WY 110, ¶¶18-21, 98 P.3d at 179-180, ¶¶18-21 (Wyo. 2004) (citing *Chapman v. California,* 386 U.S. at 23-24).

## SUMMARY OF ARGUMENT

Mr. Baldwin's character trait for aggression was an essential element to Mr. Knospler's claim of self-defense.

W.R.E. 404(a)(2) and 405(b) permit a defendant claiming self-defense to prove a decedent's pertinent character trait for aggression based on specific instances of a decedent's conduct.

Mr. Knospler should have been allowed to introduce Mr. Baldwin's past criminal history, which was escalating in aggression.

## ARGUMENT

Mr. Baldwin's character trait for aggression was an essential element to Mr. Knospler's claim of self-defense.

Self-defense is an affirmative defense in the context of a homicide. *Brown v. State*, 2014 WY 104, ¶15, 332 P.3d 1168, 1173, ¶15 (Wyo. 2014) (citing *Drennen v. State*, 2013 WY 118, ¶¶22-39, 311 P.3d 116, 1124-1130, ¶¶22-39 (Wyo. 2013)).

A defendant claiming self-defense "must first present a *prima facie* case of each element of the affirmative defense before the jury is instructed on the theory, including that the victim acted as the aggressor. *Id*. Only then does the burden shift to the State to prove that a defendant was not acting in self-

defense. *Id*." *Brown v. State*, 2014 WY 104, ¶15, 332 P.3d at 1174, ¶16 (citing *Drennen v. State*, 2013 WY 118, ¶39, 311 P.3d at 1174, ¶39).

The reasonableness of Mr. Knospler's conduct in the face of Mr. Baldwin's assault, including his attempt to retreat before shooting Mr. Baldwin, "were distinctly questions of fact" for the jury. *Cooper v. State*, 2014 WY 36, ¶36, 319 P.3d 914, 923, ¶36 (2014) (referencing *Drennen v. State*, 2013 WY 118, ¶¶ 40-43, 311 P.3d at 130-31, ¶¶40-43).

At the heart of the jury's responsibility is the need to "determine whether a defendant reasonably perceived a threat of immediate bodily injury under the circumstances and whether the defendant defended himself in a reasonable manner. Thus, the jury must evaluate the totality of the circumstances and evaluate all of the defendant's options in protecting himself from such a perceived threat of harm." *Drennen v. State*, 2013 WY 118, ¶13, 311 P.3d at 122, ¶13) (citing *Baier v. State*, 891 P.2d 754, 758 (Wyo. 1995)).

Evidence of Mr. Baldwin's pertinent character trait for aggression was essential to Mr. Knospler's claim that Baldwin was the first aggressor, *Edwards v. State*, 973 P.2d 41, 46 (1999) (citing *Mortimer v. State*, 161 P. 766,

711 (1916)), and essential to a proper consideration of the totality of the circumstances, *Drennen v. State*, 2013 WY 118, ¶13, 311 P.3d at 122, ¶13, by the jury in determining whether Knospler reacted reasonably in self-defense to Baldwin's attack. *Cooper v. State*, 2014 WY 36, ¶36, 319 P.3d at 923, ¶36.

W.R.E. 404(a)(2) and 405(b) permit a defendant claiming self-defense to prove a decedent's pertinent character trait for aggression based on specific instances of a decedent's conduct.

To prove his claim to the jury that he acted in self-defense, as an aspect of his right to present a complete defense, pursuant to the Due Process clause of the Fourteenth Amendment and Wyo. Const. Article 1, Sec. § 6, and as allowed under W.R.E. 401, 404(a)(2) and 405(b), Mr. Knospler sought to offer evidence of Mr. Baldwin's escalating criminal record, which included 18-felony counts related to vehicular burglary, to prove Baldwin's pertinent character trait for aggression. [RoA: Vol. I, pp. 181-182; Vol. V, pp. 966-967, 974-1204, see 971, 984, 1066, 1075, 1080]

The trial court allowed Mr. Knospler to introduce only Mr. Baldwin's criminal battery and interference with a police officer and precluded Knospler from introducing Baldwin's 18-counts of vehicular burglary. [RoA: Vol. IV,

pp. 825-831] In denying introduction of the 18-counts of vehicular burglary, the trial court relied on the Court's holding in *Braley v. State*, 741 P.2d 1061, 1069 (Wyo. 1987), that Baldwin's criminal record would be relevant only as it demonstrates life-threatening behavior or behavior which may have resulted in serious bodily harm. [RoA: Vol. IV, p. 828 ¶8, 829-830]

But the trial court's application of *Braley* as the basis to preclude introduction of Mr. Baldwin's escalating criminal record, culminating in his 18-counts of vehicular burglary, was inapposite because Baldwin's escalating criminal record was evidence of escalating aggression; the jury should have been allowed to consider Baldwin's escalating criminal history as it determined whether Baldwin was the first aggressor and whether Knospler's actions were reasonable under the totality of the circumstances.

