IN THE DISTRICT COURT OF NATRONA COUNTY, WYOMING

SEVENTH JUDICIAL DISTRICT

CRIMINAL ACTION NO. 19548-B

THE STATE OF WYOMING,

Plaintiff,

VS.

JOHN HENRY KNOSPLER, JR.,

Defendant.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS VOLUME III of VII

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9:33 a.m., Wednesday December 17, 2014

Proceedings before the Honorable W. Thomas Sullins, a Judge of the Seventh Judicial District of Wyoming, and a Jury of Twelve at the Natrona County Townsend Justice Center, Casper, Wyoming.

\underline{A} \underline{P} \underline{P} \underline{E} \underline{A} \underline{R} \underline{A} \underline{N} \underline{C} \underline{E} \underline{S}

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ALSO PRESENT: The Defendant

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1	PROCEEDINGS
2	THE COURT: Thank you very much.
3	Please be seated. Court will come to order.
4	The Seventh Judicial District Court for
5	the State of Wyoming convenes for day three of the
6	trial proceedings.
7	The proceedings are in the case of the
8	State of Wyoming versus John Henry Knospler, Jr.,
9	and it is Criminal Action 19548-B.
LO	The Court notes the presence of counsel,
1	the defendant, and the 13 members of the jury
_2	panel.
. 3	The parties ready to proceed here on day
. 4	three, the State?
15	MR. BLONIGEN: We are, Your Honor.
. 6	THE COURT: And the Defense?
.7	MR. NEWCOMB: Yes, Your Honor.
8 .	THE COURT: Okay. Thank you very
L 9	much.
20	We're still in the State's case.
21	Mr. Blonigen.
22	MR. BLONIGEN: Yes, Your Honor. I
23	note for the Court that we are going a little out
24	of order, our usual order, because Dr. Carver has
> 5	some obligations. So he's going to be called this

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morning, but we'd first call Detective Aaron
 1
 2
      Shatto.
 3
                     THE COURT: Please come forward,
      Officer, if you would, and be sworn by the Clerk
 4
 5
      of Court.
 6
                     THE CLERK: You do solemnly swear
 7
      that the testimony you will give in the case
 8
      before the Court will be the truth, the whole
 9
      truth, and nothing but the truth, so help you God?
10
                     THE WITNESS: I do.
11
                          AARON SHATTO,
12
      called for examination by the State, being first
13
      duly sworn, on his oath testified as follows:
14
                        DIRECT EXAMINATION
      BY MR. BLONIGEN:
15
16
                Would you state your name for the record,
          Q.
17
      please.
18
               Aaron R. Shatto.
          Α.
19
                Where are you employed, sir?
          0.
20
                Natrona County Sheriff's Office.
          Α.
                What is your position with that
21
          Q.
2.2
      department?
23
          Α.
                I'm an investigator.
24
                How long you been a police officer?
          Q.
25
                Over 20 years.
          Α.
```

1 And what was your assignment on October Q. 2 4th of 2015 -- excuse me, 2013? 3 I was called in and requested to go to the Natrona County morque. 4 5 Okay. What was the purpose of you going Ο. to the morque at that time? 6 7 I needed to view the body of James 8 Baldwin. 9 Q. Okay. And was the body there when you 10 arrived? 11 Α. I believe we arrived about the same time. And you say "we." Who's "we"? 12 Q. 13 Myself, the Deputy Coroner Mackler, and Α. 14 Sergeant Trey Warne. 15 Q. Was the body of Kade Baldwin in Mr. 16 Mackler's possession? 17 A. It was. 18 What happened at that particular point in 19 time? 20 We took the body out and put it on a table inside the morque. 21 2.2 Q. At that time, are photographs taken of 23 the body and its condition as recovered?

A. Yes, they were.

Q.

24

25

And are these done prior to autopsy?

- A. Yes.

 Q. Now, in this particular instance, prior

 to the body, where was the autopsy going to take

 place?

 A. The autopsy was set up for October 6th in

 Loveland, Colorado.
 - Q. And prior to that time, is it customary to preserve by photograph the condition of the body before it's taken to autopsy?
 - A. Yes, it is.
 - Q. And immediately taken from the scene?
- 12 A. Yes.

8

9

10

11

17

18

19

20

21

2.2

23

24

25

- Q. Approximately what time of day is this?
- 14 A. This is 8:23 a.m.
- 15 Q. How would you describe the weather that day?
 - A. It was -- it had snowed quite a bit and was probably the biggest snow of the year.
 - Q. Okay. Now, in addition to taking the body into custody, do you inventory the contents of the person's pockets, things like that?
 - A. Yes.
 - Q. I'm going to show you a photograph, 102.

 Does that include the contents of Mr. Baldwin's wallet?

```
1
          Α.
               Yes, it is.
 2
               Does that show the condition of his
          0.
 3
      wallet at that time?
               Yes, it does.
 4
          Α.
 5
               Do you recall how much cash he had in his
          Ο.
 6
      wallet?
 7
                I believe there was $150. I'm not
          Α.
 8
      absolutely certain.
 9
          Q.
               Multiple $50 bills?
10
          Α.
               Yes.
11
                     MR. BLONIGEN: Move for the
      introduction of 102, Your Honor.
12
13
                     THE COURT: Any objection to this
14
      exhibit?
15
                     MR. LOW: No objection. And I will
16
      stipulate to the photos being admitted, so we
17
      won't have to stop each time.
18
                     MR. BLONIGEN: Thank you.
                     THE COURT: Exhibit 102 is received.
19
20
                (BY MR. BLONIGEN) So this is how it
          Ο.
      was -- the condition it was in when you recovered
21
2.2
      it?
23
          Α.
              Yes, it was.
24
               And was additional currency found in Mr.
25
      Baldwin's pockets?
```

1 Α. Yes. 2 How much? Ο. 3 I believe it was \$23. Α. At that time, then, are photographs taken 4 Ο. of the body, both with clothing on? 5 6 Yes, sir -- yes. 7 When was the clothing removed, at which Q. 8 procedure? 9 Oh, the clothing wasn't removed until we 10 went to McKee Medical Center in Loveland, 11 Colorado. 12 Show you two photographs, 105 and 106. 13 Tell us what 105 depicts. 14 Α. 105 is the body of -- the upper torso of Mr. Baldwin. 15 16 Okay. And the second photograph? Q. 17 Second photograph is of the wound to his Α. 18 upper chest. 19 Okay. Now, when this call first came in, Q. 20 was it immediately identified as a gunshot wound? 21 Α. No. What was it identified as? 2.2 Q. 23 Α. I don't know that the specific nature --24 I believe it was a knife or a puncture wound of

25

some sort.

```
1
                    MR. BLONIGEN: Your Honor, move for
 2
      the introduction of 102, I don't believe I
 3
      formally moved for that, 105 and 106.
                    THE COURT: 102 was received. As I
 4
 5
      heard it, you agree to the receipt of 105 and 106?
                    MR. LOW: Yes, sir, that's correct.
 6
 7
                    THE COURT: Those two additional
 8
      exhibits are received.
 9
                    MR. BLONIGEN: Your Honor, I don't
10
      know, did the Court have any special rules about
11
      these kind of photographs and use of the overhead?
12
      I don't recall one, so.
13
                    THE COURT: I don't have any rule
14
      unless there's some specific request.
15
                    MR. BLONIGEN: Okay. Thank you,
16
      Your Honor.
17
                    THE COURT: Thank you. You can
18
      publish if you wish.
19
               (BY MR. BLONIGEN) Now, let's speak about
20
      or talk about the contents of 105. First, can you
      describe the condition of the blood that was
21
2.2
      present upon the shirt?
23
               Well, the blood on his shirt, as far as
24
      the condition, it certainly was wet. And because
2.5
      of the weather, I think it probably -- I don't
```

- 1 know the right word for it, but certainly
 2 lightened the blood or the color of the red.
 - Q. Okay. And when we look at the shirt or we look at 105, I'd direct your attention to the left shoulder. Does it appear that he fell in the dirt on that left shoulder?
 - A. It does.

4

5

6

7

8

9

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18

21

- Q. In addition to that, did you notice whether there were any injuries on the left arm when you were at the morgue?
- 11 A. I didn't see any injuries on the left arm.
- Q. How about the left shoulder up on here?
- A. I didn't see any injuries to the left shoulder.
- 16 Q. How about on the abdomen? Any scratches or scrapes?
 - A. I didn't see any injuries.
- 19 Q. Okay. Now, did you also have a chance to observe the pants that he was wearing?
 - A. I did.
- Q. Okay. And can you describe what they were?
- A. They were blue jeans. Of course, they
 were wet as well at that time.

1 Q. Do you know the size of those pants? 2 I do. Α. 3 What are they? 0. They're size 36 by 32. 4 Α. 5 So 32-inch inseam, 36-inch waist? Q. 6 Α. Yes. 7 Q. Did they appear to have any blood at all 8 on them? 9 Α. I didn't see any blood on them. 10 In addition to that, did you see any Q. injuries to the face? 11 12 I didn't see any injuries to the face, Α. 13 no. 14 Direct your attention, then, to 106. Q. 15 First, we have a couple different things here. 16 You have the scale in place. Would you point out 17 for the ladies and gentlemen of the jury the 18 gunshot wound you identified at that time? 19 It's -- sorry. It's right there. Α. 20 Okay. Now, did you identify the hole Q. made by the bullet in the shirt while you were 21 there as well? 2.2 23 Α. We did, yes. 24 And where do we see that? Q. 25 Well, it's going to be right here. Α.

- 1 Q. When you first observed the body, did the 2 hole in the shirt line up with the hole in his 3 body? I'm sorry. Can you repeat that? 4 5 Did the hole in the shirt and the hole in Ο. the body, are they directly overlining each other 6 7 when you first observed this? 8 Α. When I first observed it, no. 9 THE COURT: Lower left will clear 10 it, lower left of the screen. 11 THE WITNESS: Of the screen? Okav. 12 THE COURT: Thank you. 13 (BY MR. BLONIGEN) Now, at the time that Q. 14 you were observing this, did you observe any glass 15 fragments on the right hand and arm of Mr. 16 Baldwin? 17 Yes, I did. Α. 18 And where were they located? Q. 19 On his right hand area up to, maybe, the 20 forearm. And did you observe any glass on the area 21 Ο. 2.2 around the entry wound or the entry hole to the 23 shirt?

25

Α.

Q.

No.

Did you take pictures of the condition of

```
1
      the right hand?
 2
          Α.
                I did.
 3
                Is it fair to say that other than the
           Q.
      gunshot entry and exit, that the only other wounds
 4
 5
      to Mr. Baldwin's body were on the right hand and
 6
      arm?
 7
          Α.
                Yes.
 8
                Hand you a series of photographs. How
 9
      would you describe generally these injuries, Mr.
10
      Shatto?
11
          Α.
                Superficial.
12
                Okay. Any of them appear to be deep at
           Q.
13
      all that you could see?
14
          Α.
                There wasn't anything that I -- that
15
      appeared to be any more than really abrasions
16
      maybe at most, superficial.
17
                Okay. Now, you've been a police officer
           Ο.
18
      a long time?
19
          Α.
                I have.
20
                You've had occasion to deal with breaking
           Ο.
21
      out driver car windows?
2.2
          Α.
                I have.
23
           Q.
                They're tempered glass?
24
                They are.
          Α.
25
                Did you know if this was -- and how do
           Q.
```

- 1 you break them out when you have to break them 2 out?
 - A. Well, basically, it's an expandable baton is what I've used in the past to break them out.
 - Q. And that's made out of what?
 - A. It's made out of metal.
 - Q. Is it a heavy baton?
 - A. Well, you would think that it would break the glass easily, but it doesn't.
- Q. Okay. What happens when you hit the window?
- 12 A. It bounces.

4

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20

21

2.2

23

24

2.5

- Q. Okay. How much force does it take to

 break out one of those car windows even with one

 of these metal batons?
 - A. You're going to use -- for myself, I have to use all my force to break one out.
 - O. One blow or more than one blow?
 - A. Oh, generally more than once.
 - Q. And after you -- when you first break the glass, does it all fall out or what happens?
 - A. No. When you first break the glass, it normally just puts a little hole in the glass from where the baton actually finally entered. And then you have to take the baton and swirl it

- around in order to get into the car.
- Q. Okay. Are they -- how many blows have you used to break out one of these?
 - A. Well, there's been times, to be honest with you, I haven't been able to break them out where I've had to actually go through the front windshield.
 - Q. Okay. They take a lot of force?
 - A. They do.

4

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19

- Q. And before you even knock a hole in it, does the glass just shatter sometimes so it's hanging there, but it's just broken?
- A. It just hangs there sometimes. You still have to -- in order to enter, you know, for safety of the officer or even safety inside, you rake it around so you can get all that glass out.
 - Q. Okay. And is this glass sharp when it comes out?
- A. It is.
- 20 O. Come out in little cubes?
- 21 A. It does.
- Q. Easy to cut yourself?
- 23 A. Yes.
- Q. So I'm going to hand you a series of photographs here, 107, 108, and 109, and 110, and

```
1
      ask you to briefly look through those. And are
 2
      these photographs of the arm and hand area of Mr.
 3
      Baldwin at the morque, particularly the right
      hand?
 4
 5
          A. Yes, they are.
                    MR. BLONIGEN: Move for the
 6
 7
      introduction, Your Honor, of the four exhibits,
 8
      107 through 110.
 9
                    THE COURT: As I heard it, there's
10
      no objection, Mr. Low; is that correct?
11
                    MR. LOW: Correct, Your Honor.
12
                    THE COURT: Thank you.
13
               Exhibits 107 through 110 inclusive are
14
      received.
15
          Q.
               (BY MR. BLONIGEN) Let's discuss these a
16
      little bit. This is the inside of the right hand,
17
      correct, the palm?
18
          Α.
               It is.
19
               Now, obviously what's all this wrinkling
20
      stuff we've got going on?
               Well, this is the weather, being outside.
21
          Α.
2.2
          Q.
               And when that happens, you get just like
23
      if we stay in the bath too long; right?
24
          Α.
              Yes.
25
               Also, later on we see some black stuff on
          Q.
```

```
1
      this hand. What's that?
 2
                Oh, that would be fingerprinting.
 3
                You check for evidence before you
          Ο.
 4
      fingerprint?
 5
                We do.
          Α.
 6
                Now, in this instance, did you see any
 7
      injuries to the right palm of the hand?
 8
          Α.
                No, I did not.
 9
          Q.
                You said earlier that you saw some
10
      injuries to the right side of the hand?
11
                I did.
          Α.
12
                Or excuse me, that was a bad question.
          Q.
13
      To the right hand, the top portion?
14
          Α.
                Yes.
15
          Q.
                And 108, does that show this abrasion as
16
      you saw it at the morque?
17
          Α.
                Yes.
18
                This is before it's been cleaned up?
          Ο.
19
          Α.
                Yes.
20
                We're going to talk about some different
          Ο.
21
      lacerations, small injuries to this. Was there a
      little blood around all of them? Was there blood
2.2
23
      around all the lacerations you identified while
24
      you're at the morgue?
2.5
                You know, I -- certainly, here it appears
          Α.
```

- that way, but I don't remember if there was on
 every laceration.
 - Q. Okay. You called them -- there's not much bleeding here?
 - A. No, there's not.
 - Q. Is there any damage to the -- these knuckles here across the front of the hand?
- 8 A. No.

4

5

6

7

- 9 Q. Is there any damage to this part of the hand, the fingers?
- 11 A. No. It's the upper knuckles are most of the damage.
- Q. And when we make a fist, we've got this big old knuckle sitting out right there; is that correct?
- 16 A. Yes.
- Q. Any damage to the top of that that you saw?
- 19 A. No.
- Q. We're going to see some cuts. Where are they, if you could demonstrate on your hand?
- A. On -- well, you're going to see it to the right of that, over in here, and then there's some right through here.
 - Q. Okay. Is there also some in between

```
1
      these two knuckles here?
 2
                Yeah. Towards, you might say, the web
 3
      area.
 4
                In addition, you talked about
 5
      superficial. Do we see some of these are only
 6
      like the skin coming off?
 7
               Yes.
          Α.
 8
               And, in fact, on the right hand near the
 9
      pinky finger, do we see some of those minor
10
      lacerations?
11
               We do.
          A.
12
                Now, there were some minor ones on the
          Q.
13
      top of the arm again, halfway up the arm?
14
          Α.
                Yes.
15
          Q.
                And are these as they appeared at that
16
      time?
17
          Α.
                Yes.
18
                Would you point out specifically what
          Q.
19
      you're talking about for the ladies and gentlemen
20
      of the jury, because this is kind of small, what
21
      you're talking about?
2.2
          Α.
                It's right in between those. There it
23
      goes.
24
                These are relatively small?
          Q.
25
                Oh, very small.
          Α.
```

- Q. Then we go up to kind of the bump on your wrist on the outside. Was there similar type of damage there?

 A. You know, I don't recall.

 Q. But that's -- that would be the outside area, right here, of the arm?
 - A. Yes.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

2.2

23

- Q. And when we look towards the right hand down, you see there's almost just skin scrapings, aren't there?
 - A. Yes, yes.
- Q. On the next photograph, like you said, there is a shadow on this photograph, was there another minor laceration up in this area or is this the same one we saw in the previous photograph?
- A. Can you throw that other photograph on real quick and let me take a look? I knew there was another one.
 - Q. That's a different one, isn't it?
 - A. Yes, it is.
- Q. But are these the type of lacerations we're seeing at that time on the arm?
 - A. The real light --
- 25 Q. Yeah.

- A. -- lacerations, yes.
- Q. Okay. Are we finding any injuries on this part of the arm, the lower -- the --
 - A. No.

4

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

2.2

- Q. And not on the palm. What about on this underside of the arm?
 - A. No.
 - Q. Now, this particular photograph I believe -- let me back up here. Show you four photographs, 111 -- or excuse me, five. Let me make that four again: 111, 112, 113, and 114. Are these more photographs taken at the morgue that night of the damage to the right arm and right arm area?
 - A. Yes. Well, the 114 is more of the lower torso.
 - Q. Excuse me. But the first three are the right arm and right hand area?
 - A. Right arm, right shoulder, and this is -113 is going to be -- I don't know what 113 -- I'd
 have to go back through all of them. That's just
 a hole in his shirt.
- Q. Does this show the exit hole at the morque in the shirt?
 - A. Yes.

```
1
          Q. Okay.
 2
                    THE COURT: And that was Exhibit
 3
      114?
 4
                    THE WITNESS: 113.
 5
                    MR. BLONIGEN: 113, Your Honor.
 6
                    THE COURT: 113. Thank you.
 7
          Q. (BY MR. BLONIGEN) Thank you, Mr. Shatto.
 8
                    MR. BLONIGEN: Move for the
 9
      introduction of 111 through 114.
10
                    THE COURT: Any objection?
11
                    MR. LOW: No, sir.
12
                    THE COURT: Okay. Exhibits 111
13
      through 114 inclusive are received.
          Q. (BY MR. BLONIGEN) We talked a little bit
14
15
      about the prior photographs, some of the damage up
16
      around the wrist area by the bump on your wrist on
17
      the outside?
18
          A. Yes, sir.
19
               Let's take a look at this photograph.
20
      Does this photograph show what you were observing
      in that area in the morque?
21
2.2
          Α.
               Yes.
23
          Q.
               And what are we seeing there?
24
               Seeing another -- just a very small --
25
      it's more of, like, skin raising, like a real
```

- small laceration. I don't even know if you could really consider it a laceration. Just the skin pulled up.
 - Q. And finally, when we look at 112, is this the final injury we find on the right arm?
 - A. It is.

5

6

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15

16

18

19

20

21

- Q. And where is this located?
- A. It's more up towards the right shoulder area.
- Q. And we'll take a picture -- we'll look at this when it's a little more cleaned up, but generally what did you see in that area?
- A. Same thing, just some lacerations, all lacerations.
 - Q. And there appears to have been some bleeding onto the T-shirt?
- 17 A. Yes, there are.
 - Q. Were you able to locate the exit wound you talked about -- or excuse me, were you able to locate the second hole made by the bullet?
 - A. Yes.
 - Q. And where was it located generally?
- A. On his mid to lower back.
- Q. Okay. And did it pass through the
- 25 T-shirt as well?

```
1
          Α.
               It did.
               And does that show the defect made in the
 2
          Ο.
 3
      T-shirt by the bullet passing?
                It does.
 4
          Α.
 5
                You indicated Mr. Baldwin had blue jeans
          Ο.
 6
      on; is that right?
 7
          Α.
               Yes, sir.
 8
          Q.
               And that they didn't appear to have any
 9
      blood on them from your observation?
10
               I didn't see any blood on the blue jeans,
11
      no.
12
               Okay. And does 114 show that?
          Q.
13
                It shows --
          Α.
14
          Q.
                Shows the jeans he was wearing?
15
          Α.
               Yes.
16
               And also he had a cell phone in his
          Q.
17
      pocket?
18
          Α.
               He did.
19
               After taking the photographs, what was
20
      done with the remains of Mr. Baldwin?
21
               Well, they were secured at that point
2.2
      into a locker there at the morque. I'm sorry.
23
      You're asking for the body; correct?
24
          Q.
               Yes.
25
          Α.
                Yes.
```

```
1
          Q.
               And is that a locked facility?
 2
          Α.
               It is.
 3
               And did it remain in place until
          Q.
      transportation?
 4
 5
               It did.
          Α.
 6
                     MR. BLONIGEN: Your Honor, just to
 7
      double-check, I did admit 111, did I not?
 8
                     THE COURT: Yes.
 9
                     MR. BLONIGEN: I put it back with
10
      the other photographs, I double-checked.
11
               (BY MR. BLONIGEN) When was the autopsy
          Ο.
12
      conducted?
                It was October 6th.
13
          Α.
14
          Q.
               Where was it conducted?
15
          Α.
               At the McKee Medical Center in Loveland,
16
      Colorado.
17
               During the course of your investigation,
          Ο.
18
      did you also have occasion to observe Mr.
19
      Baldwin's car or his brother's car actually, isn't
20
      it?
21
          Α.
               Yes.
2.2
          Q.
                It's not Mr. Baldwin's car, it belonged
23
      to his brother; correct?
24
          Α.
               Yes.
25
                That they rode to the club in that night?
          Q.
```

1 A. That's correct. 2 I'm going to hand you two photographs, 3 103 and 104. What does 103 show? Excuse me. 103 is the vehicle after the 4 Α. 5 snow is melted, basically at impound. Okay. And what does the other picture 6 7 show? 8 Α. When we located the vehicle with the snow 9 still on top of it. 10 Q. And that would have been the day of the 11 shooting? 12 A. I believe it was the afternoon of the 13 shooting, yes. 14 MR. BLONIGEN: Move for the introduction of 103 and 104, Your Honor. 15 16 THE COURT: Any objection to these 17 exhibits? 18 MR. LOW: No, Your Honor. THE COURT: Exhibits 103 and 104 are 19 20 received. 21 O. (BY MR. BLONIGEN) You indicate -- and is 2.2 this the front view of the vehicle at the impound? 23 A. It is. 24 Q. And is this the same vehicle that you

talked about with the snow on top of it?

1 Α. Yes. 2 Did you attend the autopsy? Q. 3 I did. Α. 4 Were photographs taken during the Ο. 5 autopsy? 6 Α. Yes. 7 Q. During that process, was the wound of 8 entry identified? 9 Α. Yes. 10 In addition to that, were photographs Q. 11 taken of the wounds after they had been cleaned, 12 et cetera? 13 Α. Yes. 14 Q. Did you collect any physical samples during that autopsy? 15 16 Α. T did. 17 Okay. And specifically, was a known DNA Q. 18 sample of Kade Baldwin obtained? Α. 19 Yes. 20 I'm going to hand you what I've marked 21 for identification purposes as 100. Can you identify 100 for us? 2.2 Yes. 100 is the DNA card collected on 23 Α. 24 October 6th, 2013, at 12:00 noon. 25 Okay. And was that a known sample of Mr. Q.

1 Baldwin's DNA? 2 Α. It was. 3 Did you keep possession of that until Q. returning to Casper? 4 5 Α. Yes, I did. 6 At that time, was it placed in a secure 7 evidence facility? 8 Α. Yes, it was. 9 Q. And did it remain in that secure evidence 10 facility until transported to the Wyoming State 11 Crime Lab? 12 Α. Yes. 13 And if somebody had entered that Q. 14 packaging, et cetera, would it have been obvious to the person receiving it? 15 16 Α. Yes. 17 Thank you. In addition to that, were 0. 18 fingernail scrapings collected on the right and left hands of James Baldwin? 19 20 Α. They were. 21 And can you describe generally what this 2.2 is and how it happens? 23 Α. So basically, they just scrape the inside 24 of the fingernail, and they put it onto a piece of

paper as they are scraping it. And then they go

- ahead and close that up, and then it's secured and logged into evidence.
- Q. I'm going to show you 123. Can you tell us what 123 is?
- 5 A. They would be the fingernail clippings 6 collected at 10:16 a.m.
- 7 Q. Okay. And did you keep possession of 8 those?
- 9 A. I did.
- Q. And I presume sterile instruments are used to collect those?
- 12 A. Yes, they are.
- Q. Did you keep them in your possession and place them in the evidence locker?
- 15 A. Those instruments?
- 16 Q. No, not -- well --
- A. I'm sorry.
- Q. Well, let me back up a little bit. What do you use to collect it?
 - A. Well, they're generally collected off of a kind of a long Q-Tip. Pull it out, they scrape them, and then they put them into the bags here.
- Q. So a separate sterile Q-Tip is used on each occasion?
- 25 A. Yes.

21

- Q. And did you bring -- are those then placed in a separate package from the clippings themselves, that -- let me back up a little. That was a horrible question. What happens to them then?
 - A. Okay. Well, as you can -- well, they go into a -- like a bindle where they put the scrapings on, and then, of course, you have the O-Tips inside here.
 - Q. Okay. My point, Detective, is they're packaged in a way they wouldn't cross-contaminate each other; is that correct?
 - A. That's correct.
 - Q. And was that kept in that secure evidence locker as well?
 - A. Yes.

2.2

- Q. And again, would have been obvious tampering to the seals if anybody had chosen to tamper with it?
 - A. That's correct.
- Q. Thank you. I'm going to hand you an item, State's Exhibit 101. Please make sure you don't block your microphone with those when you're speaking. What is 101?
 - A. 101 is the T-shirt that Mr. Baldwin was

