

IN THE SUPREME COURT, STATE OF WYOMING

JOHN HENRY KNOSPLER, JR

(Petitioner),

v.

STATE OF WYOMING

(Respondent).

S - 14 - 0222

IN THE SUPREME COURT
STATE OF WYOMING
FILED

SEP - 5 2014

CAROL THOMPSON, CLERK
Carol Thompson
by CHIEF DEPUTY

PETITION FOR WRIT OF REVIEW OR CERTIORARI

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ATTORNEYS FOR PETITIONER

ATTORNEY FOR RESPONDENT

RESPECTFULLY COMES NOW, John Henry Knospler, Jr., to submit this Petition for Review, pursuant to W.R.A.P., Rule 13 and W.S. § 7-14-107

I. Nature of Review Desired and the Relief Sought

Petitioner seeks review of a district court Order Denying Defendant's Motion to Dismiss. The district court stated, during the motion hearing, that it had no legal authority to dismiss a case for lack of probable cause. The relief sought is a Writ that informs the district court it has authority to dismiss a case for lack of probable cause, if it determines that the case is not supported by probable cause.

II. Facts Relevant to Controlling Question of Law

- 7 Oct. 2013 The State charged Mr. Knospler with 2nd Degree Murder, in violation of W.S. § 6-2-104, for killing James Kade Baldwin in the early morning hours of 4 October, 2013. The Information recited facts that supported a reasonable belief that Knospler simply shot Baldwin dead when he walked up to Knospler's car and leaned into the driver's side window, where Knospler was sitting; the facts supported probable cause.
- 22 Nov 2013 Attorney Newcomb moved for and the district court granted the motion for Attorney Low's *pro hac vice* admission.
- 20 Dec 2013 Mr. Knospler was arraigned and pleaded not guilty. At all relevant times, Knospler maintained that he reacted reasonably in self-defense when, as

he waited at night inside his car for a heavy snowstorm to pass, Baldwin's fist suddenly smashed through his driver-side window and he began forcing himself inside through the smashed-out window and, with no place to flee, Knospler, a high-decorated combat Marine, shot him.

6 Feb 2014 The State engaged John Daily [Appendix 1, Sub-Appendix 1 (Motion to Dismiss and John Daily's report)], its forensic expert, to answer two evidentiary issues:

(1) Why did Knospler not simply drive away from the confrontation rather than shoot Baldwin? [Appendix 1, Sub-Appendix 1, p. 2 of 14]; and,

(2) Did Knospler shoot Baldwin through a closed window or was it already broken? [Appendix 1, Sub-Appendix 1, p. 2 of 14].

Mr. Daily met with the State's prosecuting attorney, the lead Natrona County Sheriff detective, and Wyoming Highway Patrol Reconstructionist and together they reconstructed what happened. The State provided Daily with law enforcement investigation reports, 3D drawings of the scene, autopsy photos of Mr. Baldwin, photos and measurements taken during the reenactment of the shooting incident using Knospler's car and an exemplar for Baldwin (Det. Ellis) and a copy of the weather conditions of that night. [Appendix 1, Sub-Appendix 1, p. 1 of 14],

12 July 2014 Mr. Daily submitted his report to the State. [Appendix 1, Sub-Appendix 1].

“There are two evidentiary issues you asked for me to examine, both dealing with Knospler’s mens rea.

“Firstly, why didn’t Knospler simply drive away from the confrontation rather than shoot Baldwin?”

“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.” [Appendix 1, Sub-Appendix 1, p. 13 of 14]

“Secondly, did Knospler shoot Baldwin through a closed window or was it already broken?”

“These injuries to Baldwin are consistent with him punching out the window and subsequently getting far enough onto the passenger compartment of the vehicle to receive the dicing and lacerations on his upper right arm near the shoulder. This also accounts for a force coming into the passenger compartment on the driver’s side and causing a wide dispersion of glass within the passenger compartment.” [Appendix 1, Sub-Appendix 1, p. 8 of 14]

“In my opinion, Baldwin punched out the driver’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 him. Somewhere in this extraction, he was shot by Knospler, thus resulting in a gunshot wound of indeterminate range.” [Appendix 1, Sub-Appendix 1, p. 13 of 14],

- 25 July 2014 The State disclosed Mr. Daily’s report to Mr. Knospler.
- 28 July 2014 Mr. Knospler’s attorneys, by private letter, asked the State to dismiss against Mr. Knospler in accord with W.R.Pr.C., 3.8(a) because the State’s charge is no longer supported by probable cause, in light of the State’s own forensic expert’s opinion verifying Mr. Knospler’s self-defense. [Appendix 2]
- 21 Aug 2014 The State filed its response to Mr. Knospler’s motion to dismiss on a variety of grounds. [Appendix 3]
- 22 Aug 2014 At a hearing on the motion, the State argued against the Motion to Dismiss on a variety of grounds, including that the district court was without authority to dismiss for a lack of probable cause.

In denying the motion to dismiss, the district court stated that it has no legal authority to dismiss a case for lack of probable cause.