"Such [criminal history] evidence is not offered for the sake of proving the victim's bad character, but rather to explain defendant's motive and what he might have reasonably apprehended as to the danger he faced. *See, e.g., Edwards,* 973 P.2d at 45-47; *Braley v. State,* 741 P.2d 1061, 1067-69 (Wyo. 1987); *State v. Velsir,* 61 Wyo. 476, 159 P.2d 371, 373-74 (1945) (principle recognized, but exclusion of such evidence not error where offer of proof inadequate); and *Mortimore v. State,* 24 Wyo. 452, 474-75, 161 P. 766, 772

(Wyo. 1916)[.]" *Holloman v. State*, 2005 WY 25, ¶12, 106 P.3d 879, 883-884, ¶12 (Wyo. 2005).

> "W.R.E. 404 and 405 specifically address the admissibility of evidence of a victim's character. *See Taul v. State,* 862 P.2d 649, 655 (Wyo. 1993). With certain exceptions, evidence of a person's character is not admissible to prove that the person acted in conformity therewith on a particular occasion. W.R.E. 404(a). An accused may, however, offer evidence of a pertinent character trait of a victim to show that the victim was the first aggressor. W.R.E. 404(a)(2).
>
> W.R.E. 405 addresses the methods of proving character:
>
> > (a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
> >
> > (b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, or is in issue under Rule 404(a)(2), proof may also be made of specific instances of his conduct.
>
> Wyoming's rule is identical, with one exception, to the comparable federal rule. W.R.E. 405(b) allows proof to be made of specific instances of conduct if the victim's character is at issue under W.R.E. 404(a)(2), while FED.R.EVID. 405 does not. [citations omitted] The Wyoming Supreme Court comment accompanying W.R.E. 405 states: "The purpose of the added language in subsection (b) is to [e]nsure that the accused in assault or

> homicide cases may introduce evidence of specific instances of the victim's conduct to prove that the victim was the first aggressor."

*Edwards v. State,* 973 P.2d at 45-47.

The trial court's ruling to preclude the jury from considering Mr. Baldwin's *escalating* criminal history, including the 18-counts of vehicular burglary, was contrary to *Edwards v. State* and W.R.E. 404(a)(2) and 405(b), was an error that denied Mr. Knospler his Fourteenth Amendment and Article 1, Sec. § 6 of the Wyoming Constitution due process right to an opportunity to present a complete defense, *Stalcup v. State*, 2013 WY 114, ¶19, 311 P.3d at 110 ¶19 (citing *Hannon v. State,* 2004 WY 8, ¶ 63, 84 P.3d 320, 346 (Wyo. 2004), quoting *Crane v. Kentucky,* 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)), and, in doing so, denied him the right to a fundamentally fair trial, as guaranteed by the Fourteenth Amendment. *Chambers v. Mississippi*, 410 US 284, 295 (1973).

The United States Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. *Crane v. Kentucky,* 476 U.S. 683, 690, 106 S.Ct. 2142, 2146, 90 L.Ed.2d 636 (1986); *Hannon,* ¶ 62, 84 P.3d at 346. "[T]he Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are

disproportionate to the ends that they are asserted to promote." *Holmes,* 547 U.S. at 327, 126 S.Ct. 1727." *Bush v. State*, 2008 WY 108, ¶59, 193 P.3d 203, ¶59 (2008) (citing *Crane v. Kentucky*, 476 U.S. at 690).

By precluding the jury's consideration of Mr. Baldwin's *escalating* criminal history and his 18-counts of vehicular burglary as evidence of a pertinent character trait for aggression, under W.R.E. 404(a)(2) and 405(b), the Court abused its discretion. *Edwards v. State*, 973 P.2d at 45 (citing *State v. McDermott*, 962 P.2d 136, 138 (Wyo. 1998)).

That evidentiary error was prejudicial because there is reasonable probability that, without it, the verdict might have been different. *Glenn v. Union Pacific Railroad Co.,* 2011 WY 126, ¶12, 262 P.3d 177, 182, ¶12.

The undisputed trial testimony from the State's witnesses was that the visibility that night was horrible, at best, because of the blizzard but that, after being asked to leave the bar because he had passed out at a table, Mr. Baldwin left the bar, approached Mr. Knospler's driver's side window and "knocked" on Mr. Knospler's window. [RoA: Vol. VIII, TJTP, Ashlee Logan (pp. 479-553 (*see particularly* pp. 529 (line 20) to p. 543 (line 24)); Ervin Andujar (pp. 744-815 (*see particularly* p. 761 (line 17) to p. 767 (line 19)); and,

Westy Gill (pp. 815-824 (*see particularly* p. 820 (line 14) to p. 824 (line 18))]. However, Mr. Andujar was wholly unable to reconcile his sworn trial testimony, that he never took his eyes off Mr. Baldwin in the parking lot, with the security video of him repeatedly taking his eyes off Mr. Baldwin, once even walking away from the door. [RoA: Vol. VIII, TJTP, pp. 774-814]

The forensic evidence established that Mr. Baldwin had not simply "knocked" on Mr. Knospler's driver's side window but had punched his fist through the glass and was forcing his way through the opening when Knospler shot him. [RoA: 1679-1807] Mr. Daily's testimony precisely mirrored his written report to the State's attorneys. [RoA: Vol. II, pp. 349-362]

This case does not present the Court with the review of a trial where the guilt of the defendant is so overwhelming that there could be no reasonable possibility that the jury might have acquitted Mr. Knospler on the grounds of self-defense, in the face of Mr. Baldwin's escalating criminal history (and his 18-counts of vehicular burglary) as evidence that Baldwin was the first aggressor. So situated, the denial of the right to introduce such W.R.E. 404(a)(2) and 405(b) evidence, raises a reasonable probability that the verdict might have been different had the jury been allowed to apprise Mr.