```
1
      wearing.
 2
                When was that shirt collected?
          Ο.
 3
                That was collected on the 6th of
          Α.
      October -- the 6th of October during the autopsy.
 4
 5
               Okay. Has it changed at all since you
          Ο.
      collected it?
 6
 7
               Oh, it has.
          Α.
 8
          Q.
                In what ways?
 9
                Well, it's -- when I first collected it,
10
      of course, you saw -- you can see the blood
11
      through here.
12
               Uh-huh.
          Q.
13
                And so it was a whole lot brighter red on
14
      the front portion right here.
15
          Q.
               Has it also been subject to markings for
16
      laboratory testing?
17
          Α.
                It has.
18
                Besides that, does it appear to be in the
          Q.
19
      same condition as when you collected it?
20
          Α.
                It does.
                Now, specifically, can you identify for
21
      us on the front of the T --
2.2
23
                     MR. BLONIGEN: Well, move for the
24
      introduction of 101, Your Honor.
25
                     THE COURT: Any objection?
```

1 MR. LOW: No, sir. 2 THE COURT: Exhibit 101 is received. 3 (BY MR. BLONIGEN) Can you point out for Q. the ladies and gentlemen of the jury where that 4 5 entry hole is we talked about. Entry hole would be right here. 6 7 Ο. Okay. And where is the exit? 8 Α. Would be right here. 9 Okay. And which would be the right side Q. 10 of the T-shirt as Mr. Baldwin, if we were looking 11 at his arm? It would be on this side right here. 12 Α. 13 And that's where you found those Q. scratches we talked about? 14 15 Α. That's correct. 16 Thank you. Now, we have two Q. Okay. 17 packages here. What's the brown paper bag that is 18 with this? 19 When we first log in evidence, we go 20 ahead and put the -- put it in the one paper bag. If I could take a look at it again, I could 21 2.2 explain it. So once you repackage those bags, 23 okay, the reason you got two here is when we --

and this isn't a paper bag. What it is is it's

paper, and so we laid it out in order for it to

24

- 608 1 dry. And then once we do it, we bag what it dried 2 on into the bag as well. 3 Okay. You don't ship stuff wet? Q. 4 Α. No. 5 Okay. And then what's that white thing Q. 6 right there? 7 That's going to be something from the Α. 8 crime lab and the crime lab number. 9 Q. Okay. What is it labeled? 10 Long black hairs. Α. 11 Ο. Okay. Collected from Item 24, shirt. 12 Α. 13 Mr. Baldwin didn't have long black hair, Q. 14 did he? 15 Α. No, sir. 16 How would you describe his hair for the Q. 17 record? 18 Α. It was short.
 - Now, when you collected this and packaged it, then, was it kept in a secure area at all times until it was packaged?
 - Α. Absolutely.

20

21

2.2

23

24

And then once packaged, was there any way to access the item without obvious tampering to 25 the seals?

1 Α. Absolutely not. 2 You went on to the autopsy, then, and 0. 3 took additional photographs; is that correct? That's correct. Α. 4 5 I'm going to hand you first a photograph Ο. 6 I've labeled as 115. Now, does 115 show the shirt 7 and the entry wound? Or let me back up. Was an 8 entry wound determined? 9 I'm sorry. Could you repeat that? 10 At autopsy, was an entry wound Q. 11 determined? 12 Α. Yes. 13 Do you see the wound identified as an Q. 14 entry wound on that photograph? 15 Α. I do. 16 And do you, again, see the T-shirt with Q. the defect in it? 17 18 Α. I do. 19 MR. BLONIGEN: Move for the admission of 115, Your Honor. 20 21 THE COURT: Any objection? 2.2 MR. LOW: No, Your Honor. THE COURT: Thank you, Counsel. 23 24 Exhibit 115 is received. 25 (BY MR. BLONIGEN) In observing the Q.

1 T-shirt both at the morque and that day, did the 2 fibers in the T-shirt appear to have been pushed 3 inward? Α. They did. 4 5 Have you ever seen something called Ο. powder tattooing or stippling? 6 7 I have. Α. 8 Ο. What is that? 9 Basically it's the gunpowder that's 10 expelled from the end of the muzzle of a weapon, 11 and it leaves burn marks on the person's body. 12 And we're talking about stippling, does Q. 13 it just wash away? 14 Α. No, it does not. 15 Q. And we'll talk to the pathologist more 16 about that. 17 Now, after completing the autopsy, did 18 you take certain photographs of the firearm in question here? 19 20 Α. I did. And were those photographs provided to 21 Dr. Carver? 2.2 23 Α. They were.

I'm going to show you an item I've marked

Is 234 a picture of the pistol after it

24

25

Q.

as 234.

```
1
      was packaged for processing?
 2
          Α.
               Yes.
 3
               Okay. Why is it wired down to that area
          Q.
      there?
 4
 5
               Basically to keep it secure so it doesn't
      move around.
 6
 7
          Q.
               Is the clip present?
 8
          Α.
               Well, it's hard to tell. I don't know.
 9
          Q.
               Okay. You usually don't ship them with
10
      the clip in, do you?
11
               Generally not, no.
          Α.
12
               It's a safety thing?
          Q.
13
          Α.
               Yes.
14
          Q.
               But does that show the pistol as you took
15
      a photograph of it that day?
16
          Α.
               Yes.
17
                     MR. BLONIGEN: Move for the
18
      introduction of 234, Your Honor.
19
                     THE COURT: Any objection to this
20
      exhibit?
21
                     MR. LOW: No, sir.
2.2
                     THE COURT: Okay. Exhibit 234 is
23
      received.
24
          Q. (BY MR. BLONIGEN) Now, when we're
25
      looking at the pistol, it's obviously got a jam;
```

```
1
      is that correct?
 2
               Yes, stovepipe.
          Α.
 3
               In addition to that, is there anything
          Q.
      unusual about the end of the barrel of this gun?
 4
 5
          Α.
               It does. I believe -- I'm trying to look
      at it. I believe it's -- on the end of this
 6
 7
      barrel, it had a hexagon design on it.
 8
          Q. Okay. That's not the usual shape on the
 9
      end of the barrel?
10
               Not that I'm generally used to seeing,
          Α.
11
      no.
12
              Now, are you familiar with model 1911s at
          Q.
13
      all?
14
               I'm really not.
          Α.
15
          Q.
               Okay. We talked a little bit about
16
      photographs being taken when you were down at the
17
      autopsy, and you indicated that -- that the wounds
18
      are then cleaned after they're photographed so you
      can see them better?
19
20
               That's correct.
          Α.
               And was that done in this case?
21
          Q.
2.2
          Α.
               Yes.
                     THE COURT: Excuse me, Counsel.
23
24
               We got a request that one of the jurors
25
      needs to use the restroom, so --
```

```
1
                    MR. BLONIGEN: Of course.
 2
                    THE COURT: -- we'll accommodate
 3
      that and take a short break.
               Why don't we take our afternoon break at
 4
 5
      this time, 15 minutes. We'll start at -- we'll
      come back at 10:25. Keep in mind the rules and
 6
 7
      admonitions as we break.
 8
                    MR. LOW: Your Honor.
 9
                            (The following proceedings
10
      were held in open court, out of the presence of
11
      the jury:)
12
                    THE COURT: Thank you very much,
13
      Officer. You may be excused and stretch your legs
14
      and take a break. Was there something, Mr. Low?
                    MR. LOW: Yes, Your Honor. I needed
15
16
      to make a record, if I may, Your Honor.
17
                    THE COURT: Okay.
18
                    MR. LOW: It came to my attention
19
      yesterday. I usually don't focus on this too
20
      much, but a number of lawyers who were sitting in
21
      the audience told me I needed to do the following,
2.2
      that's to make the following record about some
23
      disruptions that they believe are going on and I
24
      believe are going on in this court during this
2.5
      trial.
```

I'll be specific. It's coming back from the section that is sitting behind the prosecutor's section. And specifically, there's a man in the very back row, far right, wearing a plaid T -- I'm sorry, plaid shirt, short sleeves, and a beard. On the, I believe the first day of trial, maybe -- yeah, first day of trial, it was at the end, I began to exit this area here. And looking in my peripheral vision, he's standing about where the gentleman in the white T-shirt and gray shirt is waiting for me.

2.2

2.5

And as soon as I get to the spot where he thinks he can close the distance, he rushes, in my opinion, right out in front of me and then stops, as to purposely impede my progress and have to deal with him. I look back to my right, and your good deputy was there. And I asked her, Did you see that?

She said calmly and professionally, I'll handle it.

I trust her. And she went out and did whatever she did. She came back and assured me that this was not going to happen again. She's been -- first of all, your deputy has been very good to us, very professional; and I feel safe

with her here.

2.2

So yesterday, I'm leaving again, and that same gentleman sitting in the same front row sitting in that same spot where that gentleman who's sitting now in the white T-shirt is, and he's leaning down, he's looking at me, he's got this big smile, and he's shaking his head at me. And he's doing everything he can not to close the distance, but to try to get my attention. I'm walking out. And it's inappropriate.

So I asked the deputy about it, and she said, Look, I'm aware of what's going on, I'm seeing everything, and I've had another talk. And she says, I'm going to put this guy in the far back row and tell him to sit over there in the corner. I believe her. And she's handling it. But again, I was told, you know what, it's time to start making a record of things that are going on here.

Lastly, look, this is horrible for this family to have to go through. They may not like me and that's fine, I understand them. I can be empathetic. But what I'm going to have to say to you, Your Honor, is that this is my job to defend this constitution and this gentleman here. And I

1 know you know that; I'm not making a speech. 2 I'm concerned that when we have emotional 3 outbursts -- maybe that's a strong word -emotional reactions to some very emotional issues 4 5 and some very emotional pictures, I get this, arguably, it could be disruptive. When it 6 7 happened during the first videotape that 8 Mr. Blonigen played of the police car coming out 9 there and showing the resuscitation, they were 10 getting up and leaving, there was crying, holding hands, I get all that. They're suffering, they're 11 12 in pain.

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Then when it happens again with the 911, again, the same noises, and again people are coming and going because they're emotional. I get that. Then we're having them again this morning with these pictures. I wouldn't want to sit through it; I couldn't imagine what that's like.

My point, though, is if it's distracting the jury, it's not fair to anybody here, including the State. And so I wanted to make a record of that. I trust that you'll do what needs to get done. I know your deputy is. I appreciate the time, sir.

THE COURT: Anything, Mr. Blonigen?

MR. BLONIGEN: Your Honor, Mr. Itzen

tells me he did talk to the family members

about -- about counsel, and so we have addressed

that as well.

THE COURT: Okay.

2.2

2.5

MR. BLONIGEN: I haven't -- you know, frankly, Judge, I instructed the family that if you just don't think you can handle it, you need to step outside. And that's what they're doing, I don't think we can blame them for leaving the courtroom, and that's what they should do if they don't want to see. As far as anything overt or anything, I haven't heard or seen it, Judge.

Now, my back is to it, you're facing it. But I, you know, if the Court has had any concerns, I'm sure it would have said something. I don't see any indication that the jury is knowledgeable about it at all.

THE COURT: I think that's correct.

Obviously, there are family members, friends of

Mr. Baldwin that are present sitting in a portion

of the courtroom. There have been some emotional

responses, but I don't think there's been anything

excessive. I did note that there was a portion of

one of the presentations in which a couple of the

members of the family left, which is absolutely appropriate.

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Let's put it this way. The courtrooms There's an absolute right for everyone are open. to be here. But there is no right whatsoever to have anything that would in any way influence the jury as far as emotional outbursts, comments, actions in any form. And I would tell court security that any confrontation, anything directed at either of the attorneys in this case is absolutely inappropriate, and it may be a violation of law. And if you cannot conduct yourself to avoid that type of conduct, you should not be here. You should absolutely go somewhere else and monitor the case through those that can have appropriate conduct.

made, I think, by Mr. Low and Mr. Blonigen and myself. So thank you very much.

I did have a note that in yesterday's cross-examination of Ashlee Logan, there was extensive references to the interview, both the excerpts of the tape that were played or the preserved disc of the tape and then of a written transcript. So pursuant to our usual policy, it

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1
      would not be received as evidence; but if you get
      an opportunity, please have copies provided to the
 2
 3
      court reporter for the record.
                     MR. LOW: I will make a copy, Your
 4
 5
      Honor, and I can provide it tomorrow.
                     THE COURT: That'll be fine.
 6
 7
                     MR. BLONIGEN: Did you want that for
 8
      all witnesses, Your Honor, or just that particular
 9
      one?
10
                     THE COURT: Just -- there was
11
      extensive reference to that one; but if there are
12
      other extensive references other than maybe just
13
      a -- just a very brief excerpt, that would be
14
      helpful.
15
                     MR. BLONIGEN: Okay, Judge.
16
                     THE COURT: Thank you. Court will
17
      stand in recess.
18
                            (At 10:17 a.m., a recess was
19
      taken until 10:27 a.m.)
20
                     THE COURT:
                                 Thank you very much.
      Court will reconvene after the morning break.
21
2.2
      do reconvene in State of Wyoming versus Knospler,
23
      Criminal Action 19548-B.
24
               The 13 members of the jury panel are
2.5
      present as are counsel for the State, counsel for
```

1 the Defense, and defendant. 2 We're still in the direct examination of 3 Officer Shatto. If you'd retake the stand, sir. 4 You may proceed when ready. 5 (BY MR. BLONIGEN) Detective Shatto, we Ο. 6 were talking about photographs taken on autopsy. 7 And after there's been some cleanup at the autopsy, did you indicate that the wounds were 8 9 photographed so you could see their actual 10 dimensions more clearly? 11 Α. Yes. I'm going to hand you a series of 12 photographs I've marked 116 through 122. If you'd 13 14 briefly look all these and tell us if these are 15 photographs of Mr. Baldwin. 16 Α. They are. 17 And were those pictures taken that day? Ο. 18 I believe they all were, yes. Α. 19 MR. BLONIGEN: Move for the 20 introduction of 116 through 122, Your Honor. 21 THE COURT: Any objection? 2.2 MR. LOW: No, sir. 23 THE COURT: Exhibits 116 through 122 24 inclusive are received. 25 (BY MR. BLONIGEN) Let's start with 116, Q.

- 1 Investigator Shatto. This is the hand we've
 2 talked about so much?
 - A. Yes.

4

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- Q. Now, this is the hand after it's been cleaned up?
 - A. It is.
- Q. You indicated the abrasion near the big knuckle was on the -- actually between that knuckle and the next one?
 - A. It was.
- Q. Is there also some slight bruising around there?
 - A. There is right in through here.
 - Q. You talked about times the skin was just kind of, you know, just skin deep actually, I think is how you put it. Can we see that in the photograph, that kind of --
 - A. Oh, you can, right up in through here.
 - Q. And you talked about the knuckle of the little finger. Do we see the cut that was on that?
- 22 A. Yes.
- Q. I'd like to direct you up to this bump of this wrist we've talked about a little bit. After we've got it cleaned up, can we still see that

1 superficial laceration you talked about or 2 scratch? 3 Right -- after you clean it up? Α. Uh-huh. 4 Ο. 5 On that? Α. 6 Yeah, moving up towards the bump of the Q. 7 hand. 8 Α. Most you see is this right here. 9 Q. Okay. So these were -- that one was very 10 superficial? 11 Α. Yes. You indicated earlier that the left arm 12 13 did not -- and the abdomen does not appear to have 14 any damage to it? The left arm? 15 Α. 16 Q. Yes, the left arm. 17 Yes, the left arm. Α. 18 Showing you 117, does that, in fact, show Q. 19 the left arm and the abdomen as how it was viewed 20 at it was cleaned up? 21 Α. Yes? 2.2 Q. Okay. So we don't see any scratches, any 23 damage on this area or down this left arm at all? 24 No. Α. 25 Just on the right arm, you had identified Q.

```
for us earlier a defect in the T-shirt caused by
 1
 2
      an exit wound. Was, in fact, a wound identified
 3
      as an exit wound found in this procedure?
 4
          Α.
                Yes.
 5
                And, again, generally where was it?
          Q.
                Mid lower back.
 6
          Α.
 7
          Q.
               Okay. Does 118 show the shape of that
 8
      wound?
 9
          Α.
                It does.
10
               Okay. You were present throughout the
           Q.
11
      autopsy?
12
          Α.
                I was.
13
                Was there any bone that was struck as
           Q.
14
      soon as the bullet entered the body that you
15
      recall?
               Do you recall a rib being struck?
16
          Α.
                I believe a rib was struck.
17
                Did you attempt to photograph that area?
          Q.
18
                I did.
          Α.
19
                And does 119 show that particular area?
          Q.
20
                It does.
          Α.
                And now, of course, you're not making any
21
           Q.
2.2
      of the conclusions about it, that's the
23
      pathologist doing that; correct?
24
                That's correct.
           Α.
25
                Now, we've talked a little earlier,
```

Q.

- 1 looked at the T-shirt and some scrapes on the
 2 right arm; is that correct?
 - A. Yes.

4

5

6

9

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2.2

23

24

- Q. I'm going to show you 120. Is this what those scrapes look like when we get a little better view of them?
- A. Yes. It's the upper shoulder area of the arm actually, so.
 - Q. So again, very shallow?
- 10 A. Yes.
- 11 Q. Superficial?
- 12 A. Yes.
- Q. On 121, another view of that right hand,

 does this show a little better angle of the nature

 of those wounds on the knuckle?
- 16 A. Yes.
- 17 Q. Now, 122 you talked about the abdomen and
 18 the right arm. Is this a picture of the length of
 19 the right arm, the outside of the right arm, at
 20 least down to the wrist?
 - A. Forearm, yeah, it is.
 - Q. And so other than the injuries you've described for us, there were no injuries on his -- the bottom of his right arm or the palm of his right hand?

```
1
          Α.
                No.
 2
                Okay. These are all on this surface
           Q.
 3
      here?
                Yes, sir.
 4
          Α.
 5
                Well, of course, here?
          Q.
 6
                Yes, sir.
          Α.
 7
                     MR. BLONIGEN: I believe that's all
 8
      the questions I have. Thank you, Detective.
 9
                     THE COURT: Thank you very much,
10
      Counsel.
11
                Cross-examination, Mr. Low.
12
                     MR. LOW: Thank you, Your Honor.
13
                        CROSS-EXAMINATION
14
      BY MR. LOW:
15
          Q.
               Morning, sir.
16
          Α.
               Good morning.
17
               How are you today?
          Q.
18
                Doing good, thank you.
          Α.
19
                You're welcome. Is it fair to say that
          Q.
20
      during your investigation --
21
                     THE COURT: Apologize, Counsel.
2.2
      me interrupt.
23
                     MR. LOW: Yes, sir.
24
                     THE COURT: Ms. Archer, you doing
25
      okay?
```

```
1
                     JUROR ARCHER: I'm better now.
 2
      Thank you.
 3
                     THE COURT: If you need a break,
      just raise your hand and let Ms. Keffer know. I
 4
 5
      was not feeling well yesterday and sort of gutted
      it out, so I'm sympathetic with how you might be.
 6
 7
      But if at any time you feel like you just can't go
 8
      on, you can't pay attention, let us know; okay?
                     JUROR ARCHER: Okay, thank you.
 9
                     THE COURT: Thank you very much.
10
               Go ahead, Counsel.
11
12
                     MR. LOW: Thank you, Your Honor.
13
                (BY MR. LOW) Sir, it's your job as
          Q.
14
      detective -- or is it investigator?
15
          Α.
                I'm an investigator.
16
               It's your job as an investigator to
          Q.
17
      gather evidence; correct?
18
          Α.
               Yes.
                In other words, your job is to gather the
19
          Q.
20
      truth?
                I collect the evidence, yes.
21
          Α.
2.2
          Q.
               And you want to collect as much evidence
23
      as you can?
24
               Do I want to collect as much evidence as
          Α.
25
      I can?
```

- Q. Sure. Or do you want to leave some of it behind so that it is lost forever?
 - A. No. I want to collect the evidence.
 - Q. That's important; correct?
 - A. To collect the evidence, yes.
 - Q. And to preserve it so that we can bring it to court and have the jury look at it and experience it in the exact same way that maybe you found it; right?
 - A. I'm sorry, can you repeat that?
 - Q. Sure. You want to preserve it; correct?
- 12 A. That's correct.

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- Q. So that the jury can look at it and
 experience it in the exact same way that it was
 wherever the evidence was found; correct?
- 16 A. Well, you want to preserve it. They're
 17 not going to be able to experience it the same way
 18 as you -- as you see it.
- Q. I mean, for example, there's a lot of pictures taken in this case; right?
 - A. Yes.
- Q. About how many, do you think?
- A. I don't know.
- Q. Hundreds?
- A. I don't know.

- 1 If I showed you three thick binders full Q. 2 of nothing but pictures, that wouldn't surprise 3 you, would it? Α. I don't know. 4 5 Okay. And the reason why you take those Ο. pictures is so that you can bring them to the jury 6 7 and you can let them look at them so you don't 8 have to sit around and describe what you remember 9 seeing? Is that why we take pictures? 10 To preserve the evidence and so other Α. 11 people can view them, yes. 12 Q. And what it does and the nice thing about 13 that, thanks to technology, is it takes the quesswork out of the jury's deliberations; right? 14 Well, I don't know that. 15 Α. 16 That's true, it doesn't take all of it Q. 17 out, does it? 18 MR. BLONIGEN: Well, Your Honor, 19 this is improper opinion evidence. He can just 20 testify to what he collected not how the jury
- 22 THE COURT: I'll sustain.

interprets it or perceives it.