The State’s prosecuting attorney, Assistant District Attorney, Joshua Stensaas, informed Mr. Knospler’s defense counsel that he was

no longer involved in Mr. Knospler's prosecution and that Natrona District Attorney Michael Blonigen was personally prosecuting the case.

25 Aug 2014 The district court entered its Order Denying Defendant's Motion to Dismiss. [Appendix 4]

III. Question

Does a Wyoming district court have legal authority to dismiss a case for lack of probable cause?

IV. Principles of law Upon which Petitioner Relies

1. Wyoming law requires that criminal prosecutions, whether initiated or maintained, must be supported by probable cause. W.R.Pr.C. 3.8(a)¹; W.R.Pr.C. 3.8(a) Comment²; W.R.Cr.P. 5.1(c)³; *Petition of Padget*, 678 P.2d 870, 873 (Wyo. 1984); *State v. Carter*, 714 P.2d 1217, 1220 (Wyo. 1986); and, *Reichert v. State*, 2006 WY 62, ¶ 32, 134 P.2d 268 (Wyo. 2006).

¹ W.R.Pr.C. Rule 3.8(a). Special responsibilities of prosecutor. The prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.

² W.R.Pr.C. Rule 3.8(a) Comment. [1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions.

³ W.R.Cr.P. 5.1(c): If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the judicial officer shall dismiss the information and discharge the defendant.

2. The question of probable cause is a question of law for the district court to determine when the facts bearing upon that question are not in dispute. *Boyer v. Bugher*, 120 P. 171, 176 (Wyo. 1912); *Henning v. Miller*, 8 P.2d 825, 828 (Wyo. 1932); *Cordova v. State*, 2001 WY 96, ¶¶ 10-11, 33 P.3d 142, 148 (Wyo. 2001); and, *O'Boyle v. State*, 2005 WY 83, ¶ 18, 117 P.3d 401, 407 (Wyo. 2005)
3. A Wyoming district court has legal authority to dismiss a case for lack of probable cause. Wyo. Const. Art. V, §10.⁴
4. A controversy capable of repetition yet evading review is one for which the granting of a petition for review is proper. *Board of County Com'rs. v. Exxon Mobil Corp.*, 2002 WY 151, ¶ 18, 55 P.3d 714 (Wyo. 2002)

V. Statement Explaining Why Ends of Justice Require Review

The issue of whether a Wyoming district court has the authority to dismiss a criminal prosecution for lack of probable cause is not otherwise appealable under the Wyoming Rules of Appellate Procedure but involves a controlling question of law, as to which Petitioner has found no direct precedent, and an immediate appeal from the order may materially advance resolution of the litigation.

The issue involves a controversy capable of repetition yet evading review. If the jury finds Mr. Knospler not guilty, whether probable cause existed for the State to maintain its prosecution of him is moot but the issue is capable of repetition. If the jury

⁴ Wyo. Const. Art. V, §10: The district court shall have original jurisdiction of all causes both at law and in equity and in all criminal proceedings.

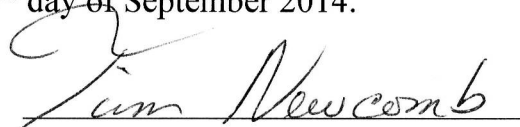
finds him guilty, the issue also becomes moot but is capable of repetition.

The ends of justice require that Wyoming district courts, who administer justice, understand whether they have authority to dismiss an Information and discharge a defendant when facts bearing upon the question of probable cause are not in dispute and no longer support probable cause.

VI. Certification that the petition is not interposed for purpose of delay

Undersigned counsel certify that the Petition is not interposed for the purpose of delay. The trial has been continued until the district court notifies the parties of a new trial date and a Petition for Review does not stay proceedings in the trial court without an order from the Court.

RESPECTFULLY SUBMITTED this 3rd day of September 2014.



Tim Newcomb # 5-2594

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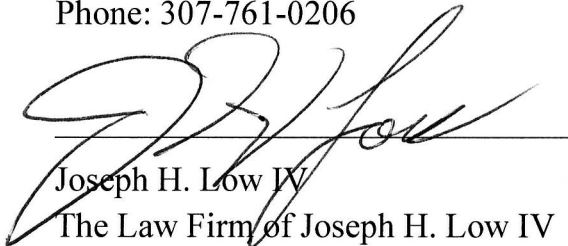
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*signed by JHL
authorized by T.N.*



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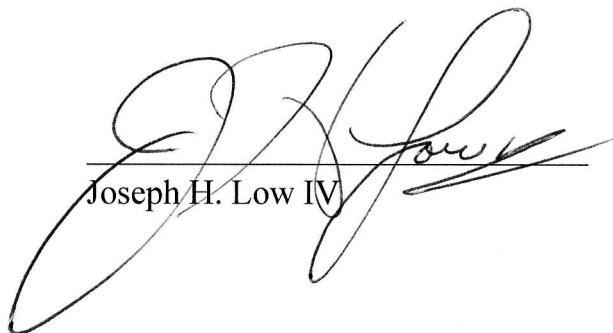
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 3rd day of Sept 2014, the foregoing was served by depositing a true and correct copy of the same with the United States Postal Service, first-class postage paid.



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 3rd day of September 2014, the foregoing instrument was emailed to:

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