Knospler's conduct in a totality of the circumstances and establishes the prejudice needed for reversible error.

The denial of the right to prove Mr. Baldwin was the first aggressor, under W.R.E. 404(a)(2) and 405(b), violated Mr. Knospler's right to an opportunity present a complete defense, under the Sixth Amendment and Fourteenth Amendment, and his right to a fundamentally fair trial under the Fourteenth Amendment.

Generally, an error that violates a constitutional right of the accused is presumed to be prejudicial, unless the reviewing court is able to declare its belief that the error is harmless beyond a reasonable doubt. On direct appeal, the State must prove that the constitutional errors at trial did not contribute to the verdict and the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt. *See Vigil v. State*, 2004 WY 110, ¶¶18-21, 98 P.3d at 179-180, ¶¶18-21 (citing *Chapman v. California,* 386 U.S. at 23-24).

Mr. Knospler should have been allowed to introduce Mr. Baldwin's escalating criminal history under W.R.E. 404(a)(2) and 405(b), pursuant to his right to an opportunity to present a complete defense under the guarantee of due process by the Fourteenth Amendment, to prove Baldwin was the first

aggressor and that Knospler's self-defense was reasonable under the totality of the circumstances.

**ISSUE II**: Should Mr. Knospler have been allowed to present to the jury expert opinion testimony based on particular URLS, under W.R.E. 702, that Baldwin was the first aggressor?

## STANDARD OF REVIEW

A trial court's evidentiary rulings are reviewed for an abuse of discretion. The ultimate issue to decide in determining whether there has been an abuse of discretion is whether the court could have reasonably concluded as it did. To establish reversible error, an appellant must show both error and prejudice in the form of a reasonable probability that, without the error, the verdict might have been different. *See Lawrence v. State*, 2015 WY 97, [¶10 (Wyo. 2015); *see Stalcup v. State,* 2013 WY 114, ¶27, 311 P.3d 104, ¶27.

To the extent that a claim argues the exclusion of evidence violated the Constitutional right to present a complete defense, pursuant to the compulsory process clause of the Sixth Amendment to the United States Constitution or the Due Process clause of the Fourteenth Amendment, review

is *de novo*. *Smith v. State*, 2009 WY 2, ¶35, 199 P.3d 1052, 1063, ¶35 (Wyo. 2009).

Generally, an error that violates a constitutional right of the accused is presumed to be prejudicial, unless the reviewing court is able to declare its belief that the error is harmless beyond a reasonable doubt. On direct appeal, the State must prove that the constitutional errors at trial did not contribute to the verdict and the reviewing court must be able to declare a belief that they were harmless beyond a reasonable doubt. *See Vigil v. State*, 2004 WY 110, ¶¶18-21, 98 P.3d at 179-180, ¶¶18-21 (citing *Chapman v. California,* 386 U.S. at 23-24).

## SUMMARY OF ARGUMENT

Mr. Baldwin's pertinent character trait for aggression was an essential element to Mr. Knospler's claim of self-defense.

W.R.E. 404(a)(2), 405(b)[3] and 702 permit a defendant claiming self-defense to make proof of such character by expert opinion testimony based on specific instances of a decedent's conduct.

[3] To avoid repetition, Mr. Knospler incorporates by reference and will rely on the W.R.E. 404(a)(2) and 405(b) argument established in ISSUE I,

Mr. Knospler should have been allowed to introduce expert opinion testimony that Mr. Baldwin's taste for bestiality served as precursor of aggression, in order to establish that Baldwin was the first aggressor.

## ARGUMENT

Mr. Baldwin's pertinent character trait for aggression was an essential element to Mr. Knospler's claim of self-defense.

Self-defense is an affirmative defense in the context of a homicide. *Brown v. State*, 2014 WY 104, ¶15, 332 P.3d 1168, 1173, ¶15 (Wyo. 2014) (citing *Drennen v. State*, 2013 WY 118, ¶¶22-39, 311 P.3d 116, 1124-1130, ¶¶22-39 (Wyo. 2013)).

W.R.E. 404(a)(2), 405(b) and 702 permit a defendant claiming self-defense to make proof of such character by expert opinion testimony based on specific instances of a decedent's conduct.

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regarding the right to use character evidence to prove a decedent was the first aggressor, as the basis for his right to present expert witness testimony under W.R.E. 702 under ISSUE II.

> "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a `meaningful opportunity to present a complete defense.' *Hannon v. State,* 2004 WY 8, ¶ 63, 84 P.3d 320, 346 (Wyo. 2004), quoting *Crane v. Kentucky,* 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986).
>
> "[A]n essential component of procedural fairness is an opportunity to be heard. That opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence ... when such evidence is central to the defendant's claim of innocence. In the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and "survive the crucible of meaningful adversarial testing."

*Stalcup v. State*, 2013 WY 114, ¶19, 311 P.3d at 110, ¶19.