21

Q. (BY MR. LOW) Let me ask it this way.

It's not part of your job to make guesses, is it,

sir?

A. Well, I have to collect. I mean, certainly at times, assume maybe something and then you try to gather that evidence and rule that out or maybe rule that in.

2.2

- Q. And you agree that, well, it wouldn't be fair to guess somebody into a conviction, would it?
- MR. BLONIGEN: Your Honor, I'm going to object again. This is improper.
- THE COURT: I'll sustain. That's an improper question. Sustained.
- Q. (BY MR. LOW) You wouldn't, as a police officer, want to make guesses in any of your conclusions, would you, sir?
 - A. I don't understand that question.
- Q. If you're going to make a conclusion about a piece of evidence or about what happened, you wouldn't want to make any guesses, would you?
 - A. I don't understand what you're asking.
- Q. Do you want to guess about the evidence, sir? Is that part of your job?
 - A. I collect evidence.
- Q. Okay. Now, I'd like to ask you, you said that you have, in your experience, had to bust out a car window before; correct?

1 Α. I have. 2 And the car window you had to bust out, 0. 3 you used your baton? 4 My asp baton. Α. 5 Yes. And the car window that you busted Ο. 6 out was a front windshield? 7 No. I've, in fact, I was unable to bust Α. 8 a window out one time on a rollover accident 9 trying to get somebody out, and I had to go 10 through the front windshield in order to get to 11 the person. 12 That's what I just said. The window that 13 you had to bust out the glass was the front 14 windshield; correct? 15 MR. BLONIGEN: Well, Your Honor, 16 that misstates what he said. 17 MR. LOW: All right. 18 MR. BLONIGEN: He said he attempted to break out the passenger window and he had to go 19 20 through the windshield. He never said he 21 busted --2.2 MR. LOW: Let me -- let me -- fair 23 enough. 24 THE COURT: I agree. You can 2.5 restate it.

- Q. (BY MR. LOW) Please tell us what window you went through in the car.
 - A. Which car?

2.2

- Q. The one that you said you busted out.
- A. Well, I attempted to bust out a side window, couldn't get into it, so the front windshield had already been busted; and I used my asp baton to peel the windshield back to get to the victim inside.
- Q. And is that the one where when you put your asp into it, it makes a hole?
 - A. Well, both of them do.
- Q. Well, the one that you personally have experience with?
- A. Oh, I've done it on both. And I've busted a front windshield with my asp baton before. I've only used my asp to pull the windshield out far enough to get the victim. As far as the busting of the windshield or the window, generally if the asp would go through it, it leaves a hole, and then you take it and rake it, and then the small glass shards fall out.
- Q. So I want to be really clear on this.

 I'm going to draw some windows real quick. In my crude drawing, sir, this is a side of a car door,

- and this area here -- and I'm pointing to the open space of the triangle in it -- can that be the glass area? Would that be all right?
 - A. Sure.

2.2

- Q. I'll just add a little blue color to it. There's the glass and the window is rolled up; correct?
 - A. Sure.
- Q. You with me so -- and is it your testimony that if I take a -- a weapon, if you will, like an asp -- so we're clear, an asp is a long, black, metal stick that's retractable. So you can make it short, put it in your utility belt; but take it out, throw it because it's weighted, and it extends and becomes about, what, a two-foot long black metal rod?
- A. There are different sizes, anywhere from probably 26 to 32 or 34 inches, yeah.
 - Q. How long was yours?
 - A. I think mine is a 32 inch.
- Q. Okay. And your testimony is that if you hit that into this glass window, it's just going to make a hole; is that correct?
- A. Sometimes, yes.
 - Q. Sometimes. Is it every time or just

sometimes?

2.2

- A. Well, generally -- well, in my experience sometimes, but the glass still stays there. The whole glass doesn't just pop out.
- Q. Well, let's go through that nice and slow. What's the size of the hole? Is it the exact same thickness of the asp or is it bigger?
 - A. I'm sorry, say that again.
- Q. The size of the hole that the asp makes in the window, is it the exact same thickness as the asp itself or is it bigger, the hole that the asp leaves?
- A. The hole? Well, generally, if you're going to hit it and it actually does pop, generally we try to pop them a little higher up towards the edge closer to the -- to the frame towards the end of the glass or the edge of the glass. And then so it would -- would generally pop where there's a line through it. It just doesn't make one little hole, it pops a little angle of whatever the length of the asp or wherever the asp hit it, it will break a portion of that out, and then you scrape it around.
- Q. So it's true that it makes a bigger hole than the size of the asp; correct?

- A. That's correct, generally.
- 2 Q. Sorry. Go ahead.

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- A. Generally, yes.
- Q. But another phenomenon also happens, and doesn't this entire window crack everywhere? I didn't say it's left yet, I'm just one step, going a step at a time. It -- the crystalline structure cracks everywhere; isn't that right?
 - A. Yes.
- Q. And you must know that the reason for that is is that this is called tempered glass.

 Tempered glass; right?
- 13 A. Yes.
 - Q. And the reason why they call it tempered glass is that from the one side of the glass only, when they make it, they put it under an enormous amount of stress; right?
 - A. Okay. I don't know. I just understand it's tempered glass.
 - O. You didn't know that?
- 21 A. No.
- Q. And on the other side, they don't. Are you aware of that?
- 24 A. No.
- Q. And as a result, when you have a lot of

stress on one side of the pane and very little on the other, when it's stricken, everything in the glass now, since it's all under stress, will instantly crack and shatters everywhere. 4

MR. BLONIGEN: Well, Your Honor, now counsel is testifying. The witness said he didn't know about the manufacture of tempered glass.

THE COURT: I don't think there's any foundation for this question since he did not have the foundational knowledge, so I'll sustain.

- (BY MR. LOW) Well, when you broke it, Ο. you actually watched the entire pane crack. Now, what I mean by crack, you can see little teeny fractures over the entire pane of glass; isn't that right?
 - Α. That's correct.
- Now, some of those pieces, those Ο. Yeah. cracks, thousands, literally thousands of cracks, you can't even count them up, can you?
 - Α. No.

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- But the nice thing about it is that when Ο. you touch them, they fall right off; isn't that right?
- 24 Well, I rake it. Α.
 - Yeah, I understand you use your asp. Q. But

it's not like you have to sit back and jam the
thing and use force. All you have to do is
lightly touch it with your asp, and that stuff
just crumbles and falls right to the ground,

2.2

doesn't it?

- A. Well, I take the asp, and I rake it all the way around. I don't know how normally it's -- your adrenaline is running pretty high at that time when you're doing something like this, so I couldn't tell you how much pressure you got to do for that, so.
- Q. Fair enough. So you just take your arm, one arm, you hold the asp out and just kind of go like this; right?
- A. Well, I think I do it a lot faster than that.
- Q. Okay. But you're making a circle with your arm; right?
- A. Well, raking all the way around the window to try to get the glass out of your way.
 - Q. Not having to beat it any more, are you?
 - A. Not once it cracks, no.
- Q. Just crumbles nice. You make a circle, and all the little pieces that are still around the area just kind of crumble and fall down;

right?

2.2

2.5

- 2 A. That's correct.
 - Q. Okay. Now, the other thing I wanted to ask you is you got asked a lot of questions about that gentleman's hand and his knuckles and so forth. I was wondering -- I'm going to ask it this way.

I've been in a few fights, especially in the Marine Corps. And unfortunately, I'm not very good at it, and I can't always hit someone like I want to, which is square on my knuckles. A lot of times I miss or I hit the sides. Did you ever have that experience, sir, where you don't hit somebody or the target with the exact area you want to, but you get it off to the side a little bit? You ever had that experience?

MR. BLONIGEN: Well, Your Honor, again, counsel's personal experiences are not relevant in the courtroom, and he's asking about other instances and other circumstances. It's not an appropriate question.

THE COURT: Your response, Mr. Low?

MR. LOW: Yes, Your Honor, this is a follow-up question to the comments as to the location of the knuckle and what that meant and

- 1 | where there wasn't an injury and the bruising.
- 2 I'm asking him if, in his experience, that he can
- 3 have an injury on that part of his hand as a
- 4 result of throwing a punch.
- 5 THE COURT: The form of the
- 6 question, though, about your being in fights and
- 7 | the form of the question is not proper, so I'll
- 8 sustain, but you may reask.
- 9 MR. LOW: Yes, sir, I'll do that.
- 10 Q. (BY MR. LOW) Sir, you ever thrown a
- 11 | punch and as a result, you weren't able to make
- 12 contact with your target in the exact area of your
- 13 knuckles that you wanted to?
- A. I don't know. I don't know.
- 15 Q. Okay. So I have to ask it this way then.
- 16 Is it fair to say you can't testify in any way
- whether or not the injury on those knuckles came
- 18 from a punch?

- 19 A. No, I cannot.
- Q. And you can't testify, then, that they
- 21 didn't? I mean, you'd have to guess one way or
- 22 | the other, wouldn't you?
- 23 A. I don't know how he got his injuries.
- Q. You'd have to guess; right?
 - A. I don't know how he got his injuries.

1 Q. During the time that you were down at the 2 morque, you gathered some more evidence; is that 3 correct? 4 Α. The morque? 5 Yes. Did you go down to the morque on Ο. 6 October the 4th, 2013? 7 Α. Yes. 8 And while you were at the morgue, you 9 gathered some evidence? 10 Α. T did. 11 And that's where you learned that John Ο. 12 Knospler is a -- was a Recon Marine? 13 No, that's not -- that's not true. Α. 14 Q. Okay. If I have -- did you write a report in this case? 15 16 Α. T did. 17 MR. LOW: I'm going to show this 18 to -- may I approach? 19 THE COURT: You may. 20 (BY MR. LOW) Sir, I'm going to show you Ο. 21 this, these three pieces of paper, and just tell 2.2 me if you recognize those at all. 23 Α. I do. This is my report. 24 And I'd like to direct your attention to Q. 25 the --

1 MR. LOW: Sorry. Pardon me, Judge. 2 I'm just going to point it out. 3 (BY MR. LOW) The bottom half down here, Ο. if you could just read that to yourself for a 4 5 second. This wasn't at the morgue, though. 6 7 portion here is at the morgue; this portion here 8 is at the office. 9 Thank you. And you learned that, again, Q. 10 John Knospler was a Recon Marine? 11 Α. Yes. 12 MR. BLONIGEN: Your Honor, 13 objection. This is clearly off the portion of the 14 report where Mr. Shatto is interviewing another 15 individual. It's hearsay, and it's inappropriate 16 cross-examination in this context. 17 MR. LOW: I believe I'm allowed to 18 figure out the evidence that he gathered during 19 his investigation. 20 THE COURT: We'll see whether 21 there's anything more than just this inquiry and 2.2 I'll -- if it looks like we're getting into 23 hearsay, but I'll overrule. You may answer. 24 (BY MR. LOW) And lastly, he's been

overseas, Africa, and was injured and then came

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1
             Is that what you learned?
      home.
 2
                     MR. BLONIGEN: Your Honor, I'd
 3
      object without foundation as to what the source of
      the knowledge is.
 4
 5
                     THE COURT: I'll overrule. You may
 6
      answer.
 7
          Α.
               Yes.
 8
               (BY MR. LOW) Is it true, sir, that as
 9
      far as you know, in the investigation you've done,
10
      that's exactly true and accurate about John
11
      Knospler?
12
          Α.
               That's what I was told, so.
13
               Do you have any information that would
          Q.
      lead you to believe that's not true?
14
15
                     THE COURT: Hold up. I'll jump in
16
      and sustain the objection at this time since it
17
      was any further knowledge he had would be hearsay
18
      based. So I'll sustain --
19
                     MR. LOW: Yes, Your Honor.
20
                     THE COURT: -- as to the last
21
      question.
2.2
          Q.
                (BY MR. LOW) Now, again, when you were
23
      down at the morgue and you're taking pictures so
24
      you can preserve the evidence so we can all look
2.5
      at them, you find that there's no injury
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1
      whatsoever to the left arm; correct?
 2
               I didn't see any injury to the left arm,
 3
      no.
 4
               Okay. And there's no injury -- well,
          0.
 5
      first of all, you saw the bullet hole; right?
 6
                I did see the bullet hole.
 7
          Q.
               And you saw it was oval shaped?
 8
          Α.
               Oval shaped?
 9
          Q.
               Yes, sir.
10
               I didn't see that it was oval shaped.
          Α.
11
             You did not see that?
          Ο.
12
               Oval shaped?
          Α.
13
               Yes, sir.
          Q.
14
               I'd have to go back through and look.
          Α.
15
          Q.
               Okay. So you don't remember one way or
16
      the other?
17
               Well, I could look at the photos and
          Α.
18
      confirm that it's oval shaped.
19
              We will, but I'm asking you if you
20
      remember.
21
               I could tell that there was a gunshot
2.2
      wound.
23
          Q.
               Yes, sir, I understand; but I'm asking
24
      you if you could tell me the shape of the gunshot
25
      wound.
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- A. You know what, I'd have to take a look at the photograph.
 - Q. All right. However, besides the gunshot wound, there's no other wound or injury to the chest, is there?
 - A. No.

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- Q. There's no cuts, are there?
- 8 A. No.
 - Q. There's no scrapes, are there?
- 10 A. Nope.
 - Q. However, you did notice on the right arm that there were injuries; correct?
- 13 A. Yes.
- MR. LOW: And with your permission,
 sir, would it be all right if I used a few of the
 exhibits?
- MR. BLONIGEN: Of course.
- MR. LOW: One second please, sir.
- 19 Let me try and keep them in the order you have
- them. Sorry, forgive me. One second, please.
- 21 That's the one I'm looking for.
- Q. (BY MR. LOW) Does that come through on the monitor better? I'm showing you what's been received into evidence as Exhibit 120. And can
- 25 you see it on your monitor all right, sir?

A. I can.

2.2

- Q. And if you can orient us just to make sure we're accurate, on the arm, those are, if you will, horizontal? They run across the arm from one direction to the other. They don't go down the arm they run across or about that; is that fair?
- A. That they are horizontal, they appear to be more horizontal, yes.
- Q. Here's my question, and tell me if you know. If -- if I've got a window in front of me, let's say it's right here, right there. And I bend over like this and my arms are down just where they're at and I go through the window and the window has glass on it and it goes up against my arm and cuts it, it'll leave a mark that goes up and down on my arm; does that sound fair to you, sir?
- A. I don't know how he received these injuries.
- Q. I'm not asking you how he received them.

 I'm asking you about a hypothetical, sir. And if

 I'm bent over and my arm is down at my side like

 this and I go through the glass and it cuts it,

 glass is here, I'm going this direction, it'll

- 1 leave a scratch that goes up and down; does that
 2 sound fair, sir?
- A. I guess I'm looking at it differently, but.
 - Q. You can disagree if you like.
 - A. Well, I could see your way, I could see if he went up and down once he's in the window and the glass is there, so I don't know.
 - Q. Sure. He could be inside and going up and down like this and that might leave a mark on the glass like this; fair? Is that what you're saying?
- 13 A. Sure.

2.2

2.5

Q. There's another way, though, or maybe, you decide, what if you're standing this way a little bent over, the glass is in front of me, and I extend my arm through the glass; and as I do and I go through the glass, the glass is here, will it cut my arm?

MR. BLONIGEN: Well, Your Honor, first, there's been no foundation as to expertise of this witness; secondly, he's assuming facts not in evidence.

THE COURT: I would agree. There's no foundation for this opinion evidence, so I'll

1 sustain. 2 MR. LOW: Okay. 3 (BY MR. LOW) For you to -- well, they're Q. going to object if I ask that, so I'll just move 4 5 on. 6 And just to make sure I'm clear, we 7 didn't find any horizontal scrapes across the left 8 arm, did we? 9 Didn't see any marks on the left -- or on 10 the left arm, no. 11 Now, if I can show you Exhibit 109. Now, Ο. 12 I don't know how well this is going to come 13 through the monitor. Sure doesn't do a very good 14 job here. But you all will get this in the back 15 so you can see it. We'll try to focus on this a 16 little bit, sir. 17 See that shiny thing there? 18 I do. Α. 19 See that shiny thing there? Q. 20 I do. Α. And is it true, sir, that during the 21 Q. 2.2 investigation, you were able to take some evidence 23 from the right forearm? 24 Α. Yes. 25 And you used, I believe, a piece of tape Q.

1 to do that? 2 Α. Yes. 3 And the piece of tape, the idea is it has Q. adhesive on it, and it'll take the stuff that is 4 5 on the right arm, and it'll stick it to the adhesive of the tape? 6 7 Α. Yes. 8 Q. So you can hold onto it and preserve it? 9 Α. Yes. 10 And when you did that, did you look at Q. what it was that stuck to the tape? 11 Yeah. I looked to see what it was when 12 Α. 13 it went across it? 14 Q. Yes, sir. 15 Α. Well, I collected it, labeled it, and 16 stuck it in a bag and sealed it up for evidence, 17 yes. 18 And the reason why you decided to take Q. 19 tape and pull that off the arm is because you 20 looked at the arm and you saw there's glass on the 21 surface of the arm; correct? 2.2 Α. Yes. 23 Q. Stuck to the hairs on the right arm; 24 correct?

Well, there was some glass, there are

25

Α.

- 1 some shiny -- what appear to be glass, yes. 2 And you realized that this is on the 3 table at the morque where you're taking the glass off of the arm; correct? 4 5 Using the tape to gather that, yes. Α. But you're at the morque; correct? 6 Ο. 7 Α. There, yes.
 - Q. Sure. So by the time you take the glass off the arm, you realize that the body has been out at the crime scene; right?
- 11 A. Yes.

9

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18

- 12 Q. It's been laying in the snow for hours;
 13 correct?
- 14 A. Yes.
- Q. It's had a lot of medical personnel
 working on him trying to resuscitate out there;
 correct?
 - A. Yes, I would assume.
- 19 Q. Fair enough. Then some people pick the 20 body up and they put it in a bag, yes?
 - A. I assume.
- Q. You didn't see the bag at the morgue when you got there?
- A. Well, I don't know what they did out there at the crime scene, so.

```
1
               Well, you know from your experience that
          Q.
 2
      when the morque goes out to the scene, they bring
      a bag and they put the body in the bag; right?
 3
               I wasn't at the scene that day, so I
 4
          Α.
 5
      don't know specifically what took place out there.
               Well, you took -- did you take pictures
 6
 7
      of the bag when you got to the morgue?
 8
          Α.
               I'd have to view it. I don't know. I'm
 9
      sure I did.
10
               You're sure you did, but you don't know?
          Q.
               Well, I don't know. I'd have to view it.
11
          Α.
12
               Okay. I've got six pictures here. I'd
          Q.
13
      like to have them marked as Defense -- would the
14
      next one in order be D?
15
                    THE COURT: I believe that's
16
      correct. Ms. Chaney?
17
                    MR. LOW: Delta, Echo, Foxtrot,
18
      Golf, Hotel, India, and Juliet.
19
                    THE COURT: So that would be seven
20
      pictures, then.
                    MR. LOW: I better count. I might
21
2.2
      have made a mistake. Your Honor, I have six. I
23
      misspoke. I have six.
24
                    THE COURT: D, E, F, G, H, I?
25
                    MR. LOW: Yes, sir. May I have just
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1
      a second to mark them so I don't make a mistake?
 2
                    MR. BLONIGEN: Yes, Your Honor, and
 3
      I'm -- to save some time, I'm familiar with the
      photographs. I'd just like to see them, but I
 4
 5
      stipulate to foundation on those.
                    THE COURT: You'll propose their
 6
 7
      introduction, sir?
 8
                    MR. LOW: I will, yes, sir.
 9
                    THE COURT: They're received,
10
      Exhibits D, E, F, G, H, and I.
11
                    MR. LOW: May I approach, Your
12
      Honor?
13
                    THE COURT: You may.
14
               (BY MR. LOW) I'm going to hand you these
          Q.
15
      six pictures. Would you please take a look at
16
      those, sir? For the record, I'm showing him D
17
      through I.
18
              Do you have a placard? Do you have the
          Α.
      picture before these that show the placard?
19
20
               I believe we may. Let me take a look.
          Q.
                    MR. LOW: Mark this as J, Your
21
2.2
      Honor. Next in the Defense next in order, J.
23
                    THE COURT: Thank you.
24
                    MR. LOW: Receive into evidence?
25
                    MR. BLONIGEN: Yes, no objection.
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1
                      THE COURT: Exhibit J is also
 2
       received.
 3
           Α.
                Okay.
 4
                 (BY MR. LOW) Have you seen those
           Ο.
 5
      pictures before, sir?
 6
           Α.
                I have.
 7
           Q.
                Sorry?
 8
           Α.
                I have.
 9
           Q.
                Who took those?
10
           Α.
                I took those.
11
           Ο.
                And tell us what that is, sir?
12
                That's a seal.
           Α.
13
                Of what?
           Q.
14
           Α.
                Seal on a bag.
15
           Q.
                What kind of bag?
16
           Α.
                Body bag.
17
           Q.
                 Is this Mr. Baldwin's body bag?
18
                It was.
           Α.
19
                What's that, sir?
           Q.
20
                 Just a picture of the body in the bag.
           Α.
                Who took that picture?
21
           Q.
2.2
           Α.
                I did.
23
           Q.
                Mr. Baldwin's body bag?
24
           Α.
                Yes.
25
                How about that one, sir?
           Q.
```

1 Α. Same thing. 2 That one? Q. 3 Another picture of the seal. Α. Same bag? 4 Ο. 5 Α. It is. Did you take pictures of other bags or 6 Q. 7 different body bags that morning? 8 Α. No. 9 Q. So is there any -- no, never mind. 10 What about that one, sir? 11 Another picture of the seal. Α. And that one? 12 Q. 13 Another picture of the seal. Α. 14 Q. So you're aware that after the body is 15 put in a bag at the scene, then it's transported 16 all the way to the morque; correct? 17 Α. It's transferred from the scene to the 18 morque. 19 And then once it gets to the morque, Q. 20 someone unbreaks that seal and takes the body out? 21 The seal -- the seal is -- is put on at 2.2 one point and then -- before taking it to autopsy. 23 That's to the McKee Medical Center. So that seal 24 was prior to it leaving Casper or the time that we

2.5

sealed the body here.

- Q. And can you tell me, while the body is in that bag and being moved around, picked up off the ground, can the bag make contact with parts of the body that's inside?
 - A. Sure.

2.2

- Q. And then when it's put on the gurney and pushed and shoved in the cars, can the bag make contact with parts of the body while that's happening?
 - A. Yes.
- Q. And then when it's moved from the car and taken into the morgue, can the bag make contact with parts of the body while that's happening?
 - A. Yes.
- Q. And then when they unzip it and they start to peel it back and they take the body out of there, can the bag make contact with the body while that's happening?
 - A. Yes.
- Q. And despite all that action, when you go and you look at that right arm, it's still got glass on it, doesn't it?
 - A. Yes.
- Q. Not only is the glass just loosely on the skin surface and stuck to the hairs, you saw that;

```
1
      right?
 2
                I saw the photo.
           Α.
 3
                You saw it yourself personally, too,
           Q.
 4
      didn't you?
 5
           Α.
                Uh-huh.
 6
           Ο.
                I'm sorry?
 7
           Α.
                Yes.
 8
           Q.
                And then you decided, boy, I should
 9
      preserve that, and you did; correct?
10
           Α.
                That's correct.
11
                More than that, isn't it also true that
           Ο.
12
      some glass was found in the knuckles or in the
13
      open wound in the right hand?
14
           Α.
                You know, I don't remember that.
15
           Q.
                Did you find any of that glass, that
16
      loose glass, anywhere on the left arm?
17
           Α.
                On the left arm?
18
           Q.
                Yes.
19
           Α.
                No.
20
           Q.
                Sorry?
21
                No, not on the left arm.
           Α.
2.2
           Q.
                None on the left arm; is that correct?
23
           Α.
                I didn't see any injuries or I didn't see
24
      anything shiny on the left arm, no.
25
                Did you look?
           Q.
```

A. Yes, I looked.

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- Q. Why did you look?
- A. Looking for evidence.
 - Q. Evidence of glass?
 - A. Just any evidence, whether it be injuries or whatever there might be there.
 - Q. Well, certainly when you found all that glass on the right arm, you wanted to check to see if there was any on the left arm; correct?
 - A. I viewed the body, yes.
 - Q. And when you looked, you didn't find any glass on the left arm anywhere, did you?
 - A. No, not that I recall, no.
 - Q. Now, I'd like to see if we can do a quick comparison. I'm showing you 121 right there. And the resolution on the big screen is not that good, check your monitor; but can you see my pen pointing at the injury here?
 - A. I do.
 - Q. And you got the bruising right there?
- 21 A. Yes.
 - Q. But there's no real skin that's peeled back, almost as if someone used a grater. You know when you use a grater on cheese and it peels that piece of cheese back a little bit, that's how

```
1
      you grate the cheese up and put it on your tacos,
 2
      you've done that before; right?
 3
                I guess what's your question?
          Α.
                You ever grated cheese before?
 4
          Ο.
 5
                Sure.
          Α.
 6
                Okay. You know that what looks like;
          Q.
 7
      right?
 8
          Α.
                I do.
 9
                Well, you don't see any skin that looks
          Q.
10
      like it's been grated off there at all, do you?
11
          Α.
                No.
                What about back here a little bit on the
12
13
      arm? Do you know if there was any back there?
14
          Α.
                Yes.
15
          0.
                There was, wasn't there?
16
          Α.
                Yes.
17
                And let me ask you this. If this window
          Ο.
18
      is not broken, it's a solid, fresh, clean window,
19
      and I go and I take my fist and I go to punch it
20
      and I initially make contact, my fist with that,
21
      there's nothing sharp on the window yet, is there?
2.2
          Α.
               Nothing sharp on the window?
23
          Ο.
                Yeah. There's nothing sharp on the
24
      window yet. I've got a nice smooth surface;
```

right?

1 Α. On the window? 2 Q. Yeah. 3 Of the window? Α. If I hit it too hard, I might hurt 4 Ο. Sure. 5 my right hand; is that fair? 6 Α. Sure. 7 In fact, you've hit those windows before, Q. 8 those passenger windows, those driver's side 9 windows with your asp, and they didn't do 10 anything, they don't break, do they, sometimes? 11 Sometimes, no. Α. 12 You got to hit them pretty hard, don't Q. 13 you? 14 Α. You do. 15 Q. So if I hit that thing too hard, I might 16 injure my right hand; correct? 17 Α. Sure, you could. 18 I might bruise my right hand; correct? Q. 19 Sure. Α. 20 But I'm not going to cut my right hand Q. because the glass didn't break; is that right? 21 I don't know. I don't -- I can't answer 2.2 Α. 23 that question. 24 But if I then hit the glass hard enough 25 and now my fist begins to penetrate through the

```
1
      glass as that happens, suddenly the glass breaks;
 2
      correct?
 3
                     MR. BLONIGEN: Your Honor, I'm going
      to object to this again. There is no foundation
 4
      for this type of opinion evidence in this case.
 5
                     THE COURT: I'll just sustain.
 6
 7
      There's no foundation for this, especially given
 8
      his last answer. I don't think he has knowledge
 9
      as to this matter, so I'll sustain.
10
                     MR. LOW: Yes, sir.
11
               (BY MR. LOW) Let me show you 120. Now
          Ο.
12
      here we got what appears to be scratches; correct?
13
          Α.
               Yes.
14
               I'm showing you 120 again.
                                            Those
          Q.
15
      scratches were deep enough that they moved into
      what's called the blood vessels of the right arm;
16
17
      correct?
18
               To the blood vessels? I'm not a doctor.
          Α.
19
      I don't know. I mean, certainly they appear to be
20
      past at least a layer of skin or two. I don't
      know.
21
2.2
          Q.
              Okay. So does that look like blood to
23
      you or were you unsure?
24
               Does that look like blood?
          Α.
25
               Yes, sir.
          Q.
```

- 1 A. Looks like redness to the skin, yeah.
- Q. Does that look like something other than blood to you?
- A. I'm not a doctor. It could be tissue. I don't know.
- Q. So was this your first time seeing blood after 20 years on the job?
 - A. No. I've seen plenty of blood.
- 9 Q. Okay. But you can't tell in this one,
 10 can you?
- 11 A. Whether that's blood?
- 12 Q. Yeah.

- 13 A. I can see the redness. It's not actually bleeding, no.
- Q. You don't see any bruising there, though, do you?
- 17 A. You might see some light bruising just through here.
- 19 Q. Might? I'm not asking you to guess, sir.
- A. Well, I'm seeing a little darker right
 there. Am I seeing bruising? Might be a little
 bruising.
- Q. Might, maybe, maybe not, do you know?
 You were there, I'm just asking what you saw.
 - A. What I saw? I saw this right here.

- 660 1 Okay. And you said at some point you Q. 2 took some pictures of the car Mr. Baldwin was 3 driving or what you believe was the car Mr. 4 Baldwin was driving earlier that evening; is that 5 correct? What evening? 6 Α. 7 0. Do you know what time --8 Α. What evening? 9 Q. Do you know what time he was driving this 10 car, Mr. Baldwin? 11 I don't know what you're talking about. Α. I'll make it -- I'll ask you a better 12 Q. 13 question. I'll try this way. Did you take some 14 pictures of a car?
 - Α. T did.

16

17

18

19

20

21

2.2

- And did you be -- were you told or did Q. you learn that you believe it was a car that Mr. Baldwin had been in at some point before October the 4th?
 - I did. Α.
- Well, what was your understanding as to Q. why you were taking pictures of the car?
 - Α. Taking photographs of the vehicle?
- 24 Yes. What was your understanding as to Q. 25 why you were doing that?

```
To take -- to preserve the evidence,
 1
          Α.
 2
      to --
 3
               Yeah.
          Q.
               -- collect what I could.
 4
          Α.
 5
                    MR. LOW: Your Honor, I'm marking
      the following photographs next in order, which I
 6
 7
      believe is K, L, M, N, O, P.
 8
               Mr. Blonigen, sir, would you like to see
 9
      these before I show them to the witness?
10
                    MR. BLONIGEN: These are all the
      ones of the interior of the Baldwin vehicle?
11
12
                    MR. LOW: Yes, sir. That's my
13
      understanding. I'll ask him, of course.
14
                    MR. BLONIGEN: You know, Judge, I'd
      admit these are -- the foundation on these. I do
15
16
      have a reservation about relevancy, though. We'll
17
      see where it goes, but they are accurate and
18
      photographs that he took that day.
19
                    MR. LOW: Just taking my
20
      identification stickers off, Your Honor. Give me
      one second, please.
21
2.2
               May I, sir?
23
                    THE COURT: Yes, permission granted.
24
              (BY MR. LOW) I'm showing you these
          Q.
25
      pictures --
```

```
1
                    MR. LOW: I'm sorry, Your Honor.
 2
      May these be received into evidence?
 3
                    THE COURT: Mr. Blonigen, you agree
      to authenticity, but I think --
 4
 5
                    MR. BLONIGEN: I agree to
      authenticity, Your Honor. I just haven't seen the
 6
 7
      relevancy yet. Maybe they didn't establish that
 8
      yet, so I'd reserve a relevancy objection.
 9
                     THE COURT: The Court will note the
10
      relevancy objection. I'll receive Exhibits K, L,
      M, N, O, and P. They're received.
11
12
          Q. (BY MR. LOW) Do you recognize those
13
      pictures, sir?
14
          Α.
               I do.
15
               And are those pictures of the inside of
16
      this car? And I'm showing you Exhibit 103, it's
17
      been received into evidence. Are these pictures
18
      of the inside of that car?
19
          Α.
               They are.
20
               And did you -- in trying to preserve
          Q.
      evidence, did you go through any of the contents
21
      of the car and look for evidence?
2.2
23
          Α.
               We did.
24
               Did you find any?
          Q.
25
               I don't believe we collected anything
          Α.
```

```
1
      from inside the vehicle.
 2
              Okay. Did you go through the contents
 3
      here and see if you could find some evidence?
               We did.
          Α.
 4
 5
               Did you find any?
          Q.
 6
          Α.
               No.
 7
                     MR. LOW: Request admission of these
 8
      pictures, sir, Your Honor.
 9
                     THE COURT: Your request?
10
                     MR. LOW: Is to have these received
11
      into evidence, Your Honor.
12
                     THE COURT: I already received K, L,
13
      M, N, O and P, so they are received. I'd confirm
14
      that.
15
                     MR. LOW: Appreciate it.
16
               (BY MR. LOW) Sir, may I ask, was it you
          Q.
17
      who took the pictures of the inside of Mr.
18
      Knospler's car?
19
          Α.
               No.
20
               Okay. Thank you. Sir, is it true that
          Q.
      you found some hairs on the shirt of Mr. Baldwin?
21
2.2
          Α.
               Yeah. There were some hairs found on his
23
      shirt.
24
               Long black hairs; correct?
          Q.
25
               That's correct.
          Α.
```

1 Q. And you preserved those for evidence? 2 I collected them, yes. Α. 3 And the length, approximately, as best Q. you can, of those long black hairs? 4 5 Oh, I don't recall. I don't remember. 6 Do you have -- and I'm just trying to be 7 fair. Do you have any idea, were they, like, a 8 half an inch, more than a couple inches? When you 9 say "long" because that's the way it was described 10 and you were there, do you have any --11 You know, I'm sorry. I couldn't tell Α. you. I don't -- I don't know the length of them, 12 13 no. Do you recall what the evidence number 14 Q. 15 was that you assigned to the long black hairs? 16 Α. I do not. 17 Was there anything that would refresh Ο. 18 your memory? 19 My report would. Α. 20 MR. LOW: May I approach, Your 21 Honor? 2.2 THE COURT: You may. 23 Q. (BY MR. LOW) Forgive my Post-its on 24 Is that your report, sir? there.

It is.

Α.

- Q. All right. Go ahead and look at that and see if you're able to refresh your memory.
 - A. I don't see it on here.
 - Q. It's not on your report?
- 5 A. No. There should be -- I don't see it on 6 here.
 - Q. Well, if it's not on your report -- let me ask you this. Is it supposed to be on your report, sir?
 - A. Well, I'm looking.
 - Q. I'm asking is it supposed to be on your report, sir? I'll ask again. Is it supposed to be on your report, sir?
 - A. And I'll answer.
- 15 Q. Okay.

4

7

8

9

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11

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16

17

18

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20

21

- A. And the answer is that this doesn't appear to be everything that I wrote. I think there's another evidence sheet from -- from the autopsy for the chain of custody log.
 - Q. Sir, I'll ask a fourth time. Is it supposed to be on your report, yes or no?
- A. Should be reported somewhere along the line, yes.
- Q. Why is it supposed to be in your report?
 - A. Why is it supposed to be?

1 Q. Yes, sir. 2 Because it should have been, and it's 3 probably logged somewhere. I don't know why it's not. 4 5 Why is it supposed to be in your report, Ο. 6 sir? 7 Why is it supposed to be in my report? Α. 8 Q. Yes, sir. 9 Generally, I put it in the report. 10 don't know why it's not. 11 Let me ask it this way. You're taught in Ο. 12 the police academy to write reports; isn't that 13 correct? 14 Α. That's correct. 15 Q. And the reason they teach you to write 16 reports is so you can refresh your memory and have 17 an accurate, detailed log of the things you 18 gathered while conducting an evidence search; correct? 19 20 That's correct. Α. 21 And what you're supposed to be putting in Q. 2.2 the report are relevant materials; correct? 23 Α. Sure. 24 And you're supposed to put evidence in

2.5

the report; correct?

A. That's correct.

2.2

2.5

- Q. And one of the things you put in the report is that you logged the evidence and you kept it and where it can be found so it doesn't get mixed up or lost; correct?
 - A. That's absolutely correct.
 - Q. Let me see if I can do this.

MR. LOW: Do you have any documents with you in court?

MR. BLONIGEN: I have an explanation, but there's not an independent document.

MR. LOW: I just wanted to be fair because he suggested I didn't give him everything.

- Q. (BY MR. LOW) And so do you believe, sir, that there is another document that I didn't give you that would prove that you logged it in your report somewhere?
- A. I -- I would be -- I don't see the evidence back from the second page where you're talking about the -- may I see that again, please?
- Q. Yes, sir. Absolutely. Oh, and first, if you look at the top right-hand corner of your report, what does it say in the very top right-hand corner?

1 Α. Page one of three. 2 So it tells you how many pages long the Ο. 3 report is; correct? 4 Α. That's correct. 5 How many pages do you have in your hand? Q. 6 Three. Α. 7 Okay. Do you believe that I've left Q. 8 anything out? 9 I don't know why it's not in here, but. 10 Just want to make sure we get the facts, Q. 11 sir. Do you believe that -- that there's a page 12 missing, yes or no? 13 Oh, I don't know if there's a page or an Α. 14 evidence page missing. 15 Q. You've got three pages before you, sir. 16 Those are the three pages of your report; correct? 17 Well, there's evidence pages, too, that Α. 18 you gave me, handed to me earlier. 19 We're going to go nice and slow. Q. 20 you have before you is your report; correct? 21 Α. Yes. 2.2 Q. You wrote it; correct? 23 Α. That's correct.

That's correct.

You drafted it; correct?

CROSS - AARON SHATTO - LOW

24

2.5

Q.

Α.

- 1 Q. You're the one that put all the information there; correct?
 - A. That's correct.
 - Q. Did you intentionally leave anything out?
- 5 A. No.

4

6

7

8

9

10

11

12

13

14

15

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18

19

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21

2.2

23

24

- Q. Great. So does this three-page report reflect everything that you put in your report on those three pages, yes or no?
- A. What I put in the report, those are the three pages of what I put in the report, yes.
- Q. Okay. And nowhere in here do you mention that you collected and maintained a long black hair; is that fair?
 - A. That's correct.
- Q. However, your memory, as you testified with Mr. Blonigen and for me now, is that there was definitely a long black hair that you found; correct?
 - A. Yes.
- Q. And do you recall whether or not there were at least one, if not more, long black hairs found stuck to crumbled auto glass inside the car of John Knospler?
- A. I can't answer that. I don't know.
 - Q. Let's see if I can do it this way.

```
1
      You've seen pictures of Mr. Baldwin's head as it
 2
      appeared that day; correct?
 3
           Α.
                Of Mr. Baldwin's head?
               Yes, sir.
 4
           Ο.
 5
           Α.
                Yes.
 6
                I'm going to show a picture, forgive me,
 7
      I have to do it, I'm just wanting to be fair.
 8
      What color was his hair?
 9
           Α.
                It's brown.
10
                And how short was it?
           Q.
11
           Α.
                Short.
                Real short, isn't it, like almost shaved
12
           Q.
13
      short; right?
14
           Α.
                Yes.
15
           Q.
                So clearly, he did not have long black
16
      hairs, did he?
17
           Α.
                No.
18
                Yet you found that long black hair on his
           Q.
19
      T-shirt; right?
20
           Α.
                That's correct.
21
                Do you have any idea whether or not that
           Q.
2.2
      long black hair or hairs could have been
23
      transferred to his T-shirt while he was in club?
24
                I don't know.
           Α.
25
                Did you realize that he'd been in a club
           Q.
```

```
1
      that night and he was having his birthday and he
 2
      was getting some dances from some ladies who were
 3
      touching him and were up close to him, and some of
      them had long hair?
 4
 5
               I don't know how he got it.
               You'd have to guess; right?
 6
          Ο.
                                             Right?
 7
          Α.
               I don't know how he got it.
 8
                     MR. LOW: I'm just checking, Your
 9
              I think I'm done. I just want to be sure.
10
             Thank you, Your Honor. I appreciate it.
11
      Mr. Blonigen, sir.
12
                     THE COURT: Thank you, Counsel.
13
               Redirect examination, anything,
14
      Mr. Blonigen?
15
                     MR. BLONIGEN: Just very briefly,
16
      Your Honor.
17
                      REDIRECT EXAMINATION
18
      BY MR. BLONIGEN:
               We talked a lot about this hair and
19
          Q.
20
      whether it's on your -- where is it at.
                                                 The hair
      was on the T-shirt; right?
21
2.2
          Α.
               The hair was on the T-shirt.
23
          Q.
               And the hair was left on the T-shirt;
24
      right? You told us the lab found it?
```

The lab found it.

2.5

Α.

1 Q. So when we look at that, when that's 2 entered on your evidence log, it would be entered 3 as the T-shirt, not the T-shirt and a separate long hair, correct, because the lab collected it? 4 5 That's correct. Α. Okay. And is that why it doesn't appear 6 Ο. 7 separately on your sheet? 8 Α. That's correct. 9 Q. Okay. We've talked a little bit or 10 actually quite a lot about this body bag. And there are a number of photographs, and I'm going 11 12 to show you one more. Looking at 124, upon 13 opening the body bag, there's quite a bit of blood 14 or -- well, actually that's blood and water, isn't 15 it? 16 Α. It is. 17 There's quite a bit of red liquid there, 18 isn't there? 19 There is. Α. 20 So he obviously had injuries that were Ο. bleeding? 21 2.2 Α. Yes. 23 MR. BLONIGEN: Move for the 24 admission of 124, Your Honor.

THE COURT: Any objection?

25

```
1
                     MR. LOW: No, sir.
 2
                     THE COURT: Exhibit 124 is received.
 3
                     MR. BLONIGEN: That's all the
 4
      questions I have.
 5
                     THE COURT: Thank you.
 6
                Anything on recross?
 7
                     MR. LOW: Yes, sir, quickly.
 8
                     THE COURT: You may proceed.
 9
                       RECROSS-EXAMINATION
10
      BY MR. LOW:
11
                So, sir, did I hear you say that the lab
12
      found the long black hair?
13
                The lab found it on the shirt, yes.
          Α.
14
          Q.
               And the lab was in a different location,
15
      some other place than the morque where you were
16
      at?
17
                The crime lab, yes.
          Α.
18
                What location was that in?
          Ο.
                I don't know the exact address in
19
          Α.
20
      Cheyenne, Wyoming.
21
          Ο.
                It's in a different city; correct?
2.2
          Α.
               Yes.
23
          Q.
                Than the morgue here?
24
                That's correct.
          Α.
2.5
                So is it fair to say that the lab found
          Q.
```

- 1 the long black hair on the T-shirt, not you? 2 That's correct. Α. 3 But your memory was that a long black Q. hair was found, you just forgot it wasn't by you? 4 5 That's correct. Α. And that would explain why you can't tell 6 Q. 7 us how long it was. Remember I asked you how long 8 it was? 9 Α. T do. 10 Because you've never actually seen the Q. 11 long black hair, have you? 12 Α. No. 13 Do you believe it's in that bag? Q. 14 Α. I do. 15 Q. And what about looking at that bag right 16 now -- what's the evidence number you're looking 17 at, so I'm clear. I got to do this for the 18 record. 19 MR. BLONIGEN: Excuse me, Counsel. 20 That's 101. I don't think the sticker is on that particular portion of the exhibit. 21 2.2 MR. LOW: Appreciate it, sir.
- any words on that bag or any writing that would

The original number was 511.

23

24

Α.

Q.

(BY MR. LOW) Thank you. And is there

1 help you be able to identify that as a evidence 2 exhibit that contains a long black hair? 3 Well, they have it as 24.1. Α. The number? 4 Ο. 5 Well, Item 24.1 is how they have it 6 itemized in their log. 7 Q. And for the record, you're looking at a 8 clear plastic bag, and inside of that clear 9 plastic bag is a white envelope, small white 10 envelope; is that fair? 11 Α. Yes. 12 Is there any words on that small white Q. 13 envelope that say long black hair? 14 Α. Long black hairs, yes. 15 Q. Thank you. Any other writing that's on 16 there that say long black hairs or indicate what 17 it is you're looking at? 18 Α. No. 19 Q. Okay. 20 MR. LOW: Thank you. That's all. 21 Thank you very much. THE COURT: 2.2 Officer, you may be excused and you're 23 free to go.

Ask maybe, Mr. Blonigen, if you'd

retrieve the last exhibit there.

24

25

```
1
                     MR. BLONIGEN: I will.
 2
               Call Dr. John Carver.
 3
                     THE COURT: Doctor, please come
      forward, work your way around to the Clerk of
 4
 5
      Court here to my left for the oath, then you'll
      sit to the other side once sworn.
 6
 7
                     THE CLERK: You do solemnly swear
 8
      that the testimony you will give in the case
 9
      before the Court will be the truth, the whole
10
      truth, and nothing but the truth, so help you God?
11
                     THE WITNESS: I do.
12
                     THE CLERK: Please be seated.
13
                     THE COURT: We do ask you to speak
14
      into the microphone. It is adjustable as you've
15
      noted, so thank you.
16
                        DR. JOHN CARVER,
17
      called for examination by the State, being first
18
      duly sworn, on his oath testified as follows:
19
                       DIRECT EXAMINATION
20
      BY MR. BLONIGEN:
               Would you state your name for the record,
21
          Ο.
2.2
      please.
23
          Α.
               My name is John Carver, C-A-R-V-E-R.
24
               What is your occupation, sir?
          Q.
25
                I'm a forensic pathologist.
          Α.
```

- Q. And, Doctor, can you briefly describe for us your educational background.
- A forensic pathologist is a medical Α. doctor who goes to four years of medical school. I then did a residency in pathology, which is the study of natural disease processes, for five years. Then I did a fellowship year in forensic pathology, which has to do with investigation of sudden, unexplained deaths, deaths under suspicious or criminal circumstances, deaths in the workplace. These are all the kinds of situations where a death is reported to a coroner's or medical examiner's office for the performance of an autopsy. The ultimate object being to help the coroner or myself, as medical examiner, certify the cause and manner of death under those circumstances.
 - Q. How long have you been practicing forensic pathology?
 - A. This is my ninth year.
 - Q. And are you board certified?
 - A. Yes, I am.

2

3

4

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6

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19

20

21

2.2

- Q. Could you explain the certifications you have?
 - A. At the end of my general pathology

residency, the five-year residency, I took board exams in anatomic and clinical pathology. After my fellowship year in Milwaukee in forensic pathology, I took a board exam in forensic pathology.

- Q. And have you been practicing forensic pathology since that time?
 - A. Yes, I have.
 - Q. Where at?

2.1

2.2

2.5

A. I started for about 20 months after I was through with my fellowship year working for a group of doctors headquartered out of Loveland, Colorado. There aren't that many forensic pathologists. And, in fact, as I understand, there is not a board certified forensic pathologist in the State of Wyoming. So that group in that hospital covered a wide geographic area, covered essentially the northeast quarter of Colorado and the south half of Wyoming. I did that for about 20 months.

I then worked for the Denver Office of the Medical Examiner for about -- a little over five years. And since May 1st of 2013, I've been working for the Jefferson County Coroner's Office, which is one county to the west of Denver in

- 1 Golden. As it happens, the practice I'm in and as 2 an independent contractor, on every third weekend, 3 I'm still helping the group of pathologists headquartered out of Loveland. So every third 4 5 weekend, I go up to Loveland, and I cover the 6 cases that are brought down to Loveland. And the 7 circumstances that have brought us all here are 8 one of those cases that was brought to Loveland on 9 a weekend when I was on call.
 - Q. And so that's how you happened to become involved in this case as you were the on-call guy with the Loveland office at that time?
 - A. That's correct.
 - Q. I take it you've conducted a large number of autopsies?
 - A. Yes.

11

12

13

14

15

16

17

18

21

2.2

- Q. You have any idea how many?
- A. Roughly 2,500.
- 19 Q. Okay. And have you also testified as an expert as a forensic pathologist in the courts?
 - A. Yes, I have.
 - Q. In what states?
- A. Wisconsin during my fellowship year,

 Colorado, and Wyoming.
 - Q. Okay. And what is your current position,

then? What is your title?