To prove his claim that Mr. Baldwin was the first aggressor, as an aspect of his right to present a complete defense, pursuant to the Due Process clause of the Fourteenth Amendment and Wyo. Const. Article 1, Sec. § 6, and as allowed under W.R.E. 401, 404(a)(2), 405(b) and 702, Mr. Knospler sought

to introduce expert opinion evidence, under W.R.E. 702[4], to prove Mr. Baldwin was the first aggressor, based on their expert opinion that the bestiality URLs which Mr. Baldwin viewed for hours before his assault on Knospler were evidence of a pertinent character trait for aggression. [RoA: Vol. I, pp. 148-151 and 181-182]

Dr. Hickey and Dr. Tallichet's expert testimony, pursuant to W.R.E. 702, would have provided specialized knowledge that could have assisted the jury in understanding the URLs as evidence of a pertinent character trait of aggression, which would have assisted in their determination, under the totality of the circumstances, of whether Mr. Baldwin was the first aggressor and whether Mr. Knospler had acted reasonably in self-defense.

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[4] W.R.E. 702 provides: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

On 15 Dec 2014, prior to the start of trial, and following the State's allegation that defense counsel had violated the trial court's discovery order that opposing parties exchange witness statements by 8 Dec when the defense produced Dr. Hickey's first written statement of 8 Dec on 10 Dec and produced Dr. Tallichet's first written statement of 10 Dec on 10 Dec. [RoA: Vol. VIII, TJTP, Vol. I, p. 161 (lines 22-24)], the trial court ruled from the bench to preclude the introduction of both Dr. Hickey's and Dr. Tallichet's expert opinion evidence, in part, as a sanction for Mr. Knospler's defense counsel for violating its PRETRIAL CONFERENCE ORDER to provide opposing parties witness statements. [RoA: Vol. I, TJTP, pp. 157 (line 15) to p. 178 (line 17), see particularly p. 172 (lines 3-12)]

As noted above, while the trial court recited that "There was a filing on August 15[5] that that identified the URL record, but there was no specific

[5] See 28 Aug 2014: SUPPLEMENT TO DEFENDANT'S NOTICE TO INTRODUCE EVIDENCE OF THE CHARACTER OR PERTINENT TRAITS OF CHARACTER OF THE ALLEGED VICTIM, PURSUANT TO WYOMING RULES OF EVIDENCE 404(A)(2) AND 405(B), FOR THE PURPOSE OF PROVING MR. BALDWIN WAS THE FIRST

identification of the proposed evidence until last Wednesday and Thursday of last week, the week before trial," [RoA: Vol. VIII, TJTP, Vol. I, p. 171 (lines 15-19)], the URLs *were* the specific identification of the proposed evidence. Because of the nature of many of the websites involved (some failed to pull up for NCSO Investigator Hulshizer on 28 Nov (*see* 28 Nov. entry above) and because anyone (other than authorized law enforcement) accessing any website with child-pornography is subject to federal prosecution, so the titled URLs are the best specific proposed evidence and were sufficient upon which to base an expert opinion (see titles of the URLs). [RoA: Vol. III, pp. 618-622 (particularly p. 621(6th URL from the top of the page)]

Importantly, and as argued to the trial court [RoA: Vol. VI, pp. 1223-1224, pp. 1233-1236], following the allegation by the State that Mr. Knospler's defense attorneys had procedurally violated the trial court's ordered exchange of witness statements by 8 Dec by providing Drs. Hickey's and Tallichet's written statements on 10 Dec, and following the trial court's preclusion of their opinion testimony, in part, as a sanction for that violation,

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AGGRESSOR & THAT MR. KNOSPLER ACTED IN SELF-DEFENSE. [RoA: Vol. III, p. 510, Exhibit 3]

the trial court was then obligated to follow the procedures required under *Willoughby v. State*, 2011 WY 92, ¶26, 253 P.2d at 165, ¶26 (Wyo. 2011), and *State v. Naple*, 2006 WY 125, ¶24, 143 P.3d at 365, ¶24 [RoA: Vol. VI, pp. 1228-1236] before imposing any sanction, which the trial court failed. That failure to follow the *Willoughby* and *Naple* protocols was an abuse of discretion because no sanction decision can be reasonable in their absence.

The exclusion of such evidence was constitutionally prohibited because such exclusion either served no legitimate purpose or was disproportionate to the ends that they were to promote. See *Bush v. State*, 2008 WY 108, ¶59, 193 P.3d 203, ¶59 (2008) (citing *Crane v. Kentucky*, 476 U.S. at 690). In doing so, the Court abused its discretion. *Edwards v. State*, 973 P.2d at 45 (citing *State v. McDermott*, 962 P.2d 136, 138 (Wyo. 1998)).

As argued above in the prejudice argument of ISSUE I, this case does not present the Court with the review of a trial where the guilt of the defendant is so overwhelming that there could be no reasonable possibility that the jury might have acquitted Mr. Knospler on the grounds of self-defense, in the face of Mr. Baldwin's escalating criminal history (and his 18-counts of vehicular burglary) as evidence that Baldwin was the first aggressor. So situated, the denial of the right to introduce such W.R.E.