2.2

- A. I don't really have a title because I'm not really anybody's employee or part of an organizational flowchart, so I'm just an independent consulting forensic pathologist.
 - Q. Did you conduct the autopsy in this case?
 - A. Yes, I did.
 - O. When and where did that occur?
- A. It was on October 6th, 2013, at McKee Medical Center in Loveland, Colorado.
- Q. And do you recall, were there other people in attendance?
- A. There were.
 - Q. Can you briefly describe them? You don't have to name everybody, but who would be there?
 - A. There would have been an assistant who would have been one of the investigators probably from Larimer or Weld County who would have helped with the autopsy that date. I think in this case, there were also a couple of x-ray technicians who came into the morgue briefly. There was -- I'd actually have to refer to my report to know who all was there.
 - Q. Okay. And do you have a copy of your report with you?

```
1
          Α.
                Actually, I do.
 2
                I may have to refer to that on several
 3
      occasions if you do have one with you.
 4
                Now, when the body arrives at autopsy, is
      it still clothed as found?
 5
 6
                I believe so. Photographs are taken at
 7
      the time. In this situation, the clothing still
 8
      would have been in place.
 9
           Q.
                And is an external examination done of
10
      the body prior to any autopsy?
11
          Α.
                Yes.
12
                Are observations made as to injury?
          Q.
13
          Α.
                Yes.
14
                Did you also obtain a height and weight
          Q.
      for Mr. Baldwin?
15
16
          Α.
                Yes.
17
          Q.
                Unclothed?
18
                I did.
          Α.
19
                Could you give us the height and weight,
           Q.
20
      please.
21
                74 inches, 232 pounds.
          Α.
2.2
          Q.
                And that's without any shoes or clothing;
23
      is that correct?
24
                That I'm not sure about.
          Α.
25
          Q.
                Okay.
```

1 Α. Sometimes -- sometimes weight for 2 clothing gets subtracted; sometimes it doesn't. 3 The height, how is that measured? Q. That's by me on the gurney in the autopsy 4 Α. 5 suite. 6 Okay. From heel to top of head? Q. 7 Correct. Α. 8 Q. Now, in addition to that, as the autopsy 9 is conducted, is it customary to collect samples 10 for toxicology, toxicological testing? 11 Α. Yes. And was that done in this case? 12 Q. 13 Α. Yes. Was blood and urine collected from Mr. 14 Q. Baldwin? 15 16 Α. Yes. 17 And was it subject to testing? Q. 18 Yes, it was. Α. 19 Did you have access to those toxicology 20 results at the time you issued your report? 21 Yes, I did. Α. 2.2 And could you tell us what it revealed 23 about the blood alcohol content of Mr. Baldwin at 24 the time of his death?

His blood alcohol content was 206

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Α.

- 1 milligrams per deciliter or .206. 2 Okay. And were there any drugs of abuse 3 in his system? Α. I don't believe so. 4 5 Q. They were tested for? 6 Α. Yes. 7 Q. And specifically, there was no marijuana 8 in the system? 9 I'd have to refer to the report to make 10 sure of that. 11 Would you double-check that, please, Ο. 12 Doctor. That's correct. 13 Α. 14 Now, is the body photographed and are all Q. 15 injuries on the external part of the autopsy 16 documented by both photograph and in writing? 17 Α. Yes. 18 Did you do that in this case? Q. Yes, I did. 19 Α. 20 What was the most significant evidence of Ο. 21 injury you found upon external examination of Mr. Baldwin? 2.2
 - Q. And did you measure the dimensions of

above the right clavicle next to the sternum.

A gunshot injury wound that was just

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that wound?

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- 2 A. I did.
 - Q. And could you provide those dimensions of the wound for the ladies and gentlemen of the jury, please.
 - A. I'll have to refer to my report to give the dimensions. It was a roughly oval defect about 1.0 by 0.7 centimeters.
 - Q. Okay. And so when you observed the wound, did you observe any other injuries around the wound?
 - A. A faint pink purple rim of contusion surrounding the gunshot entrance.
 - Q. And, Doctor, I'm going to --

MR. LOW: May I real quick?

Your Honor, if I may, pardon the interruption. When the witness starts to refer to the report in order to testify, I think I would like to ask that he denote each time he needs to do that. And I believe what I just witnessed is on his last answer, he had to look at his report to answer the question about the contusion and the color. So I just wanted to put that on the record. Submit.

THE COURT: Okay. So noted. And I

- think that's proper procedure. If we're reading or referring, we can note that as the testimony is given. So thank you.
 - Q. (BY MR. BLONIGEN) Do you observe 115 up on your screen there, Doctor?
 - A. Yes, I do.

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- Q. You were just referring to a purplish ring around the entry wound?
 - A. Correct.
- Q. And could you point that out for me on the monitor? And perhaps you can either circle it, but that might be kind of -- or you might just use a pen and point it out to the jury.

THE COURT: I think the best thing is it's touch sensitive, so if you want to just use your finger to circle on your monitor, it would show.

MR. BLONIGEN: Just use your finger.

- Q. (BY MR. BLONIGEN) Okay.
- A. I didn't see anything happen on my monitor.
- 22 MR. BLONIGEN: I didn't either.
- 23 THE COURT: Maybe Ms. Koski can help you, and she'll show you how to erase also.
 - A. I'll try it again.

THE COURT: I hope that helps.

- A. The circle I've just drawn is actually somewhat larger than the area.
 - O. (BY MR. BLONIGEN) So let's --
- A. But there's a just a rim of pink purple discoloration around the gunshot injury.
 - Q. Did you carefully note both the condition of the clothing and specifically the bullet hole in the clothing as well as the bullet hole in the body? Did you closely look at both those things?
- A. Yes, I did.

2.2

- Q. Now, when we're working with gunshot wounds, we talk about range of fire; correct?
 - A. Correct.
 - Q. What is range of fire?
- A. It's what you can say about the distance the tip of the barrel of the weapon used is from the body itself by looking at the body and any clothing that's between the body and the barrel of the gun.
- Q. Okay. And how do we categorize these wounds, then, based upon that?
- A. In really basic terms, there are contact gunshot wounds, intermediate range gunshot wounds, some people can say distant, I prefer to use the

term indeterminate when I can't determine what the distance is.

- O. What's a contact wound?
- A. If I can clarify. Intermediate means -indeterminate means beyond intermediate, but you
 don't know. It's somewhere between intermediate
 and infinity.
- Q. And when you have these gunshot wounds, is it also important as a follow-up to test the weapon that was actually used?
 - A. Yes, it can be.
 - Q. And distance testing can be performed?
- A. Yes, it can.

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- Q. Did you do that or did somebody else do that in this case?
- 16 A. I don't know that anybody did it in this
 17 case.
 - O. You did not?
- 19 A. I did not.
- Q. Now, let's start with a contact wound.
- 21 What's that mean, what's a contact wound?
 - A. A contact wound means that the barrel of the gun is actually pressed up directly against the body or the clothing that directly overlies the body.

Q. Okay. And when we have a gun pressed up against the clothing over just the top of the body, this is a relatively thin white T-shirt; is that correct?

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- A. It's a -- it's a common white T-shirt, yes.
 - Q. Okay. What do we see in our entry wounds when we have this gun pressed tight up against the skin?
 - A. If it was pressed tight up against the skin, you might see an abrasion from the muzzle of the gun surrounding the gunshot entry wound. The next thing to remember is that not only the projectile comes out the end of the barrel, but a number of other things. There can be a small flame that may extend out for a short distance. So if you have a contact wound, you may actually see burning or searing of the skin on the borders of where the bullet went in.

Also coming out the end of the barrel of a gun is incompletely consumed gunpowder in the form of soot. So depending on how tightly pressed the barrel of the gun might be against the skin, you could see soot on the borders of the entrance of the wound or on the surface of the skin. If

there's a little bit of a gap, some soot might escape and be deposited on the skin.

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Then finally, the other thing that comes out the end of this barrel is noncombusted gunpowder particles, so entire gunpowder particles. Not the ones that have been burned and are in the form of soot, but actual particles.

- Q. Okay. And with the entry wound the way it is, then, where does all that material go if it's --
- A. If it's contact, all that is driven into the wound path itself.
- Q. Okay. What kind of things do we see, what's the characteristics of the outside appearance of an entry wound like this?
- A. The things I was describing, if it's tight enough, you might see a -- an abrasion in the pattern of the barrel of the weapon, searing of the edges of the entry wound. You might see a thin rim of soot deposited around the rim of the entry wound.
- Q. Okay. Now, do you know, did we ever see ripping or tearing that would make a different shape, kind of a stellate tearing they call it?
 - A. You do, but that's frequently over large,

flat, bony surfaces. So, for instance, if a barrel is pressed against something like a skull, the gas that also comes out the end of the barrel too can dissect between the bone of the skull and the scalp and expand and end up tearing the scalp and giving you a stellate-looking laceration.

- Q. Now, if it's pressed up against the shirt, will we see the same kind of things on the shirt, that is, will we -- will we see -- does the fact that the shirt overlays a contact wound change what you've just told us?
 - A. No, it doesn't.

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- Q. You talked a little bit about the imprint of the gun. In fact, sometimes if you have a front sight, for instance, on the end of the gun, you'll actually see a mark for the front sight in the wound; is that correct?
- A. The sight or if it's a semi-automatic revolver that has a slide carriage, there's a slide carriage rod that sometimes leaves a small circular imprint when it's pressed up against the skin.
- Q. So it's not just the shape of the barrel hole, it's the stuff directly around it?
 - A. Correct.

- Q. Now, when we look at those wounds microscopically, what do we see and what do we see inside the wound itself when it's that contact wound?
- A. There should be a lot of soot on the edges of the skin. You can take a section of the skin surrounding the wound, and you'll see -- sometimes you'll see soot directly on the skin surface adjacent to the hole made by the bullet; but you see quite a bit driven into the disrupted subcutaneous tissue.
- Q. So there would be large amounts of this soot in the subcutaneous tissues?
 - A. Correct.

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- Q. Now, also, as to the cloth itself and the skin, is it actually seared or burned by a contact wound?
- A. There can be searing from the flame coming out the end of the barrel with a contact wound, yes.
- Q. Now, this soot and this searing, does this just wipe away, like, with a washcloth or something like that?
- A. In my experience, it doesn't. You can actually -- if there are contact wounds, for

instance, to the head, sometimes you'll have to shave hair surrounding the wound to get a better visualization of the wound. There's frequently a large amount of dry blood which I have to wash away using peroxide with a fair amount of scrubbing, too; and the soot is usually --

- Q. Still there?
- A. -- still there.
- Q. We sometimes see a near contact wound.

 Have you ever seen that term?
- A. Yes.

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- Q. What's that?
- A. Near contact means that there's a slight gap between the end of the barrel and the skin such that a small amount of soot will escape through the edges of that seal and be deposited on the skin around the hole created by the projectile.
- Q. And in this instance, do we have a burning and searing of the skin or the clothing that's not quite a tight contact?
 - A. No, we don't.
- Q. Okay. Now, what kind of -- do we have any stippling or powder or soot staining in this instance?

A. No, we don't.

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- Q. Okay. What is stippling, by the way?
- A. Stippling is kind of a general term, and it can just mean a small abrasion made by the impact of anything really. It's sometimes called powder tattooing when it's referring specifically to unburned gunpowder particles. So you have the flame coming out the end of the gun for a very short distance, so if it's contact, you can get searing.

The soot -- most handguns the textbooks will talk about, the soot will come out the barrel for a matter of inches up to about a foot. The unburned gunpowder particles, which have some mass and carry further, it can be up to two, two and a half, three feet that they will still be coming out of the end of the barrel. And what they can do is just create a very small, circular, superficial abrasion on the skin where they pepper the skin. They don't penetrate far into the skin, but they create a little -- little small abrasion that has a characteristic appearance.

- Q. If there's clothing over the -- the wound, will it also be deposited on that clothing?
 - A. Yes, it will.

Q. Okay. But this is kind of -- this is penetrating the fabric or the skin; is that correct?

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- A. The gunpowder particles, if the clothing is thin, can sometimes penetrate the fabric. Even if it doesn't penetrate the fabric, the impact will still leave a characteristic rashy looking appearance surrounding the entrance. What you have to remember, too, is you get further back, the distance between the barrel and the skin, both the soot is dispersing in the atmosphere, so there's -- it's being dispersed and less concentrated, so it will become fainter and cover a larger area as you go further back. The same thing is true about the unburned gunpowder particles, too. They will disperse and be distributed over a larger area the greater the distance is.
- Q. So this doesn't wipe off with a towel either?
- A. If there's stippling, it doesn't wipe off with a towel.
- Q. Now, we then talked about intermediate wounds.
 - A. Correct.

Q. Tell us what those are.

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- A. Intermediate range wounds is where you have stippling.
 - Q. Okay. And tell us about that. What kind of distances are we talking about generally?
 - A. You may see stippling if the barrel is as close as a centimeter or two from the skin. It'll be very tightly clustered around the defect created by the bullet. As you get further back, it's spread out further, less concentrated over a bigger area. And most textbooks will say beyond two to three feet, you shouldn't see stippling anymore, depending on the handgun and what the ammunition is.
 - Q. So when we're in the intermediate range, is it important for a lab to see what a specific gun will do, not on your end, but somebody else?
 - A. Yes.
 - Q. Finally -- and you say that results in the stippling you talked about?
 - A. Stippling is the characteristic that defines an intermediate gunshot wound.
 - Q. Finally, you told us about indeterminate or what was the other term other folks use?
 - A. Distant.

- Q. Okay. What are the characteristics of a wound in this area?
 - A. You don't see any of the things that you would see with a contact or intermediate range wound.
 - Q. Uh-huh.

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- A. And so the inference that's made is it's beyond a couple feet from the end of the barrel to the body.
- Q. Now, if it's a -- if it's an indeterminate wound, can you tell whether it's two feet or twenty feet?
- A. No, you can't.
- Q. Okay. So but it's outside the area that the gun leaves these deposits?
- 16 A. Correct.
 - Q. I see. In addition, if you have an intervening target, if that means there's something between Mr. Baldwin's T-shirt and skin and the barrel of the gun when it fires the bullet, will that cause these characteristics not to be present?
 - A. That could happen, too, yes.
- Q. And this is called -- what is that called? Is that an intervening target?

A. Yes.

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- Q. So if I fire through, you know, a board, let's say a door, I'm not going to get all that powder tattooing and stuff, it's just going to go through that, and that will keep those particles from coming through and attaching to the skin?
 - A. That's correct.
- Q. And certainly a pane of glass could do that?
 - A. Correct.
- Q. In this particular case, what did you determine about Mr. Baldwin's wound?
- A. I determined that -- I called it an indeterminate range gunshot wound.
- Q. What were the important findings to you that would indicate that it's an indeterminate gunshot wound?
- A. The lack of findings indicating that it was a contact gunshot wound, no stippling, and it was not an intermediate gunshot wound.
- Q. And do you have an opinion as to whether this could possibly be a contact wound or near contact wound?
- A. In my opinion, it is not a contact wound or a near contact wound.

- Q. Is there anything that suggests that it's a contact wound or a near contact wound?

 A. Not to me.

 Q. Is there anything that suggests it's an
 - Q. Is there anything that suggests it's an intermediate wound?
 - A. No.

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- Q. Now, when we have this wound, then, as we see it in the exhibit, do you do anything to collect tissue slides from around the entry wound itself?
- A. Yes. I did take a sample of the skin, cutting in perpendicular to the surface of the skin, going out, you know, a thin slice of the tissue, so I get the surface of the skin surrounding the entrance and also get the disrupted subcutaneous tissue, too. And I put that on a slide and looked at that.
- Q. And how far around the wound are we talking about?
- A. I don't have the slide in front of me.

 It's unlikely to be more than two centimeters.
- Q. So it's what's very close to the entry wound, then?
- A. Correct.
 - Q. And did you do any microscopic studies of

the sample you collected?

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- A. I then looked at the slide under the microscope.
 - Q. What did you find?
 - A. On the surface of the skin surrounding the entrance wound, within -- the skin is not just a perfectly smooth surface. It has lots of little folds in its surface. There were very minute glass fragments, not many of them, but glass fragments were deposited on the surface of the skin.

Also, in the underlying fatty and connective tissue, which is a lot of collagen that's below the protective surface of the skin, of course there was hemorrhage from it being disrupted by the bullet. Also, there were two spots of what I called amorphous black particulate, two small spots of something that looked like it could possibly be soot, too, but not enough to make me think it was a contact wound.

- Q. Because a contact wound, you have a lot of that; you just had one or two scattered particles?
 - A. You know, in my initial report, I used

the word *sparse*. And I think that is actually overstating it because I had to look hard again when I reviewed the slides just a few days ago to find two specks. So they are there, but even calling it sparse seems overstating it. I would call it -- I think the word *rare* is more accurate.

- Q. Okay. When you're looking at these -this glass through the -- on the slide, what do
 you see? I mean, what becomes apparent on the
 microscope slide as to the character or nature of
 these fragments? Color, for instance?
- A. The glass fragments are just very irregular little shards that I'm not -- I'm not used to seeing on the surface of the skin. The black particulate is just a -- it's a minute, lumpy, bumpy fragment of black material.
- Q. And the glass, does it appear almost a blue-green color?
 - A. It does.

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- Q. Now, when we're talking glass, though, what size of fragments are we talking about?
- A. These would be fragments that I believe would be -- I mean, think of glass being polarized or thinking of 600 grit sandpaper, even finer than that. Very, very, very fine fragments.

Q. Okay. Almost like dust, then? 1 2 Almost, yes. Α. 3 Now, did you also examine -- also, let me Q. go back a little bit to your characterization of 4 the wound. 5 MR. BLONIGEN: I'm sorry, did you 6 7 shut that down? 8 THE COURT: I did. 9 MR. BLONIGEN: I was unaware, Judge. 10 THE COURT: We might touch the lower 11 left screen, and it will take the circle off 12 Thank you. Go ahead, Counsel. there. 13 (BY MR. BLONIGEN) You talked a little Ο. 14 bit about what you observed around the entry 15 wound. Had this been a contact, near contact type 16 of wound, would you have expected that to look 17 different? Would there be any other coloration or 18 what would you see there? 19 Usually soot is really obvious around the 20 rim of the qunshot entry when it's a contact range gunshot wound. 21 2.2 Q. Okay. And moving on, then, to exit, you 23 determined an exit wound? 24 Α. Yes.

THE COURT: Since you're changing

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      topics and we're at noon, let's go ahead and break
 2
      for lunch --
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                     MR. BLONIGEN: Oh, okay.
                     THE COURT: -- if that's okay,
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      Counsel.
 5
               Doctor, you'll be excused until 1:30.
 6
 7
      We'll start again at 1:30 sharp.
 8
               Ladies and gentlemen of the jury, please
 9
      keep in mind the rules and admonitions, including
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      not to discuss the case with anyone and not to
11
      permit anyone to discuss the case with you. Thank
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      you very much.
               And I hope, Ms. Archer, you're feeling a
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14
      little better. Keep us posted.
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               Court will stand adjourned for the
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      luncheon hour.
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                            (At 12:00 p.m., a recess was
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      taken until 1:35 p.m.)
                     THE COURT: Good afternoon. Please
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      be seated, and court will reconvene after the
      luncheon break in State of Wyoming versus Knospler
21
      in Criminal Action 19548-B.
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               The Court notes the presence of the 13
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      members of the jury, defendant, defense counsel,
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      counsel for the State. We're still in the direct
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      examination of Dr. Carver.
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               Mr. Blonigen.
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                     MR. BLONIGEN: Your Honor, I'm
      wondering -- this is from a previous witness, if
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      we can move that.
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                     THE COURT: Yes. Let's take down
 7
      any displays. Thank you.
 8
          Ο.
             (BY MR. BLONIGEN) Doctor, we were
 9
      talking before lunch about the entry wound.
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      you take a measurement of how far from the top of
11
      Mr. Baldwin's head that entry wound was?
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               Twelve and a half inches.
          Α.
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               Did you also identify an exit wound?
          Q.
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          Α.
               Yes.
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          Q.
               Generally, where was this located?
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          Α.
               His right lower back.
17
               Okay. And approximately how far from the
          Q.
18
      top of the head?
               26 inches.
19
          Α.
20
               Refer you to a photograph here. After
      the wound was cleaned, is this a picture of the
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      exit wound?
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          Α.
               Yes, it is.
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               Did you find anything unusual at all
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      about the exit wound?
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1 A. No.

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- Q. Did you take x-rays of the body as well?
 - A. I can't remember whether I did or not.
 - Q. Okay. Did you see any indication in your autopsy that a portion of the bullet had been left in the body?
 - A. No.
 - Q. After identifying the exterior -- well, in addition to that, we've talked about the gunshot wounds. Were there any other injuries to the body on the outside of the body?
 - A. Yes.
 - O. And what was that?
 - A. There were some blunt force injuries consisting of abrasions and superficial lacerations involving the decedent's right hand, right forearm, and right upper arm.
 - Q. Did you find any other injuries in any other portions of the body other than the bullet wound you've described in these?
 - A. No.
 - Q. Referring you first to 116, the right hand, this has already been admitted into evidence for the record. Your report describes the abrasions more towards the middle of the hand as

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1
      dicing abrasions; is that correct?
 2
                I'd have to refer to my report and see if
 3
      that's --
               Would you please, then?
 4
          Ο.
 5
                -- how I described them.
 6
                Tell us where you're referring to in your
          Q.
 7
      report.
 8
          Α.
               On page 4 of my report is where I
 9
      describe superficial disruption of the skin over
10
      the back of the right hand at the base of the
11
      right third through fifth fingers and the lateral
12
      surface of the right hand. A very superficial
13
      dicing type laceration is over the ulnar surface
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      of the right wrist. So I'm not really talking
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      about dicing when I talk about the back of the
16
      right hand.
17
          Q.
               Okay.
18
                I'm talking about the right wrist --
          Α.
19
               Okay.
          Q.
20
                -- and over the right forearm.
21
               Now, the abrasions we see in the
          Q.
2.2
      photograph, you described them as superficial?
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Q. What does *superficial* entail? It's hard to define.

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Α.

Yes.

- A. It's disruption of the thin external layers of the skin. It's not deep.
 - Q. Does there appear to be some minor bruising associated with that as well?
 - A. There may be some very faint pink bruising on the back of the hand at the base of the third and fourth fingers.
 - Q. But as you indicated, very faint?
 - A. It's pretty faint, yes.
 - Q. Now, as far as going back to the wrist, then, when you talked about the term dicing, what's that term mean?
 - A. To me, that means an abrasion or a superficial laceration that has an angled contour to it. And I usually associate those with broken bits of glass, small, square, broken bits of glass.
 - Q. And in tempered glass, would the bits be cubed like that as you say?
 - A. They tend to break in small cubes, yes.
 - Q. And they're sharp?
 - A. Yes. The edges are sharp.
- Q. So the dicing refers to what caused the injuries not how much force was used?
 - A. Correct.

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- 1 Now, in addition to that, were there some Q. 2 other injuries to the -- I believe you referred to 3 the right ulnar surface? Α. Yes. 4 5 Explain to the jury what the ulnar surface is. 6 7 Your forearm has two bones in it. Α. 8 one extending to your elbow from the base of your 9 thumb is the radius. The one extending from the 10 outer surface of your wrist up to your elbow is 11 the ulna. So the ulnar surface would be that bony surface of the forearm. 12 13 So how do you refer to those in your Q. 14 report? How do you describe them? 15 Α. I say very short superficial dicing type 16 lacerations. 17 So, again, they're superficial as well? Ο. 18 Yes. Α. 19 Relatively small?
- 20 Α. Yes.

Q.

- And then when we go to the right 21 Q. 2.2 shoulder, are there additional lacerations or 23 abrasions?
- 24 Α. Yes.

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And how did you describe these? Q.

- A. An area of oblique superficial abrasions and dicing type lacerations measuring about ten by five cm.
 - Q. Again, they were superficial in nature?
- A. Yes.