404(a)(2) and 405(b) evidence through expert opinion testimony under W.R.E. 702, raises a reasonable probability that the verdict might have been different had the jury been allowed to apprise Mr. Knospler's conduct in a totality of the circumstances and establishes the prejudice needed for reversible error.

The denial of the right to prove Mr. Baldwin was the first aggressor, under W.R.E. 404(a)(2), 405(b) and 702, violated Mr. Knospler's right to an opportunity to present a complete defense, under the Sixth and Fourteenth Amendments, and his right to a fundamentally fair trial under the Due Process clause of the Fourteenth Amendment.

Generally, an error that violates a constitutional right of the accused is presumed to be prejudicial, unless the reviewing court is able to declare its belief that the error is harmless beyond a reasonable doubt. On direct appeal, the State must prove that the constitutional errors at trial did not contribute to the verdict and the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt. *See Vigil v. State*, 2004 WY 110, ¶¶18-21, 98 P.3d at 179-180, ¶¶18-21 (citing *Chapman v. California,* 386 U.S. at 23-24).

Mr. Knospler should have been allowed to introduce expert opinion testimony that Mr. Baldwin's taste for bestiality, based on the specific instances of conduct in visiting certain URLS, served as precursor of aggression, in order to establish that Baldwin was the first aggressor under W.R.E. 404(a)(2) and 405(b).

**ISSUE III**: Was the denial of Mr. Knospler's requested jury instructions # 16-18 reversible error?

## STANDARD OF REVIEW

Jury instructions are reviewed for abuse of discretion. *Stocki v. Nunn*, 2015 WY 75, ¶21 (Wyo. 2015);

Where the instructions correctly state the law and the entire charge covers the relevant issue, reversible error will not be found. To constitute reversible error, an erroneous instruction must be prejudicial. Because the purpose of jury instructions is to provide guidance on the applicable law, prejudice results when the instructions confuse or mislead the jury. *See Stocki v. Nunn*, 2015 WY 75, ¶21; *Drennen v. State*, 311 P.3d 116, ¶20, 311 P.3d at 124, ¶20.

However, to the extent that a claim argues the violation of a Constitutional right review is *de novo*. *Smith v. State*, 2009 WY 2, ¶35, 199 P.3d at 1063, ¶35.

Generally, an error that violates a constitutional right of the accused is presumed to be prejudicial, unless the reviewing court is able to declare its belief that the error is harmless beyond a reasonable doubt. On direct appeal, the State must prove that the constitutional errors at trial did not contribute to the verdict and the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt. *See Vigil v. State*, 2004 WY 110, ¶¶18-21, 98 P.3d at 179-180, ¶¶18-21 (citing *Chapman v. California,* 386 U.S. at 23-24).

## SUMMARY OF ARGUMENT

Mr. Knospler requested that the trial court give jury instructions # 16-18, which the court declined.

The failure to give those jury instructions provided insufficient guidance on the applicable law, which confused or mislead the jury and prejudiced Mr. Knospler.

The failure to give jury instructions # 16-18 also deprived Mr. Knospler of his right to a fundamentally fair trial, as guaranteed by the Fourteenth Amendment.

## ARGUMENT

Mr. Knospler requested that the trial court give jury instructions # 16-18, which the court declined. [RoA: Vol. VI, pp. 1355 to 1353 (requested instructions); pp. 1287-1330 (given instructions)]

Requested Jury Instruction # 16 recited:

> A person may defend his home or habitation against anyone who manifestly intends or endeavors in a violent or riotous manner, to enter that home or habitation and who appears to intend violence to any person in that home or habitation. The amount of force that the person may use in resisting such trespass is limited by what would appear to a reasonable person, in the same or similar circumstances, necessary to resist the violent or unlawful entry. A person is not bound to retreat even though a retreat might safely be made. A person may resist force with force, increasing it in proportion to the intruder's persistence and violence if the circumstances apparent to him are such as would excite similar fears and a similar belief in a reasonable person. If

the person kills under the influence of such fear, the homicide is not a felonious homicide but is justified.

[RoA: Vol. VI, p. 1355]

Requested Jury Instruction # 17 recited:

"Habitation" means any structure that is designed or adapted for overnight accommodation, including, but not limited to, buildings, modular units, trailers, campers, tents and vehicles.

[RoA: Vol. VI, p. 1356]

Requested Jury Instruction # 18 recited:

A person who unlawfully and by force enters or attempts to enter another's home or habitation is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

[RoA: Vol. VI, p. 1356]

The failure to give those jury instructions provided insufficient guidance on the applicable law, which confused or mislead the jury and prejudiced Mr. Knospler.

By declining those instructions, the instructions as a whole did not correctly state the law nor correctly cover the relevant issue. [RoA: Vol. VI, 1287-1330] (given instructions)]

The Court declined to give requested Instruction # 17 because it included "vehicles" within the definition of "habitation," which the Legislature removed from W.S. § 6-2-602(d)(i)[6] in 2014 from the definition of habitation. Because Instructions # 16 and 18 turned on the presumptions that follow from the defense of one's habitation, they were declined, as well.

By declining to give Instructions # 16 and # 18, the jury was not instructed regarding the contours of the law when one is defending oneself within one's habitation.