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- Q. So those -- all the injuries you could find were documented in the report?
 - A. Correct.
- Q. And they're to the top portion of the arm not the bottom portion of the arm and the hand?
- A. They're to the outer surface of the right upper arm, the outer surface of the right forearm, and the back of the right hand.
- Q. Thank you. Upon determining the external evidence of injury, did you proceed with the autopsy?
 - A. Yes.
- Q. And particularly in relation to the autopsy, did the autopsy show the path the bullet had taken from where it entered in the chest to its ultimate exit?
 - A. Yes, it did.
 - Q. And how do you go about determining that?
- A. By removing the rib cage, examining all the internal organs carefully, seeing what's

damaged, and finding the path that connects the entrance, you know, the entrance skin wound with the exit skin wound and all the damage that occurs in between those points.

- Q. Okay. Upon -- as we begin that process, then, you said we had the entry wound. What immediately under the entry wound did you first notice?
 - A. There was a fracture of the first rib.
 - Q. Okay. Which?

- A. Right first rib.
- Q. Okay. What is -- where is the first rib at on our body?
 - A. It's actually kind of hidden behind your collarbone. It actually connects to the sternum below the collarbone, but it curves back; and a large part of it is protected by the collarbone.
 - Q. Okay. So that was damaged from the bullet?
 - A. It was fractured.
 - Q. How did the bullet then proceed?
- A. Then proceeded front to back and
 downward. The first thing it does is go into the
 pericardial sac. That's a fibrous sac within
 which the heart is contained. So it perforates

the pericardial sac, then it went through the right atrium of the heart, exited the heart, damaged the inferior vena cava, which is the large vessel that returns venous blood to the heart from the lower portion of the body.

2.2

It then entered the lower lobe of the right lung, then very briefly went into the abdominal cavity. And to understand how that works, you have to understand that there's a diaphragm separating your chest cavity with your abdominal cavity. And that diaphragm is arched, so it's curved. On its path downward through the right lung, it then very briefly went into the abdominal cavity by perforating the diaphragm. It damaged the right kidney, then went back out through the diaphragm back into the chest cavity. It can only do this because the diaphragm is curved like that. And then it exited below the right 12th rib and came out the right lower back.

- Q. And did it deviate from right to left at all?
- A. Very minimally. I believe I described the entrance as being an inch and a quarter to the right of anterior midline. So if you just draw an imaginary line through the center of your sternum,

it was about an inch and a quarter to the right.

And the exit was about an inch and a half to the right of the center of the spinal column.

2.2

- Q. Okay. Now, when we're talking about a wound like this, is it possible through forensic pathology to say how long a person is capable of movement and things after the injuries you saw were inflicted?
- A. I think the most that could be said is that it would be possible for somebody to be capable of -- possibly, not that I know that that is what, in fact, happened, but possible for someone to continue to have volitional action as long as blood was still going to the brain. With the damage that was done to the heart here, I think oxygenated blood would not be going to the brain very quickly, and loss of consciousness would have been on the order of seconds.
- Q. Okay. Do you have any minimum number of seconds you have in mind?
- A. If somebody -- I don't have a minimum number, but what the textbooks talk about is if you cut off the flow of blood to the head, you lose consciousness in 10 to 15 seconds.
 - Q. Okay. But we can't say with any

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      precision exactly if that occurred or not, can we?
 2
          Α.
                No.
 3
                Now, do you have an opinion as to the
          Q.
      cause of death of James Kade Baldwin on the
 4
 5
      morning of October 4th, 2013?
 6
          Α.
                Yes.
 7
          Q.
               And what is that opinion, sir?
 8
          Α.
               Gunshot wound to the chest.
 9
          Q.
               And what is the manner of death
10
      classified as?
11
          A. Homicide.
12
                     MR. BLONIGEN: Thank you, Doctor.
13
      That's all the questions. I'm sure counsel has
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      some questions.
15
                     THE COURT: Thank you.
16
                Cross-examination, Mr. Low.
17
                     MR. LOW: Thank you. Yes, sir,
18
      please.
19
                        CROSS-EXAMINATION
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      BY MR. LOW:
21
                Will you be able to see that there, sir?
          Q.
2.2
          Α.
               Yes.
23
          Q.
                Thank you. I'm going to attempt to ask
24
      you a question about the pathway of the bullet.
2.5
      If my artwork doesn't work, I know you'll tell me;
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- 1 is that fair? 2 Α. Sure. 3 Okay, then. So I'm just going to try and Q. draw a side view, sir. Will that do for a side 4 5 view, at least at this point? 6 Α. Sure. 7 Q. Okay. Now, I'm going to start within the 8 body. What I mean is start with these questions 9 are going to ask you about the general pathway of 10 the bullet as best we can while it's inside the 11 body. Would that be okay? 12 Α. Sure. 13 All right, then. We said that the Q. 14 distance from the top of the head to the entry wound was about -- I think you said 12 and a half 15 16 inches? 17 Α. Correct. 18 And I believe it's at the base of the Q. 19 neck or you said the collarbone joins the sternum? 20 Α. Correct. Would it be all right if I put that right 21 2.2 about here, sir?
 - Q. I'm just going to put a black dot there.

 I believe you said that from the lower back, the

24

25

Α.

Sure.

- 714 1 exit wound was about 26 inches; is that correct, 2 sir? 3 Α. Correct. And realizing that isn't to scale, but is 4 5 that still going to mean the exit wound is somewhere in the lower back region? 6 7 Correct. Α. 8 Ο. Would this dot suffice for this diagram? 9 Α. Sure. 10 Thank you. So is it fair to say, sir, Q. that the pathway of the bullet through the body, 11 12 while viewing it from the side -- I'm going to move over here so it's easier to see -- was a 13 14 straight line between those two dots?
 - Α. Not necessarily.

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- And say more. I'm sorry. Go ahead and Q. say why.
- It's possible that the body is bent, Α. Your spine is not a fixed ramrod straight structure. You're capable of bending your back. You're capable of bending over.
- Q. Thank you. So did you note in your autopsy that the pathway between the entrance and the exit waved back and forth like that?
 - Never have. Α.

- Q. Sure. So is it fair to say, if we had to describe it, that the best description between the entrance wound and the exit wound is a relatively straight line?
 - A. What you have to realize is that if the posture is changed, the relative position of the internal organs is going to change, too. So that, in fact, if the person was bent over and the bullet goes through and it does take a straight path through a curved body, once you straighten up the body and examine the body, you're not necessarily going to see a straight line --
 - Q. Thank you for saying that.
 - A. -- going from point A to point B.
 - Q. Thank you for saying it because that's my next diagram. All right, then. One other note I want to make sure we got before we go and draw the bent over body.
 - This hole here had a shape that you noted; correct?
 - A. Yes, sir.
- Q. And you noted it to be an oval shape; right?
 - A. Correct.

Q. And tell the jury what an oval shape

indicates with regards to an entrance wound from a qun or from a bullet?

2.2

- A. The only thing it indicates is that there's underlying soft tissue which, when disrupted, pulls the surface opening into an oval shape. The underlying tissues have -- there's a number of different kinds of underlying tissues. They can have a grain, and there can be forces that would either pull it one way or the other way. And it could be different forces at different points of the body. So it's just a slight distortion of the shape on the surface of the skin.
- Q. Thank you, sir. Lastly, on this diagram before we move on, is it fair to say that you didn't see any evidence -- let me use a different color -- that the bullet went in, hit the first rib, and then took a change of path within the body and then deflected? Does that make sense what I'm asking? Did you see any indication that the bullet deflected off the rib and went a different direction?
- A. No. But any time a bullet hits any tissue, it's automatically not acting the same way as when it comes out of the barrel of the gun.

The ballistics change once it enters the body.

2.2

- Q. Just want to make sure we're clear, there's no deflection present as far as you can tell; correct?
 - A. My answer is what I just said.
- Q. Okay. Now, what I'd like to do is draw the following with your permission. And we'll leave the arm out of it for now.

And sir, can this, for the purposes of -
I know it's crude, go with me, but can this

represent maybe the body as it's bent over?

- A. Looks -- I would think the body would be somehow supported by the arms. That's a very difficult position to just bend right at the waist like that.
- Q. All right. So are you telling me that I should be working in Cirque du Soleil right now because I can do things no one else can do?
- A. Well, it's not an easy position to hold.

 I'm just saying a back can be curved.
- Q. I'm not talking about time. I'm just asking you, can someone go like this and not have to really spend a whole lot of energy doing it?
- A. It's a lot easier to support your weight with your arms doing that. Sure, it's possible.

1 You're doing it. 2 Q. Yeah. 3 Yeah. Α. More than possible, it's real; correct? 4 Ο. 5 You just did it. Α. 6 Okay. Maybe someone who's 24 years old Q. 7 in good health wouldn't have any problem doing 8 that either; right? 9 Α. It's possible. 10 Did you see any defects in Mr. Baldwin's Q. 11 body other than the gunshot wound that you thought 12 would maybe inhibit his ability to bend at the 13 waist? 14 Α. Nope. 15 Q. Okay, then. All right. Now, if we put 16 the -- is that okay? Can I put the first dot 17 there in about the same place where the bullet 18 enters the chest? 19 Α. Sure. 20 Is that okay? And then the second one, Q. 21 again, the lower back; is that about right? that okay, sir? 2.2 23 Α. Sure. 24 And again, if we -- now the body is bent Q. 25 over and we connect the two dots. Well, I screwed that up. I'm sorry. Let me do a better job. Is
that okay, sir?

A. Sure.

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- Q. And from what you saw in the body, does this generally -- of course, this isn't to scale -- generally reflect the path of the bullet through the body?
 - A. Sure.
- Q. Now, with your permission, can I take this area here, and can we draw that for a second, I'm going to make it a little bigger, would that be all right?
 - A. Absolutely.
- Q. All right. All right, then, sir. Now, if I'm bent over and the bullet is coming straight through here, so I'm bent over at an angle, we'd have to measure to be precise; but I'm bent over and a bullet is completely, say, parallel with the ground. And I'll draw it out to represent it. Here's the path of the bullet, and there's the angle of contact to the skin. And I can draw the bullet here.

If we have a 90-degree angle here or thereabouts, and the bullet is traveling true, like a very expensive, competition, precision

- style pistol may be, is it consistent and likely that the entrance wound, shape only, would be a circle?
 - A. Depends on the area of the body and what the underlying tissues are.
 - Q. I understand there's a lot of things we could change, go one way or the other. Maybe I could ask it this way. Would it be inconsistent at 90 degrees for you to see a circle as an entrance wound?
 - A. Would it be inconsistent at 90 degrees to see a circle as an entrance wound?
- Q. Yes.
- 14 A. No.

2.2

- Q. So I guess we could also say it another way that if it's not inconsistent, then it could be consistent; right?
 - A. Yes.
 - Q. And you see that quite often, don't you?
- A. You also see slightly oval gunshot entrance wounds quite often.
- Q. Yes. We're going to do that right now.

 But before we go there, out of your 2,500

 autopsies, clearly you've seen entrance wounds

 that were circle shaped?

A. Correct.

2.2

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- Q. Now, let's change the scenario a little bit. Change the angle of the skin. We're going to keep the bullet, same path now. When this bullet contacts the skin, it's not just contacting it from the point, it's also going to expose and contact it from the side a bit, too, as well; correct?
 - A. Correct.
 - Q. And as a result, you've seen in your experience that these, the shape of the wound that that will leave can be an oval shape; correct?
 - A. The textbook would say you should have an eccentric, partially circumferential, marginal abrasion from an angled gunshot entrance wound.

 You sometimes see that, you sometimes don't.
 - Q. Thank you.

So it's consistent; correct, sir?

- A. What's consistent with what?
- Q. The oval shape can be consistent with a bullet that enters the wound at an angle other than 90 degrees; correct?
- A. I would only call it an angled wound if I did see the eccentric marginal abrasion.
 - Q. Okay. All right. Next question. You

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were talking or -- I'm sorry. You were being asked questions about the hand. I would like to follow up with that for a second.
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MR. LOW: May I please have the next two pictures marked next in order. And I believe the last one was in, but I could be wrong, so I'll ask the clerk. I trust the clerk and the judge.

Q and R, please. May I enter these into evidence, sir?

THE COURT: Yes, if there's no objection, Exhibits Q and R are received.

MR. LOW: Thank you, sir, I appreciate it.

- Q. (BY MR. LOW) Sir, you've been asked questions about these. Are you able to see that on your monitor? Clearly the big screen is not too good.
 - A. It's better on my monitor.
- Q. And referring to this area here, did you refer to that injury and description as a blunt force injury?
 - A. Yes, I did.
- Q. Please describe for the jury what a blunt force injury is.
 - A. A blunt force injury is as opposed to a

sharp force injury, and sometimes the dividing line between them can be arbitrary. Blunt force would mean that something you would ordinarily think of as a sharp implement such as scissors or a knife was not used to cause the injury versus a blunt force injury, something that doesn't have a sharp edge, it's just impact to the tissue that causes it to tear.

And so looking at a sharp force injury and looking at a blunt force injury, you can tell the difference between them because the sharp force injury usually has sharp edges; a blunt force injury, it will tear the surface tissues but might leave underlying nerves or blood vessels intact and stretched across the injury. A dicing type laceration is kind of a --

- Q. Hold on a second. We're going to do that in a second. I don't want to cut you off, but we're going to stay on blunt force for a second.
 - A. Sure.

2.2

- Q. So this is a blunt force injury; correct?
- A. Correct.
- Q. Would this injury be consistent with one if someone made a fist and punched it against an intact, pristine car window?

A. Yes.

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- Q. Now, just to change the hypothetical a little bit. Suppose we have the tempered glass you've mentioned earlier, and suppose the tempered glass is cryst -- I'm sorry, it's crumbled and it's brittle and it's got those sharp edges on it. Would it produce the dicing injuries that you described that are on the forearm?
 - A. I'd have to see the pictures of the forearm again. But as I stated before, the dicing injuries, they tend to look like an angled superficial laceration like, you know, perhaps the edge of a small cube of broken glass.

MR. LOW: May I approach, Your

Honor?

THE COURT: Yes, you may.

MR. LOW: Thank you, Your Honor.

Q. (BY MR. LOW) I'm showing you what's been received as Q and R, if I can just come over here with you. Looking at the first one, R, it's on your left, and Q, it's on your right. And I'll just be asking you about the skin, torn skin here and here and here; and it's also seen here, here, and here. And I've got one other picture I want to show you.

MR. LOW: Please may I mark the next photo as S as in Sierra. Move into evidence what's been marked as Defense Exhibit S as in Sierra.

THE COURT: Any objection?

MR. BLONIGEN: No, sir.

THE COURT: Exhibit S is received.

- Q. (BY MR. LOW) All right. And here's a close-up of the right hand, sir. And I'll give you a chance to study this, just so you know, Exhibit S, as in Sierra. And I'll again focus you in on the skin there on the hand. Have you had a chance to look at those?
 - A. Yes, I have.

2.2

- Q. Would it be fair to describe those pictures that we're going to show here as having the skin peeled back as if -- if you will, almost like they -- almost like using a cheese grater? I want you to describe it the way you want. How would you describe that -- those injuries to the skin there?
- A. I wouldn't really object to the cheese grater analogy. With respect to the forearm, the photos are -- they don't show the detail that I described in the opinion, so I'm having a hard

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1
     time characterizing what -- based on the photos,
2
     what I describe in the report. Nor -- nor are
3
     these what I would classically call dicing-type
     lacerations. Again, you'd almost think of a bird
4
5
     beak and pecking and leaving a small angled
              These are a little bit longer, but I
6
7
     think they are -- it's -- you know, possibly
8
     consistent with broken glass, against broken
9
     glass.
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- Q. Thank you. And out of fairness to you, if the pictures had better resolution and maybe some better color and all the things that go into better pictures, might they show or better describe the detail that raises to the level of dicing?
 - A. They might, yes.

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- Q. Okay. All right. May I take those from you?
- MR. LOW: And, Your Honor, so that the detail doesn't get lost, may I have permission to hand these to the jury?
- THE COURT: Through the bailiff, yes, permission to publish to the jury is granted.
- Q. (BY MR. LOW) This comes through a little bit better for you, Doc -- I'm sorry -- Doctor.

1 And you got some decent resolution on the screen 2 there? 3 Α. Yes. And does this picture, for some reason, 4 5 come out better for you to be able to describe -well, let's do it this way. How do you describe 6 7 that wound? 8 Very similar to the way I described the 9 ones on the back of the right hand. 10 Is this a good example of the term dicing Q. 11 that you mentioned? There are actually, if I could --12 Α. 13 Would you like it instead? Q. 14 Α. Can I do the circle thing again? 15 Q. Sure. Help yourself. 16 MR. BLONIGEN: Judge, is that 17 function on the monitor so he can draw on it? 18 THE COURT: Should be. 19 MR. BLONIGEN: Okay. 20 THE COURT: Yes. 21 That's probably the best point on the Α. 2.2 whole photograph that has that kind of angled, 23 bird beak like look to it that you kind of 24 associate with a small cube of glass. The rest of

it is less classic for what I would call a dicing

- 1 laceration. These could be caused by pieces of
 2 glass, too.
 - Q. (BY MR. LOW) Thank you. Let me see if I can ask you this, then. So if I have a cube of glass, can we deal with that?
 - A. Yep.

2.2

- Q. And now I'm going to have it contact the skin. We'll call that the skin there; okay? Is it fair to say that if this corner here stabs directly like a bird beak, the likely wound that it's going to create is similar to the star shape? It's got a little depth to it. And I'll color in the part that is the part that goes inside or penetrates the skin. And this is below the surface with the dots. Is that accurate?
- A. It's the most complicated explanation I've ever seen of it, but sure.
- Q. You're much better educated and smarter than me. How would you say it to make it simple?
- A. How I described it earlier. It looks like a bird beak pecked at the skin.
- Q. Great. And this is the cube that does it; right?
- A. Correct.
- Q. Now, what if we take the same cube,

- though, and we got the edge there, and now we take our skin and we move it across that surface of the cube, what kind of mark will it leave then?
 - A. A linear superficial laceration or scratch, if you want to call it that.
 - Q. Like the one seen here on your monitor, sir?
 - A. Sure.

- Q. So based on the direction of those scratches on the arm, if the arm is outstretched and the glass is fixed and it's moving across the glass, are those wounds seen in Exhibit 120 consistent with that movement?
- A. Not really with the movement you just made with your arm.
- Q. Well, are those -- instead of focusing on me, then, are those cuts on that arm consistent with someone whose arm is traveling through glass?
- A. It's consistent with glass moving across the arm in the direction indicated by those injuries.
 - Q. Thank you, sir.
- 23 MR. LOW: Everybody got a chance to
 24 look at that? Okay. Thank you, ma'am.
 25 Appreciate it.

1 THE BAILIFF: Uh-huh. 2 (BY MR. LOW) And again, I'm -- I want to Ο. 3 make sure that we're fair to you and we have things that accurately describe what you're trying 4 5 to show us. Next one I'd like to mark as T as in -- well, I forget the phonetic for T. 6 7 I'll get in trouble with those guys. 8 MR. LOW: Your Honor, I'd like to 9 move into evidence what's been marked as T as in 10 Tango for identification. 11 THE COURT: Any objection? 12 MR. BLONIGEN: Your Honor, I would 13 note these are the scene photographs. Mr. 14 Norcross will be testifying about them. We did 15 end up a little out of order on the witnesses 16 here. But those are taken at the scene, and we 17 will be admitting similar photographs, so I have 18 no objection. 19 THE COURT: Okay. Exhibit T is 20 received, then, and the observation or concern is 21 noted. Thank you. 2.2 Q. (BY MR. LOW) Sir, if you could clear 23 that green circle on your screen there, please. 24 I'm sorry. I don't know how. Α. 25 MR. LOW: I don't know how to do it.

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      The judge knows.
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                     THE COURT: It's the lower left.
 3
                    MR. LOW: She's good at it, she can
      do it.
 4
 5
               (BY MR. LOW) All right. Then what I'm
          Ο.
 6
      trying to show you is I know you were trying to
 7
      describe the injuries on the forearm, and you were
 8
      using scientific terms. Does this picture
 9
      accurately describe where those injuries are on
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      the forearm that you were describing?
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               Yes, it does.
          Α.
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               And can you just circle them there and
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      just point them out so we can make sure we're all
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      clear on that with the green circle thing?
               The resolution is really blurry on the
15
          Α.
16
      screen, so.
17
          Q. All right, then. Thank you.
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                    MR. LOW: Thank you, sir. I
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      appreciate your time. That's all I have.
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                    MR. BLONIGEN: Very briefly
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      follow-up, Dr. Carver.
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                     THE COURT: You may proceed with
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      redirect.
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REDIRECT EXAMINATION

BY MR. BLONIGEN:

2.2

- Q. We talked about dicing, and you used a term I don't think you were asked to explain, eccentric marginal abrasion. What's that?
- A. In forensic pathology textbooks when they talk about gunshot entry wounds, one of the ways that you can distinguish an entry from the exit is the presence of a marginal abrasion. And it's just an exposure of underlying soft tissue around the central defect created by the bullet, by the bullet pushing on the skin, deforming it before it finally breaks through, and abrading the edges all the way around. If a bullet enters the skin at an angle, you can see how that abrasion would be accentuated on the side of the bullet that's closest to the skin. So you end up with an eccentric looking thing with a much wider margin around that one edge.
- Q. Now, you talked about blunt force and you were asked is that consistent with a fist punching a window; right?
 - A. Correct.
- Q. Is it also consistent with many, many, many, many other things?

- 1 Α. Sure. 2 And, in fact, we can suffer blunt force Ο. 3 trauma when we fall? Α. 4 Yes. 5 And oftentimes people do, in fact, fall Ο. very hard when they're injured fatally, don't 6 7 they? 8 Α. Yes. 9 Q. And neither of these wounds on the hand, 10 then, were particularly dicing abrasions, you said 11 they were blunt force; correct? 12 As I explained with the pictures, Α. 13 actually the one that looked best for the dicing 14 was that little bird beak injury on the upper arm. 15 Q. Okay. And let's talk about that upper 16 arm just a bit. You pointed that out for us. 17 can't say exactly the same thing about those kind 18 of long sideways scratches, can you, that that has the same characteristics? 19 20 THE COURT: Okay. 21 They look different, but my --Α.
 - THE COURT: My apologies. Make sure that -- there we go. Thank you very much.

 A. They look different. They could be

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- Q. (BY MR. BLONIGEN) Okay. And these cubes of glass, I think we discussed, have pretty sharp edges?
 - A. Yes, they do.

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- Q. So when we talk about blunt force trauma, it can occur all sorts of different ways. It's just trauma that isn't caused by a sharp-edged instrument; correct?
 - A. Correct.
- Q. And the fact that it's a blunt force trauma doesn't mean that any degree of great force was used to inflict the trauma, does it?
- A. Not necessarily.
 - Q. And do you see any definitive indicators of substantial force in that blunt force trauma to the hand?
 - A. None of the injuries are deep.
- 18 Q. Yeah.
- 19 A. I didn't note any broken bones in the 20 hand or the forearm.
- Q. Okay. People punch solid objects or pretty stout objects, they'll break their bones in their hands lots of times?
 - A. Well, they can.
 - Q. Yeah. Sometimes they don't?

1 A. Correct.

2.2

- Q. Now, you were asked about trajectory, and you answered many of those questions. But this glass and particularly tempered glass also have potential to alter the trajectory of the bullet?
 - A. Yes, it does.
- Q. Okay. And in fact, does glass commonly alter the trajectory of bullets?
 - A. Yes, it does.
- Q. Now, tempered glass is a little more than our window glass in our average house window. Do you know of any specific difference between the two as far as altering the trajectory? Would tempered glass be more likely to alter the trajectory?
- A. I don't know comparisons between ordinary household glass and tempered glass, but I know there are studies that talk about the deflection of a bullet when it strikes tempered glass.
- Q. And then considering trajectories, should you always consider what tissue the bone passed through and whether it did hit -- excuse me, let me back up. That was a bad question. Should you consider whether it hit bone?
 - A. Yes.