When the trial court declined to give Instruction # 16, Mr. Knospler lost the benefit of an instruction that he was not bound to retreat even though a retreat might safely be made. He lost the benefit of an instruction that he may resist an intruder with force if the circumstances apparent to him are

[6] The new W.S. § 6-2-602(d)(i) provides: "Habitation" means any structure which is designed or adapted for overnight accommodation, including, but not limited to, buildings, modular units, trailers, campers and tents;

such as would excite similar fears and a similar belief in a reasonable person and that if he killed Mr. Baldwin under the influence of such fear, the homicide is not a felonious homicide but is justified.

When the trial court declined to give Instruction # 18, Mr. Knospler lost the benefit of an instruction that when Mr. Baldwin forcefully broke into and entered Knospler's car, he was presumed to be doing so with the intent to commit an unlawful act involving force or violence.

Instruction #17 should have been given for two reasons.

First, the definition of "habitation" even under the current W.S. § 6-2-602(d)(i) remains inclusive ("including, but not limited") and applies to any structure adapted for overnight accommodation. So long as a structure is adapted for overnight accommodation, it qualifies as "habitation." Because Mr. Knospler had bunkered down inside his car for the night to wait out the blizzard, he had adapted it for "overnight accommodation."

Second, reliance on the Legislature's 2014 removal of "vehicle" from the definition of "habitation," under W.S. § 6-2-602(d)(i), to deny the requested instructions # 16-18, violated Constitutional prohibition of application of Ex Post Facto laws under Art. 1, §§ 9-10 of the United States Constitution and

Article 1, § 35 of the Wyoming Constitution. Mr. Knospler was entitled to those requested instructions on the day he was charged. *See Weaver v. Graham*, 450 US 24, 30 (1981); and, *United States v. Tucker*, 982 F.Supp. 1309, 1311 (N.D.Ill.1997: "A criminal law violates the Ex Post Facto Clause if two elements are present: first, the law is retrospective, that is, it applies to events that occurred before its enactment; and second, the law disadvantages the offender affected by it." [RoA: Vol. VI, pp. 1446-1448] Mr. Knospler was constitutionally entitled to have the jury instructed on the statutory definition of "habitation" that controlled on 3-4 Oct. 2013 (the night of the incident), which included "vehicles" if adapted for overnight accommodation. The application of the revised legislative definition of "habitation" was retrospective and disadvantaged Knospler because it mislead the jury as to the correct state of the law on 3-4 Oct. 2013.

Had Instruction # 17 been given, then Instructions # 16 and # 18, would necessarily been properly given, as they depended directly upon the legal definition of "habitation."

The failure to give those jury instructions provided insufficient guidance on the applicable law, which confused or mislead the jury and prejudiced Mr. Knospler.

While the Court's review of instructions are considered as a whole, if they do not correctly state the law such instructions constitute reversible error. *Drennen v. State*, 311 P.3d 116, ¶20, 311 P.3d 116, at ¶20. Requested jury instructions # 16-18 correctly stated the law that applied on 3 Oct 2013, were not confusing, argumentative nor emphasized one aspect of the case or law. *Id*.

Because the purpose of jury instructions is to provide guidance on the applicable law, prejudice and reversible resulted when the trial court declined to give instructions # 16-18 because their absence served to confuse or mislead the jury as to the correct law on 3 Oct 2013. *See Stocki v. Nunn*, 2015 WY 75, ¶21; *Drennen v. State*, 311 P.3d 116, ¶20, 311 P.3d at 124, ¶20.

The failure to give jury instructions # 16-18 separately deprived Mr. Knospler of his right to a fundamentally fair trial, as guaranteed by the Fourteenth Amendment. *Chambers v. Mississippi*, 410 US at 295.

Generally, an error that violates a constitutional right of the accused is presumed to be prejudicial, unless the reviewing court is able to declare its belief that the error is harmless beyond a reasonable doubt. On direct appeal, the State must prove that the constitutional errors at trial did not contribute to the verdict and the reviewing court must be able to declare a belief that it

was harmless beyond a reasonable doubt. *See Vigil v. State*, 2004 WY 110, ¶¶18-21, 98 P.3d at 179-180, ¶¶18-21 (citing *Chapman v. California,* 386 U.S. at 23-24).

**ISSUE IV**: Was the giving of the State's requested jury instruction #27 reversible error?

## STANDARD OF REVIEW

Jury instructions are reviewed for abuse of discretion. *Stocki v. Nunn*, 2015 WY 75, ¶21 (Wyo. 2015);

## SUMMARY OF ARGUMENT

Instruction # 27 was an erroneous statement of the law, unduly emphasized its version of the events and improper.

Because it emphasized one aspect of the State's case and did not correctly state the law, the giving of that instruction constituted prejudice and reversible error.

Separately, combined with the Court's refusal to give Instructions #16-18, the giving of that instruction cumulatively prejudiced Mr. Knospler's

right to a meaningful opportunity to present a complete defense and to a fundamentally fair trial, as mandated by the Fourteenth Amendment.

## ARGUMENT

The trial court gave the State's requested Instruction # 14 over Mr. Knospler's objections, as Instruction # 27. [RoA: Vol. VI, pp. 1323, 1414, 337-1338]

Instruction # 27 was an erroneous statement of the law, unduly emphasized its version of the events and improper under *Drennen v. State*, 2013 WY 118, ¶20, 311 P.3d 116, ¶20.