1 Q. Should you consider what tissues it went 2 through? 3 Α. Yes. And you also indicated that how the 4 5 person's positioned can change things, can't it? 6 Α. Yes. 7 Ο. And when something happens, the person 8 might not be laying flat on their back like they 9 are on the autopsy table? 10 They almost never are. Α. 11 So forensic pathology is great stuff, but Ο. we can't answer every single question with it, can 12 13 we? 14 Α. That's true. 15 MR. BLONIGEN: I believe that's all 16 the questions I have, Your Honor. 17 THE COURT: Thank you very much, 18 Counsel. 19 Anything on recross, Mr. Low? 20 MR. LOW: Yes, sir. Thank you. 21 RECROSS-EXAMINATION 2.2 BY MR. LOW: 23 Q. Sir, if I asked you to look at that --24 that hand, that blunt force trauma on the hand, 2.5 and I asked you to tell me, was that injury caused from someone falling on the ground versus punching a window, would you be able to tell me?

A. Could you repeat the question?

2.2

- Q. Yes. If I showed you that picture and I asked you to tell me whether that blunt force trauma was caused by someone falling to the ground or from someone punching a glass window, would you be able to tell us?
- A. Let me think about this. Certainly these are consistent with someone hitting something solid such as a tempered glass window, yes.
- Q. Would it be unfair for me -- or let me ask you this way. Would I be asking you to guess which one of the two happened, someone falling to the ground or someone hitting a plate glass window -- I'm sorry, a tempered glass window?
 - A. Say that again.
- Q. Would I be asking you to guess if I asked you to tell us which one of the two it was?
- A. I think it's possible it could happen either way.
 - Q. Well, which way did it happen?
- A. I'm telling you there are multiple possibilities.

- Q. You'd have to guess; right?
- 2 A. I couldn't say for certain.
 - Q. Maybe I can say it to you this way. If I asked you if that blunt force trauma was caused by someone falling to the ground, you'd have to quess; right?
 - A. I'm trying to get a hang of what exactly you're asking.
 - Q. Is that -- want me to ask it again?
 - A. Please.

2.2

- Q. If I asked you to tell us that blunt force trauma in this exhibit was caused from someone falling to the ground, you'd have to guess; right?
- A. I'd have to say there are circumstances under which it would be possible to be caused by a fall to the ground, yes.
- Q. Well, was there any other evidence that you had access to that would help you maybe rule out that it was caused by someone falling to the ground?
 - A. I need you to repeat that one again.
- Q. Yeah. Did you find any other evidence that would help you rule out that somebody -- that -- that injury was caused from someone

- 1 falling to the ground? 2 I don't have any other evidence that 3 rules it out. 4 Okay. Well, let's see. Is it true that Ο. 5 glass fragments were found impregnated in the 6 knuckles of that right hand? 7 Knuckles is inaccurate. Α. 8 Q. Well, you say what it is accurate, then. 9 There was glass found in, I believe, this 10 area at the base of the right fifth finger. 11 Ο. What kind of glass? 12 Glass. Α. 13 Any idea what kind? Q. 14 Α. I -- I assume it has something to do with the broken auto window. 15 16 Q. Yes. 17 That would be most likely. Α. 18 Thank you. Did you find any gravel or Q. 19 dirt impregnated in this general area? 20 I don't recall any; but to rule it out, I 21 would have to look at any pictures that were taken 2.2 before the hand was cleaned up.
 - Q. Did you look at the hand when you did your inspection?
 - A. Yes, I did.

24

- Q. Are you supposed -- are you trained to look for things like dirt and gravel impregnated in the skin such that it causes an injury to the skin?
 - A. Well, there's often dried blood that may include things that aren't identifiable because they're mixed with dried blood.
 - Q. Well, did you indicate in your report anywhere that you found items impregnated in the skin that appear to be gravel or dirt?
 - A. No, I didn't.

2.2

- Q. And if you had, you would have put that in there; right?
 - A. Yes, I would have.
- Q. So the only thing you did find impregnated in that area that broke the skin and remained was glass shards; correct?
 - A. Minute glass fragments, yes.
- Q. So if I asked you now to pick between what most likely caused that blunt force trauma, and that is a glass window versus falling to the ground, does it get a little easier now to figure out which one of the two it more likely was?
- A. I've already said that they're consistent with striking the window. I can't be absolutely

- certain it isn't the result of falling on glass, as with the injuries to the forearm and upper arm.
 - Q. Now, I heard tell earlier in the week, Monday, that there was no fracture to the bones in the hand.
 - A. I'm not aware of any fractures in the bones of the hand.
 - Q. Sure. And is that because you were told to actually look at the hand and x-ray it and please determine if there could be any fractures of any kind in the bones of the hand?
 - A. I honestly don't remember that.
- Q. Well, is it fair to say that no one asked you to take an x-ray of the right hand?
 - MR. BLONIGEN: Your Honor, I'm going to object. That's directly inconsistent with the statement that an x-ray study was done in the report.
- MR. LOW: Okay.

2.2

- MR. BLONIGEN: If he has something in the report to refer to show that wasn't done or wasn't done at the mortuary -- Your Honor, we have the x-rays.
- THE COURT: Okay. Well, I note that
 the question may also be outside the scope of

```
1
      redirect, but why don't I sustain to the objection
 2
      on the grounds stated; and then maybe we can
 3
      address it in a different fashion if you want to.
                     MR. LOW: Yes, sir.
 4
                     THE COURT: Go ahead.
 5
                (BY MR. LOW) On redirect, Mr. Blonigen
 6
          Ο.
 7
      asked about blunt force trauma. This now goes to
 8
      that question. And, sir, do you have your report
 9
      before you?
10
          Α.
               I do.
11
               And do you note anywhere in your report
12
      where you took an x-ray of the right hand?
13
               I need to go through it.
          Α.
14
               Please, sir, take your time.
          Q.
15
          Α.
               The only sentence I've got in my report
16
      that talks about radiographs of the torso, and it
17
      does not describe an x-ray of the right hand.
18
               Thank you, sir. So as far as you know,
          Q.
19
      there may be some minor fracturing in those right
20
      knuckles of this person's hand, and you wouldn't
      know one way or the other, would you?
21
2.2
          Α.
               T wouldn't.
23
                     MR. LOW: Thank you. That's all I
24
      have, Your Honor.
```

THE COURT: Thank you very much,

1	Counsel.
2	Dr. Carver, you may be excused. You're
3	free to go. Thank you, sir, for your time.
4	Everybody on the jury doing well? We're
5	okay? Okay.
6	The State may call its next witness.
7	MR. ITZEN: Your Honor, State would
8	call Ervin Andujar.
9	THE COURT: Mr. Andujar, please come
10	up to the Clerk of Court here. She'll give you
11	the oath, and then you'll sit over to the other
12	side. Right there is fine.
13	THE CLERK: You do solemnly swear
14	that the testimony you will give in the case
15	before the Court will be the truth, the whole
16	truth, and nothing but the truth, so help you God?
17	THE WITNESS: I do.
18	THE CLERK: Around the table and
19	right over there.
20	THE COURT: Work you way through.
21	The seat is over here. Thank you.
22	ERVIN ANDUJAR,
23	called for examination by the State, being first
24	duly sworn, on his oath testified as follows:
25	

1		DIRECT EXAMINATION	
2	BY MR. I	TZEN:	
3	Q.	Good afternoon, sir.	
4	Α.	Good afternoon.	
5	Q.	Could you please state your name.	
6	Α.	Ervin Andujar.	
7	Q.	And, sir, where are you from?	
8	Α.	Dominican Republic.	
9	Q.	And is English your first language or	
10	your second language?		
11	Α.	Second.	
12	Q.	If there's something you don't	
13	understand, let me know, and I'll try to rephrase		
14	it.		
15	Α.	Okay.	
16	Q.	How long have you been in Casper?	
17	Α.	About seven years.	
18	Q.	Were you here in Casper on October 3rd of	
19	last year?		
20	Α.	Yes, sir.	
21	Q.	Where were you working then?	
22	Α.	Racks, the bar.	
23	Q.	And what did you do for them?	
24	Α.	Bounce. I'm a bouncer.	
25	Q.	All right. And what time did you go to	

```
1
      work on October 3rd?
 2
               Like 7:00, 8:00, or 9:00, something like
 3
      that.
 4
               All right. And in the evening?
          Ο.
 5
               Yeah, at night.
          Α.
 6
               When you got there, was it a busy
          Q.
 7
      evening?
 8
          Α.
               Well, it was little bit busy, not like
 9
      crazy.
10
               All right. Did you meet the defendant
          Q.
11
      that night?
12
               Huh?
          Α.
13
                Did you meet the defendant that night?
          Q.
14
          Α.
               Yeah.
15
          Q.
                Was he with anyone?
16
          Α.
                No.
17
               And where did he sit inside the bar?
          Q.
18
          Α.
               He sit several places.
19
                All right. Where did you first see him?
          Q.
20
                Well, he was sitting in the corner of the
          Α.
21
      bar.
2.2
          Q.
              All right. And you say he kind of moved
23
      to different places?
24
               Uh-huh.
          Α.
25
                Now, let me show you State's 343.
          Q.
```

```
1
                    MR. ITZEN: Your Honor, if I may
 2
      approach.
 3
                    MR. LOW: No objection.
 4
                    THE COURT:
                                You may.
 5
                    MR. ITZEN: Your Honor, I don't
 6
      believe there's an objection to 343, and I would
 7
      offer it at this time.
 8
                    MR. LOW: That's correct, Your
      Honor.
9
10
                     THE COURT: Okay. Exhibit 343 is
11
      received.
                Thank you.
12
                    MR. ITZEN: If I may approach,
13
      Judge.
14
                    THE COURT: You may.
15
                    MR. ITZEN: Thank you.
16
             (BY MR. ITZEN) Mr. Andujar, does that
          Q.
17
      look familiar?
18
              Yes, sir.
          Α.
               What is it?
19
          Q.
20
               The corner of the bar. The bar where
21
      he's sitting over here.
2.2
          Q.
               All right. Would it show where the
23
      defendant was first seated when you noticed him?
24
          Α.
              Yeah.
25
               I'm going to put it on the overhead, and
          Q.
```

- 1 you'll be able to see it on your computer screen 2 in just a moment. 3 Α. Okay. 4 On your computer screen, you can draw 5 circles, kind of like John Madden football. 6 Α. Uh-huh. 7 Q. Can you show us where he was seated? 8 Α. Yeah. About right here. 9 Q. All right. Now, did he ever leave that 10 spot? 11 Yeah. Α. 12 And where would he go? Q. 13 He walk outside, he walk several times Α. 14 outside, in and out. 15 Q. All right. Do you know about how many 16 times he went in and out that evening? 17 Α. No. He went several times. I can't 18 remember how many time. 19 Would he stay outside for any long Q. 20 periods of time? 21 Maybe 10, 15 minute, something around 2.2 there.
- Q. And when he would come in, did you notice anything different about his clothing?

2.5

A. Well, he went in and out. One time, he

- 1 put a different hat. 2 Q. All right. 3 A. He no have no hat, and after that, he put a hat on it. 4 5 Did you end up speaking with the defendant that evening? 6 7 A. Yes, some. I asked him if he leaving one 8 time. And he say, You giving away my position. 9 And I kind of wondered why he say that to me. 10 Q. All right. Where did that conversation 11 occur? Well, because I hear some conversation 12 Α. 13 that he been overseas. 14 Q. Hang on just a second. Where in the bar did that conversation occur? 15 16 Α. By that spot right there, the same spot I 17 marked. He was talking right there, and I just 18 seen him right here. 19 Q. All right. 20 The conversation --And you asked him why are you going 21 Q. 2.2 outside or are you leaving? 23 Α. Yeah. I ask him, Are you leaving?
 - And he say several time, You giving away my position.

Q. Did you understand what that meant, you're giving away my position?

2.2

- A. Well, kind of, just kind of -- I kind of say, why you say kind of stuff like that, you know, make me think a little bit why he saying stuff like that.
- Q. All right. And did that seem out of the ordinary, that comment to you, you're giving away my position?
- A. I wondering why he say that. I sort of keep my eyes, you know. That made me uncomfortable.
- Q. Okay. Now, did you talk to him a second time that evening?
- A. Yeah. I asked him again if you leaving, you know, you have to stay in or out, you know, because you keep going in and out.
 - Q. All right.
- A. And that make me more uncomfortable still.
 - Q. All right. And this time, was he seated on the other side of the bar?
- A. Yeah. He -- it was a table, too, by when you go to the bathroom, he sit -- he was sitting there for a few minute, and he left the beer over

```
1
      there and went outside again.
 2
               All right. Let me show you 344.
          0.
 3
                     MR. ITZEN: Your Honor, if I may
 4
      approach.
 5
                     THE COURT: You may.
 6
               (BY MR. ITZEN) Do you recognize that,
          Q.
 7
      sir?
 8
          Α.
               Yeah.
 9
          Q.
               What is that?
10
               It's the corner of the bar, too.
          Α.
11
                Is it just the other side of the bar?
          Ο.
12
               The other side of the bar, he sitting
          Α.
13
      right there, too.
14
          Q.
               All right. Is that where that
15
      conversation took place, the second time you
16
      talked with him?
17
               No.
                     That conversation when I was -- he
          Α.
18
      sitting there the last time.
19
          Q.
               Okay.
20
               That's when I told him he need to leave.
21
               All right.
          Q.
2.2
          Α.
                I kick him out because he give me a
23
      reason to kick him out.
24
          Q. All right. We're going to talk about
2.5
      that a little bit.
```

```
1
          A. Okay.
 2
                     MR. ITZEN: Your Honor, State would
 3
      move to introduce -- I believe it was 342, perhaps
      I got the number wrong.
 4
 5
                     THE COURT: I believe 344.
 6
                     MR. ITZEN: Yes, sir.
 7
                     MR. LOW: No objection.
 8
                     THE COURT: Okay. Exhibit 344 is
 9
      received.
10
                     MR. ITZEN: And may I retrieve that,
11
      Judge?
12
                     THE COURT: Yes, you may.
13
                     MR. ITZEN: Thank you.
14
                     THE WITNESS: You're welcome.
15
          Q.
               (BY MR. ITZEN) Sir, does that kind of
16
      show where he was the last time you talked with
17
      him?
18
          Α.
               Yes. More that way, like, three more
19
      stool -- chair to the right.
20
               Okay. And that was towards the end of
          Ο.
      the evening?
21
2.2
          Α.
               Uh-huh. Yes, sir.
23
          Q.
               What did you notice when you went over to
24
      talk to him towards the end of the evening?
2.5
               Well, he dropped something, and I asked
          Α.
```

him what it was.

2.2

2.5

- Q. All right. Could you describe to the ladies and gentlemen of the jury what he dropped, what it looked like to you?
 - A. Yeah. I asked him what it was, and he tell me it was a joint of marijuana.
 - Q. Of marijuana?
 - A. Yep. Yes, sir.

THE COURT: Counsel, let me ask the Defense. We haven't directly addressed this, but the other acts instruction, would you want the Court to give that at this time?

MR. LOW: Your Honor, you can give that when you think it's most appropriate.

MR. BLONIGEN: Your Honor, if I might, I did have an objection to one portion of that instruction, though. The Court may give it in regards to the drug use at this time, I think that would be appropriate; but not as to other items mentioned in the instruction because there is a -- there is an issue there, Judge, with one of those items.

THE COURT: Okay. Let me do this in an abundance of caution because I believe the Defense pretrial requested this instruction, and I

think it should be given, even though we're in the middle of the trial; and I'll modify what I'm giving here. This instruction will also be given to you at the end of the case, maybe in a little bit modified form, to address what we call other acts evidence. But I'll mark this as Instruction Number 5.

2.2

2.5

You are about to hear a certain category of evidence called other acts evidence. Here, that evidence is that of the defendant's activities on the evening of October 3, 2013, and alcohol and drug use of the defendant on the evening.

You may not use other acts evidence to decide whether the defendant committed the crime charged in the Information. In order to consider the other acts evidence at all, you must first unanimously find beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crime charged in the Information. If you make that finding, then you may consider the other acts evidence to decide the course of conduct, the natural progression of the events, and intent.

Other acts evidence must be proven by a

preponderance of the evidence, that is, you must find that the evidence is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt.

2.1

2.2

2.5

If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proved by a preponderance of the evidence, then you should disregard such evidence.

Remember, even if you find that the defendant may have committed these other acts, this is not evidence that he may have committed the crime charged in this case.

You may not convict a person simply because you believe he committed these other acts. The defendant is on trial for the crime charged, and you may consider the evidence of these other acts only on the issues of course of conduct, natural progression of events, and intent.

So thank you. And as I mentioned, this instruction maybe will be modified, but at least as to what I just read, that will be given to you at the end of the trial so you can review that.

So thank you. Counsel, I'm sorry for the

- 1 interruption. You may proceed. 2 MR. ITZEN: Yes, sir. 3 (BY MR. ITZEN) Mr. Andujar, we'd left Ο. off with he told you it was a marijuana joint? 4 5 Α. Yes. What did you tell him about that? 6 Ο. 7 He say it's not allowed -- I told him Α. 8 it's not allowed in here, he need to leave. 9 All right. About what time in the Q. 10 evening did that occur? 11 About 12 something, I mean, about Α. 12 midnight, something around there. 13 All right. Q. 14 Α. 12 something, yeah. And when you kick a person out of the 15 Q. 16 bar, how is that done? Do you just kind of, You 17 got to go right now, or do you let them finish 18 their drink? Well, you know, you cannot just grab a 19 20 person and just throw them out, you know.
 - A. Well, you know, you cannot just grab a person and just throw them out, you know. If sometime if he did -- you have to let him finish his drink; sometime let him finish his drink if they not do nothing physical, if they really calm about it.

2.2

23

24

25

Q. All right. And how was the defendant

when you told him he had to leave?

1

4

5

6

7

8

9

10

11

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2.2

23

- A. He tell me, I going to finish my drink and I leave.
 - Q. All right. And is that what he did?
 - A. Yeah. Soon he finish his drink, he left.
 - Q. All right. You said earlier in the evening you had overheard a conversation with the defendant that made you nervous or --
 - A. Yeah, made me uncomfortable.
 - Q. What was the defendant saying then?
 - A. He say he used to go to different country and shoot people and stuff like that, so I got really uncomfortable.
 - Q. Did you tell him that's not appropriate?
 - A. Yeah. I know -- I say, You know what, I don't want to hear it, whatever is in the past, you keep that stuff, and he told me he going to tell me anyway. So I say, I don't want to hear it, and I get up and walk away.
 - Q. Was that when he was sitting in that corner?
 - A. In that corner, the first corner I pointed out.
- 24 Q. Yes, sir.
 - A. Yeah, in that spot.

1 Q. Now, once he left the bar for good, did 2 you escort him to the door or how did that work? 3 Well, he went outside and I was watching. 4 The car was back to the -- like, to the highway, 5 and the car was facing to, like, towards the 6 building, you know. 7 Q. All right. 8 Α. The car was running, too. 9 Q. And he just kind of walked out by 10 himself? 11 Yeah, uh-huh. Α. 12 Now, did you meet Kade Baldwin that Q. evening? 13 14 Α. Yeah. It was his birthday. 15 Q. It was his birthday? 16 Α. Uh-huh. 17 Who was he with? Q. 18 Α. He was with two more person. 19 All right. Now, did Mr. Baldwin go in Q. 20 and out as well? 21 You know, if he did, I did not see it. 2.2 Q. All right. Did there become a time that 23 evening you noticed that Kade had a knife on his 24 hip?

Yes, sir.

Α.

- Q. What's your policy about weapons inside Racks?
- A. Well, if I see the knife, I ask him, put it in the car or leave it in bar.
- Q. All right. Did you take a knife away from Kade?
 - A. He hand it to me. I ask him how big is that knife, and he said, Look. And he give it to me and I give it to bartender.
 - Q. All right. Sorry to interrupt. Can you describe it to the ladies and gentlemen of the jury.
- A. Yeah, about knife?
- 14 Q. Yes, sir.

8

9

10

11

- 15 A. The knife, it wasn't, like -- it wasn't
 16 too big of a knife. You know, for people in the
 17 bar, if you drinking, I don't let them be with a
 18 knife in the bar.
- Q. All right. More of like a working person's type knife?
- A. Uh-huh. Yeah, it wasn't big. It was
 little knife. But still, people drink, you don't
 want no knife in the bar, you know?
- 24 Q. Sure.
- 25 A. Yeah.

```
1
          Q.
               Had he been causing any trouble with it
 2
      or anything like that?
 3
          Α.
               No.
 4
               And once you get it, where does it go
 5
      from there? What do you do with it?
 6
               The knife?
 7
               Yes, sir.
          Q.
 8
          Α.
               I give it to the bartender.
 9
               All right. And where does it go? Do you
          Q.
10
      have a drawer or a box?
11
              Yeah, there's a drawer over there. If --
          Α.
12
      you know, we leave it there, if they ask, we give
13
      it back when they leave.
14
          Ο.
              All right. Did Mr. Baldwin ever get his
      knife back?
15
16
          Α.
               No, I don't think so. Nope.
17
               Now, you say it was his birthday that
          Q.
18
      evening?
               Yes, sir.
19
          Α.
20
               Was he causing any problems inside the
          Q.
21
      bar?
2.2
          Α.
               No, not that I see, no.
23
          Q.
               Anything that made you uncomfortable or
24
      nervous?
```

Α.

No.

- 760 1 Q. How intoxicated would you say Mr. Baldwin 2 was? 3 Well, he was a little bit drunk. He was, Α. you know, yeah. 4 5 And why do you say that? Q. Well, because he was head down on the 6 7 table. 8 Q. All right. And we'll talk a little bit 9 about that. Was there a time that evening Mr. 10 Baldwin's friends left him? Yeah, they left him. Yeah. 11 Α. 12 Do you recall about what time that was? Q. 13 It was, like, midnight or something like Α. 14 that, yeah. 15 Q. Around midnight? 16 Around midnight, yeah. Α. 17 What did Mr. Baldwin do after his friends Ο. 18 left?
- 19 A. Oh, he just sitting by himself in the
- 20 table and he pass out. I said, Hey it's time to
- 21 get you a taxi.

- Q. All right. And where was he -- where was
- 23 Mr. Baldwin seated inside the bar?
- A. He seated by the pool tables.
 - Q. Let me show you 341.

```
1
                     MR. ITZEN: If I may approach,
 2
      Judge.
 3
                     THE COURT: Yes, you may.
 4
                (BY MR. ITZEN) Over in that area of the
          Ο.
      bar, sir?
 5
 6
               Yeah, somewhere around here.
          Α.
 7
          Q.
               All right.
 8
          Α.
               By the pool table over here.
 9
                     MR. ITZEN: Your Honor, State would
10
      move to introduce 341. I don't know if Mr. Low
11
      has an objection.
12
                     THE COURT: Any objection from the
13
      Defense?
                     MR. LOW: No, sir.
14
                     THE COURT: Exhibit 341 is received.
15
16
                     MR. ITZEN: Thank you.
17
          Q. (BY MR. ITZEN) And Mr. Andujar, can you
18
      kind of show us where Mr. Baldwin was?
19
               He was by the pool table around here, you
20
      know, kind of hard to see for the angle.
21
          Ο.
               Sure.
2.2
          Α.
               But it was around here on the pool table,
23
      in this area around there.
24
          Q. All right. Now, you said he had his head
25
      down?
```

1 A. Yes, sir.

4

5

6

7

8

9

- Q. Can you explain that to the ladies and gentlemen of the jury.
 - A. Yeah. He was laying down the table, his head down. His head was laying down the table.
 - Q. And when a person is like that, what do you do?
 - A. Call them a taxi.
 - Q. All right. It's time to go home?
- 10 A. Yeah. We don't kick him out, you know,
 11 if somebody -- especially if it's, you know, I
 12 don't want to throw nobody out in the cold
 13 weather.
- Q. Sure. Do you wake Mr. Baldwin up then?
- A. Yeah. I told him, Hey, I going to call you a taxi. And he look and he say, Hey, my friend out there.
 - Q. Pointing out the doors?
- 19 A. Yeah. He say, My friend outside there.
- I said, Hey, I get you a taxi. He say, I'll be
- 21 back.
- Q. All right. So you offered him a taxi
- 23 twice?
- 24 A. Yes, sir, yep.
- Q. And does he look outside and say --

- A. Yeah, he see the light and the car running. He tell me that was his friend. I was watching the door the whole time.
 - Q. All right. Do you and Mr. Baldwin then walk to the door and he leaves? Is that how that happened?
 - A. Yeah. He leaves, and he got in the car.