The jurors were instructed that they must first determine whether the defendant was the aggressor or whether the decedent was the aggressor.

The instruction was error because it is contrary to *Drennen v. State*, 2013 WY 118, ¶¶31-32, 311 P.3d 116, 127, ¶¶31-32. While the jury should be instructed on the definition of an aggressor, *Drennen v. State*, 2013 WY 118, ¶32, 311 P.3d at 126, ¶32, and it was [RoA: Vol. VI, p. 1323], and while the definition of an aggressor is relevant to a duty to retreat, the jury's duty is not to "first determine" who was the aggressor but, instead, to determine

whether the defendant reasonably perceived a threat of immediate bodily injury under the circumstances and whether he defended himself in a reasonable manner, by evaluating the totality of the circumstances and his options in protecting himself from such a perceived threat of harm. *Drennen v. State*, 2013 WY 118, ¶13, 311 P.3d 116, ¶13.

Because it emphasized one aspect of the State's case and did not correctly state the law, the giving of that instruction constituted prejudice and reversible error.

Separately, combined with the Court's refusal to give Instructions #16-18, the giving of that instruction cumulatively prejudiced Mr. Knospler's right to a meaningful opportunity to present a complete defense, *Crane v. Kentucky*, 476 U.S. at 690, and to a fundamentally fair trial, as mandated by the Fourteenth Amendment under *In Re Winship,* 397 U.S. at 359 and 363 (1970).

**ISSUE V**: Was the admission on the eve of trial of W.R.E. 404(b) testimony by Westy Gill, Chris Syverson and Crystal Mize an abuse of discretion?

## STANDARD OF REVIEW

A trial court's evidentiary rulings are reviewed for an abuse of discretion. The ultimate issue to decide in determining whether there has been an abuse of discretion is whether the court could have reasonably concluded as it did. To establish reversible error, an appellant must show both error and prejudice in the form of a reasonable probability that, without the error, the verdict might have been different. *See Lawrence v. State*, 2015 WY 97, [¶10 (Wyo. 2015); *see Stalcup v. State,* 2013 WY 114, ¶27, 311 P.3d 104, ¶27.

## SUMMARY OF ARGUMENT

Upon an allegation of a violation of a discovery order, a trial court is obligated to follow the procedures required by the Court.

Mr. Knospler alleged that the State violated the trial court's 23 June 2014 discovery order for W.R.E. 404(b) evidence when, on 19 Nov, it filed for the admission of new W.R.E. 404(b) evidence.

Allowing their testimony without first following the procedures the Court requires after an allegation of a discovery order was an abuse of discretion and prejudiced Mr. Knospler's defense and was reversible error.

## ARGUMENT

Upon an allegation of a violation of a discovery order, a trial court is obligated to follow the procedures required by the Court.

Following an allegation that an opposing party has violated a discovery order, a trial court is obligated to follow the procedures required under *Willoughby v. State*, 2011 WY 92, ¶26, 253 P.2d at 165, ¶26 (Wyo. 2011), and *State v. Naple*, 2006 WY 125, ¶24, 143 P.3d at 365, ¶24 [RoA: Vol. VI, pp. 1228-1236], before imposing any sanction.

Mr. Knospler alleged that the State violated the trial court's 23 June 2014 discovery order for W.R.E. 404(b) evidence when, on 19 Nov, it filed for the admission of new W.R.E. 404(b) evidence. [RoA: Vol. I, p. 140; Vol. VI, pp. 1225-1231]

On 19 Nov 2014, six-months beyond the trial court's 23 June deadline for seeking to introduce W.R.E. 404(b) evidence [RoA: Vol. I, p. 140], and near the eve of trial, the State moved to introduce 404(b) testimonial evidence by Westy Gill, Christopher Syverson and Crystal Mize, who had been employed at the Racks Gentlemen's Club on 3 Oct 2014. [RoA: Vol. IV p. 791-797] after the police reintereviewed them.

The State sought to introduce their testimony that Mr. Knospler asked Mr. Gill about cocaine, asked Mr. Syverson about marijuana and told Ms. Mize that "no body means anything to me" and talked about killing people. [RoA: Vol. IV p. 791-792]

Mr. Knospler alleged that the State's attempt to introduce W.R.E. 404(b) evidence six-months beyond the 23 June deadline for seeking to introduce that evidence constituted a violation of the trial court's discovery order regarding 404(b) evidence and obligated the trial court to follow the procedures required by the Court in *Willoughby v. State*, 2011 WY 92, ¶26, 253 P.2d at 165, ¶26 (Wyo. 2011), and *State v. Naple*, 2006 WY 125, ¶24, 143 P.3d at 365, ¶24 [RoA: Vol. VI, pp. 1228-1236], before imposing any sanction, which the trial court failed to do before allowing their testimony.

When there has been an allegation of a discovery violation, a district court is obligated to pursue the matter," *Willoughby v. State*, 2011 WY 92, ¶26, 253 P.2d 157, ¶26 (Wyo. 2011), and must exercise its discretion in determining the appropriate sanction. *Id.* (citing *State v. Naple*, 2006 WY 125, ¶24, 143 P.3d 358, 365, ¶24 (Wyo. 2006). Once such claim is made by a party, there are three factors for a trial court to consider in determining the appropriateness of a sanction for a discovery violation: (1) the reasons a party

delayed in producing the required materials, (2) the extent of the prejudice to an opposing party as a result of the delay; and, (3) the feasibility of curing the prejudice with a continuance. Once those factors are considered, the Court should impose the least severe sanction needed to ensure compliance with discovery responsibilities. *State v. Naple*, 2006 WY 125, ¶24, 143 P.3d at 365, ¶24.

The Court's 24 April 2014 Order for the State to notice any W.R.E. 404(b) evidence by 23 June constituted an order for discovery. The State's notice of such W.R.E. 404(b) evidence on 19 Nov 2014 violated the Court's deadline of 23 June for the State's notice of proposed introduction of 404(b) evidence by nearly 6-months. Inquiry into the appropriate sanction was required under *Willoughby v. State*, 2011 WY 92, ¶26, 253 P.2d 157, ¶26. The Court did not conduct any such inquiry before it allowed the State's new 404(b) evidence, which was an abuse of discretion because the absence of such inquiry foreclosed reasonable exercise of discretion.

The trial court granted the State's motion to admit the W.R.E. 404(b) statements of Mr. Gill, Mr. Syverson and Ms. Mize [RoA: Vol. IV, pp. 941-949] only on the basis of a W.R.E. 404(b) analysis and they testified in

accord. [RoA: Vol. VIII, TJTP, Vol. III, pp. 816-845 (Gill), pp. 1080-1096 (Syverson), pp. 1009-1050 (Mize)]

As noted above in the prejudice argument in ISSUES I and II, this case does not present the Court with the review of a trial where the guilt of the defendant is so overwhelming that there could be no reasonable possibility that the jury might have acquitted Mr. Knospler on the grounds of self-defense Mr. Knospler argued that allowing the admission of that W.R.E. 404(b) evidence on the eve of trial denied him adequate time to investigate such claims and to prepare for effective cross-examination, thereby denying him: (1) a fundamentally fair trial as required by the Fourteenth Amendment, *In Re Winship*, 397 U.S. at 359 and 363; (2) a meaningful opportunity to present a defense under the Fourteenth Amendment, *Stalcup v. State*, 2013 WY 114, ¶19, 311 P.3d 104, ¶19 (citing *Hannon v. State*, 2004 WY 8, ¶63, 84 P.3d at 346) (quoting *Crane v. Kentucky*, 476 U.S. at 690); (3) a meaningful opportunity for an effective cross-examination as to those allegations, in violation of the 6th Amendment. *Bush v. State*, 2008 WY 108, ¶59, 193 P.3d 203, ¶59, *Davis v. Alaska*, 415 U.S. 308, 315 and 317-318 (1974), and, *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 317 (2006); and (4) that the Court's order constructively prevented Mr. Knospler's counsel

from providing effective assistance of counsel as required by *Strickland v. Washington*, 466 U.S. 668, 684[7] and 680[8] (1984), because the time of that decision on the eve of trial foreclosed any meaningful opportunity to conduct the mandatory investigation to effectively impeach such testimony.

Allowing their testimony, without first following the required *Willoughby*/*Naples* procedures after an allegation of a discovery order violation, was an abuse of discretion that prejudiced Mr. Knospler's defense and was reversible error.

## CONCLUSION

Respectfully, for these reasons and those others the Court deems determinative, Mr. Knospler's conviction should be vacated and be remanded for retrial.

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[7] "The Court has considered Sixth Amendment claims based on actual or constructive interference with the ability of counsel to render effective assistance to the accused." *Strickland v. Washington*, 466 U.S. at 683.

[8] "[T]he Sixth Amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options." *Strickland v. Washington*, 466 U.S. at 680.

Submitted this 24th day of August, 2015.


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## CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 24th day of August, 2015, the foregoing instrument was served by depositing a true and correct copy of the same in the United States mail, postage prepaid, addressed to:

Peter K. Michael
Attorney General
123 Capitol Building
Cheyenne, WY 82002
(307) 777-7805

_____
Tim Newcomb

# APPENDIX

**Appendix 1**:

Final judgment and order, pursuant to W.R.A.P. 7.01(j)(1))

**Appendix 2**:

Cost of original transcript of the evidence with certification regarding payment. WRAP 7.01(j)(3) and WRAP 10.01.

**Appendix 3**:

Designation of the Record

# Appendix 1

Final Judgment and Order

**Appendix 2**

Cost of original transcript of the evidence with certification regarding payment. WRAP 7.01(j)(3) and WRAP 10.01.

Attorney Tim Newcomb, appellate counsel for Mr. Knospler, herein certifies to the Court that the total cost for trial transcripts was $6,470.75, the total for all the motions and scheduling conferences was $578.50, and the sum total of all transcripts was $7,049.25, which was paid in full and to the satisfaction of the court reporter.

24 Aug 2015

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Tim Newcomb, Attorney for John Henry Knospler, Jr.

## Appendix 3

Designation of the Record on Appeal

Pursuant to W.R.A.P. 3.05(a) and (e), Appellant designates the entire record on appeal.