 He say, My friend out there. I say, Hey, I'll get

 you a taxi. And he said, No, my friend out there

 and he went outside as soon as that happened.
 - Q. And once he's in the parking lot, where does he walk, what direction or?
 - A. Like -- you know what they, like -- it was like a gas meter over there.
 - Q. Yes, sir.

2

3

4

5

6

7

8

9

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12

13

14

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16

19

20

21

2.2

23

- A. It's in the picture. I can show you.
- 17 Q. Yes, sir. I believe there may be one in evidence. Let me take a moment.
 - Mr. Andujar, I'm going to first show you what's been entered into evidence as 331. What is that, sir?
 - A. The bar.
 - Q. Is that the front doors of it?
- 24 A. Yes, sir.
 - Q. And were these the doors, Mr. Andujar,

```
1
      that you were looking out?
 2
          Α.
                Yes, sir.
 3
                And then 333, which has already been
          Q.
      entered into evidence, do you recognize that, sir?
 4
 5
          Α.
                Yes, sir.
 6
                And what is that?
          Ο.
 7
          Α.
                It's where that happened. Right there in
 8
      that spot around there.
 9
               All right. And is that to the west of
           Q.
10
      the doors?
11
                Yeah. You know, you go -- the door is a
          Α.
12
      little bit that way, yep.
                And is that the direction Mr. Baldwin
13
           Q.
14
      started walking?
15
          Α.
               Yes, sir.
16
                And then finally, 336, it's a little bit
           Q.
17
      harder to see the yellow poles. But is that
18
      generally the parking lot?
19
          Α.
                Yeah.
20
                And do you see Mr. Baldwin walk to the
           Q.
21
      car?
2.2
          Α.
                Yes, sir.
23
          Q.
                And you said its headlights were on?
24
                Yep. The car was running, yeah.
          Α.
25
                And what side of the vehicle does he walk
           Q.
```

1 up to?

2

3

4

5

6

7

8

9

10

12

13

14

16

18

19

20

21

- A. When he walk, he walk to the passenger side and pull up the handle. And it was locked, and he went to the other side, to the driver's side, and he lean in the car.
- Q. All right. Well, let me slow you down just a second. The front passenger door is where he went to first?
 - A. Yeah. He went there first.
 - Q. And he wasn't successful getting in?
- 11 A. Huh-uh.
 - Q. And as he walked across the parking lot, did Mr. Baldwin have any weapons on him that you saw?
- 15 A. No.
 - Q. Anything in his hands?
- A. Nothing.
 - Q. And once he doesn't get in the front passenger side, how does he go around the car?
 - A. He walk in the front the car and go to the driver's side.
- Q. All right. And once he gets to the driver's side of the car, what does Mr. Baldwin do?
 - A. He just lean in the car. And I thought

for a minute that he find his two friends doing, you know, being in the car having fun or something, the two.

2.2

- Q. You thought his two friends were in the car having sex?
 - A. Yes. That's what I -- uh-huh.
- Q. And what does Mr. Baldwin do with his hands when he's on the driver's side?
- A. He leaned in the car, and I watching the whole time. And I even call a couple people that work with me, the bouncer, and show it because I thought they having sex, you know. I was laughing because I thought he having sex, I mean, so he just drop.
- Q. All right. And you did a motion with your hands. Can you explain what you were doing?
- A. Yeah. He got his hand like that on the side of the car, and he, like, fell down.
- Q. And what part of the car were his hands on?
 - A. You know, like, the window right here and the thing over here, just kind of between the door, like that, leaning like that.
- Q. Kind of on the windowsill, I think they call that?

1 Α. Uh-huh, yep. 2 Do you ever see him punch the window? Q. 3 Α. Nope. No. And how long is he in that position would 4 Ο. 5 you say? 6 Well, I don't know. Can't say. Maybe --Α. 7 Pretty quick? Ο. 8 Α. Pretty quick, yes. Maybe five, ten 9 minute, something like that, because I call the 10 people to come and see in the door what's going on 11 because he was, you know. 12 Q. When his hands are on the windowsill, 13 what happens to him? What do you see? 14 Α. You don't see nothing. He just standing 15 there. 16 All right. And how do you know that Q. 17 something has happened? 18 Yeah, because I see him drop and the car Α. So we went outside --19 20 All right. Q. -- and see. 21 Α. 2.2 Q. Did you see Mr. Baldwin's body jerk back 23 from the car? 24 MR. LOW: Objection, leading. 25 MR. ITZEN: I'll rephrase.

```
1
                     THE COURT: Would be. I'll sustain.
 2
               (BY MR. ITZEN) Was there any movement
          Ο.
 3
      from Mr. Baldwin's body?
               He fell face first in the ground.
 4
          Α.
 5
               All right. And you said he fell face
          Ο.
      first on the ground; is that correct?
 6
 7
          Α.
               Yes, sir. Going up there, I see the
 8
      puddle of blood.
 9
               All right. When he falls face first,
          Q.
10
      what do you think has happened at that point?
11
               Well, I thought he was laughing still,
12
      you know. After the car take off with someone,
13
      I -- we thought it was something serious happened.
14
          Q.
               And did you ever hear a gunshot?
15
          Α.
               No.
16
               How loud is the music inside Racks?
          Q.
17
               You know, it's close, everything is close
          Α.
18
      inside of it, you know. All the music stay
19
      inside. You cannot hear nothing outside.
20
               All right. Now, once Mr. Baldwin's body
          Ο.
      is on the ground, what does the car next to it do?
21
2.2
          Α.
               Left.
23
               All right. Can you describe how it left?
          Q.
24
               Yeah. It went like you're heading
          Α.
25
      towards town. He go drive by the front door, you
```

- can see it. Yeah, I -- I even whistled to stop, I
 even say that.
 - Q. All right. Let me back you up just a second. When the car left, was it spinning its tires or?
 - A. Yes. It was going through the snow because there was a lot of snow, and the tires spinning.
 - Q. And once you see the car leaving, what do you do?
 - A. I went inside and grab my keys, try to follow the car. That way I can get somebody to follow him, tell them what position he's in.
 - Q. Were you -- did you go out and try to stop the car?
 - A. Yes, sir.

2.2

- Q. Can you explain to the ladies and gentlemen of the jury how you tried to stop the car.
- A. I yell and tell him to stop, and he keep going. So I ran inside and I grab my keys, try to take off, and my car can't go anywhere. My wiper was froze, the windshield.
- Q. When you yelled at the guy to stop, did you get his attention?

```
1
          Α.
               No. He keep going.
 2
               Did you recognize the driver at all?
          Q.
 3
          Α.
               Yes.
               And who was the driver?
 4
          Ο.
 5
              Right there.
          Α.
 6
               All right. Can you tell me what color
          Q.
 7
      jacket he has on -- or let me ask you this. Is it
 8
      the fellow in the middle? Is that who you pointed
 9
      to?
10
          A. Yes, sir.
11
                    MR. LOW: Objection, leading.
12
                    THE COURT: Would be leading. Hold
13
      up. I'll sustain.
14
          Q. (BY MR. ITZEN) Can you describe what
      he's wearing to me today?
15
16
          Α.
               He had, like, a -- that night?
17
          Q. No, today. Can you describe what he's
18
      wearing?
19
               He's the one in the middle, the one with
20
      the suit right there.
21
                    MR. ITZEN: That's what I was trying
2.2
      to get to, Judge. I apologize. State would ask
23
      that the record reflect he's identified the
24
      defendant.
```

THE COURT: Shall so reflect.

- Q. (BY MR. ITZEN) Did you go over to where
 Mr. Baldwin's body was?
 A. Yes.
 Q. Can you describe what that looked like?
 A. Say that again.
 - Q. Can you describe what you saw when you went over there?
- A. Yeah. He got blood. It was a puddle of blood in the snow.
- 10 Q. All right. Did you think he had been stabbed?
 - A. I thought for a minute he'd been stabbed because I no heard no gunshot, no gunshot, nothing like that.
 - Q. All right. And after you checked on Mr. Baldwin, what did you do, sir?
- 17 A. After I went out there?
- 18 O. Yes, sir.

7

12

13

14

15

16

- A. Yeah, so I -- after I went over there,

 after he left, I just tell him to stay with me,

 don't die, something like that. I think I say

 something like that, too.
- Q. Were you asking people to call 911?
- A. Yeah.
 - Q. And was that Ashlee Logan, I believe?

```
1
          Α.
                Yeah.
 2
                     MR. ITZEN: Your Honor, if I could
 3
      just have a moment.
 4
                     THE COURT: Yes, sir.
 5
                (BY MR. ITZEN) Now, Mr. Andujar, prior
          Q.
 6
      to this night, did you know Kade Baldwin?
 7
                I seen him before.
          Α.
 8
          Q.
               All right.
 9
                You know, driving around, you know.
10
                Did you guys work together or anything
          Q.
11
      like that?
12
                No. Not that I know, no.
          Α.
13
                And you're not an electrician, are you?
          Q.
14
          Α.
                No, nope.
15
          0.
                Now, when you went out to the body, did
16
      you move it at all or try to get help?
17
                Well, it was guy -- one guy giving -- try
          Α.
18
      to help him out, give you -- how do you say it,
      C-P --
19
20
          Q.
                CPR?
21
                Yeah.
          Α.
2.2
          Q.
                All right. And he moved him?
23
          Α.
                Uh-huh, yeah. Try to give him CPR.
24
                All right. And he was face down and he
          Q.
25
      moved him to give CPR?
```

1 Α. Yeah. They moved him, yeah. 2 Which direction was Kade's head? Was it Ο. 3 towards the building or towards the --Α. Towards the building. 4 5 Okay. Now, the thing -- the times that Ο. we talked about, those are just estimates, is that 6 7 correct? 8 A. Yeah. 9 MR. ITZEN: I believe that's all the 10 questions I have. Thank you for your time. 11 Mr. Low will have a couple of questions 12 for you. 13 THE WITNESS: Yep. 14 THE COURT: Thank you very much. Cross-examination on behalf of the 15 16 Defense. 17 MR. LOW: Yes, sir. Given the three 18 o'clock hour, is this a time you would like to 19 break or you would you like me to start? 20 THE COURT: Why don't we go ahead for a while yet. 21 2.2 MR. LOW: Thank you. I just need a 23 second, then, to get set up. I just need to grab

THE COURT: Sure. That'll be fine.

24

25

something.

```
1
                     MR. LOW: Don't turn it on yet,
 2
      please. I just want to make sure I can get it up
 3
      and going, so I just need a second. Thank you.
 4
                     THE COURT: Okav.
 5
                        CROSS-EXAMINATION
 6
      BY MR. LOW:
 7
          Q.
               Afternoon, sir.
 8
          Α.
               Afternoon.
 9
          Q.
               How you today?
10
               Good. How about yourself?
          Α.
11
          Ο.
               I'm well. Thank you. Appreciate it.
12
                Sir, did we hear you right, you just
13
      testified that while watching Mr. Baldwin outside,
14
      you were watching him the entire time; is that
15
      correct?
16
          Α.
               Yes, sir.
17
                So at no point did you ever take your
          Ο.
18
      eyes off Mr. Baldwin and what was going on
      outside; is that correct?
19
20
          Α.
               Correct.
21
                Sir, is it true that you've never been in
2.2
      the military?
23
          Α.
                (Shook his head.)
24
                     MR. BLONIGEN: Your Honor --
25
                     MR. ITZEN: Judge, I don't see the
```

```
1
      relevance in that.
 2
                     MR. LOW: Well, I'll ask the
 3
      question, and then we'll see if we need
      foundation.
 4
 5
                (BY MR. LOW) Sir, is it --
          Ο.
 6
                     THE COURT: I'll allow.
                                               You may
 7
      answer.
 8
          Ο.
               (BY MR. LOW) Go ahead. Have you ever
 9
      been in the military, sir?
10
               No, sir.
          Α.
11
                Is it fair, then, to say that you don't
          Ο.
12
      have any experience with military humor?
13
               Yeah. I got -- my family is military,
          Α.
14
      too.
15
          Q.
               What military, sir?
16
          Α.
               Cop.
17
               Yes, sir. I'm talking about the United
          0.
18
      States of America --
19
          Α.
               No.
20
               -- military. You don't have any
          Q.
21
      experience with that military humor?
2.2
          Α.
               No, nope.
23
          Q.
               And I need to do a better job.
                                                 I'm
24
      supposed to get the whole question out first, only
2.5
      because that way we can make sure you're answering
```

1 the right question.

2 A. Uh-huh.

2.2

2.5

- Q. Sometimes if we answer too soon, then you may misunderstand the question, so I want to be fair to you; okay? Lastly, if you don't understand my question at any point, please don't answer it. Just say, Mr. Low, I don't understand, or can I rephrase it, however you like. But if you don't understand the question, don't answer it. Would that be okay?
- 11 A. Sure.
- 12 Q. Okay. Thank you, sir.

Sir, can you make room for the possibility that when someone says you're going to give away my position, that might be military humor?

- A. Yeah. Military stuff, yeah.
- Q. And you did learn that through your course of the evening around Mr. Knospler, that he is a former United States Marine?
 - A. Not -- say that again.
- Q. You did learn through the course of your interaction -- I'm sorry, the time spent with Mr. Knospler that he is a former United States Marine, he used to be in the Marine Corps?

- 1 Α. No. Now I know. 2 So you're saying you didn't know until 0. 3 right now? 4 Α. No. Didn't. 5 Did you learn through the course of the Ο. 6 evening that he had been in the war? 7 Α. Nope. 8 All right. Sir, if I can ask you, how 9 good is -- how good would you say your memory is 10 with regard to what happened a little over a year 11 ago? 12 Α. It's good. 13 How good? Q. 14 I remember a -- I just say what I Α. 15 remember. 16 Q. Well, are you able, in any way, to tell 17 us if your memory is perfect, has it dissipated 18 over time, has it remained the same, do you have any idea? 19 20 Well, Judge, I think he MR. ITZEN: 21 said he was pretty good was the witness's words. 2.2 THE COURT: I think it's a follow-up
 - A. Yeah. I already told you what I see and

question that's allowable, so I'll allow. You may

23

24

2.5

answer.

1 what I know.

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

20

21

2.2

23

24

- Q. (BY MR. LOW) Yes, sir. Thank you. But I'm asking you about your memory. Can you tell us if you've forgotten some things over time, some things you may not recall as well as you used to?
 - A. No.
- Q. Okay. And you believe that Mr. Baldwin was a little drunk that evening; is that correct?
 - A. Yep.
- Q. Have you ever seen anyone in that bar who was really drunk or very drunk?
- 12 A. You see people drunk in the bar, yeah. I
 13 see people drunk in the bar.
 - Q. Do you ever see someone more drunk than a little drunk?
 - A. More drunk than a little drunk? Can you explain that?
 - Q. Maybe I'll just ask it this way.
- 19 A. Okay.
 - Q. I think we got the testimony. In your opinion, he was just a little drunk; correct?
 - A. Yeah, he was.
 - Q. And do you believe that Mr. Baldwin fell asleep at the table there because he was only a little tired or do you have any idea why he fell

```
1
      asleep?
 2
               No, I don't. But maybe because it was
 3
      his birthday and he was drinking, celebrating his
 4
      birthday.
 5
               Okay. Now, you claim that you saw Mr.
          Ο.
 6
      Knospler with a marijuana cigarette?
 7
               Yes, sir.
          Α.
 8
          Q.
               Yes, sir. And did you take that
 9
      marijuana cigarette?
10
               Nope. He put it back in his jacket.
          Α.
11
               So that's fair to say, then, that you
12
      never looked inside of the item that you believe
13
      was a marijuana cigarette?
14
          Α.
               He told me.
                I understand, sir, but listen to the
15
          Q.
16
      question, please. Did you ever look inside of it?
               Inside of what?
17
          Α.
18
          Q.
               The cigarette?
19
               He just drop it and I ask him what it was
20
      and he just show me. I said that stuff is not
21
      allowed here. You need to go.
2.2
          Q.
               Yes, sir. And where was he located in
```

the bar when he dropped it?

23

24

2.5

Well, you know, you walk -- can you show Α. me the picture again, please.

- Q. We'll get there in a minute, but I'd like you to describe it from your memory, please.
 - A. When you walk in, it's, like, a four chair, it's a garbage right there. He sitting in that spot when he drop it.
 - Q. Let's do it this way. Was he at the bar?
 - A. Yeah.

2

3

4

5

6

7

8

9

15

16

17

- Q. Was he sitting on a barstool?
- A. Yep.
- Q. And is it your testimony that he dropped the marijuana cigarette from the barstool?
- 12 A. Yep.
- Q. While sitting in the barstool?
- A. He was there, yep.
 - MR. LOW: Your Honor, if I may inquire, can you give me an idea what time you do want to break for the noon hour because it will depend on where I go next.
- THE COURT: Probably 3:30.
- MR. LOW: Thank you.
- 21 THE COURT: Let me ask the gentlemen
 22 and ladies of the jury, anybody need a break right
 23 now or? Okay. We'll go ahead for another 15
 24 minutes or so.
- MR. LOW: Yes, sir. Thank you.

```
1
                     THE COURT: Thank you.
 2
                (BY MR. LOW) And you believe that you
          Ο.
 3
      asked Mr. Knospler to leave and he left at 12
      midnight?
 4
 5
               12 something, yeah, somewhere around
      there, yeah.
 6
 7
          Q.
              And your memory is pretty good about
 8
      that; right?
 9
          Α.
               Yep.
10
               No doubt about it; right?
          Q.
11
               No doubt about it.
          Α.
12
               Would you consider Mr. Baldwin your
          Q.
13
      buddy?
14
          Α.
               No.
15
          Q.
               Have you ever told anybody that Mr.
16
      Baldwin was your buddy?
17
               Well, I -- you know, I seen him before,
          Α.
18
      like I say. I said I know the guy so that's what
19
      I say when that happened because I seen him.
20
               Yes, sir. I'm not asking if you've seen
21
      him before. My question is much different. Have
2.2
      you ever told anybody before that Mr. Baldwin was
23
      your buddy?
24
               If I said it maybe because I seen the
25
      person before, you know.
```

1 Q. Do you remember whether or not you've 2 ever told somebody Mr. Baldwin was your buddy? 3 If I did, because I seen him before. Yes. But I'm asking you, do you recall, 4 Ο. 5 yes or no, whether you told somebody that he was your buddy? 6 7 Α. I do not remember. If I did, it because 8 I seen him before. 9 Excuse me, I say 12 or 12 something, too, 10 and he got it to midnight. Q. I'll put what you like. 12 or something, 11 12 no problem. 13 Yep, 12 or 12 something. Α. 14 Q. Yes, sir. Thank you. You mean 12 or 15 later? 16 Α. 12, 12 something, yeah. 17 In other words, it wasn't something 0. 18 before 12, it was 12, 12:05? 12 something, yeah, 12, 12 something. I 19 Α. 20 cannot remember the time, but it was after midnight maybe, you know, yeah. 21 2.2 Q. I'll put after midnight. Would that be 23 okay? 24 Yeah, sure. Α.

Did you used to work at the Power

25

Q.

```
1
      Service, sir?
 2
             Yes, sir.
          Α.
 3
              Okay. And do you see, have you seen
          Q.
      Kade -- sorry, Mr. Baldwin around all the time?
 4
 5
               No, I quit. If he is -- maybe he start
      after me, but I never seen him there before.
 6
 7
          Q.
               Let me ask it this way. Have you seen
 8
      Mr. Baldwin around all the time?
 9
               I no say all the time. I seen him
10
      around.
11
          Ο.
               And did you ever see Mr. Baldwin at the
      Power Service?
12
13
          Α.
               No.
14
          Q.
               Sir, after you went out there to where
15
      Mr. Baldwin was laying and you saw that he was
16
      injured, and then at some point later that same,
17
      if you will, evening or morning, however you want
18
      to say it, after 12:00 sometime --
               Uh-huh.
19
          Α.
20
               -- you found that he passed on, did that
          Ο.
      make you mad at Mr. Knospler?
21
2.2
          Α.
               No.
23
          Q.
               So you've never been mad at Mr. Knospler?
24
          Α.
               No.
25
               And, sir, if I may ask, did you see
          Q.
```

- anything -- let me orient you. Sorry. It's that time now where you're looking out the doors and you're looking at the car where you believe Mr.

 Baldwin's friends are at. Are you with me so far?
 - A. Uh-huh.

- Q. And the court reporter is going to ask that you use a word "yes" or "no" as opposed to a noise. I'm sorry. That's a formality for the
- So is it true you -- the answer is yes, you're with me so far?
 - A. Yeah.
- Q. Thank you. And you say that you believe that Mr. Baldwin's friends were out in that car having sex; is that right?
 - A. Yep.
- Q. And what -- tell us what you saw that allowed you to feel comfortable making the conclusion that there was a man and a woman in the car having sex.
 - A. Because he tell me his friend was there.
 - Q. Besides that, did you see anything else?
- 23 A. No.
- Q. And by the fact that someone said their friends are in the car, how did that allow you to

1 believe that they're having sex? 2 Well, because it's like that, so I 3 thought when he went to the car and he fell down, 4 we -- I thought for a minute and we thought that 5 he was laughing about it. 6 And you believe you saw Mr. Baldwin 7 laughing; correct? 8 Α. He wasn't laughing. I thought he was 9 laughing --10 So if you thought --Q. 11 -- when he fall down. Α. 12 So if you thought he was laughing, it's Q. 13 because you saw it or because somebody told you? 14 Α. I was watching the door. 15 Q. Yes. Did you see Mr. Baldwin laughing? 16 When he fell down, his movement, I Α. 17 thought he was laughing. 18 Because you saw that? Q. 19 Yep, I saw that. Α. 20 So you saw Mr. Baldwin laughing; true? Q. 21 I told you, he just moving like he was Α. 2.2 laughing. I no say he was laughing. 23 Ο. And, sir, was it difficult for you to see

out across that parking lot because it was dark

24

2.5

and snowing?

- A. No. You know, if it snow, it's bright outside.
 - Q. Did you speak to a gentleman by the name of Sonny Pilcher that evening after you saw Mr. Baldwin fall?
- A. Yeah, I have to.
 - Q. Yes, sir. You have to; correct?
- 8 A. Yep.

4

5

7

15

16

17

18

19

20

21

2.2

23

24

- 9 Q. And isn't it true that you told Mr.

 10 Pilcher that in your opinion, it was hard to see

 11 because it was dark and snowing? Isn't that true,

 12 sir?
- A. Hey, I told you what happened already. I already did tell you.
 - Q. Sir, isn't it true that you told Sonny
 Pilcher that evening that --
 - A. Yeah, because I no hear no gunshot. I thought for a minute he was stabbed with a knife.
 - Q. So it is true that you told Sonny Pilcher that evening that it was hard to see because it was dark and snowing?
 - A. It wasn't that dark. I can see the whole thing happen. I even called people in the front door to watch what happened.
 - Q. Thank you, sir.

- 1 Α. Yep. 2 Did you, yes or no, tell Sonny Pilcher 3 that it was difficult to see because it was dark and snowing? 4 5 I just told you twice already. 6 Yes or no, sir? Ο. 7 Α. I just told you. 8 Q. Sir, can you please tell us one more 9 time? I'm --10 I already did twice. Α. 11 Third time, please. 0. 12 Nope. I already did. I told you what Α. 13 happened. 14 Q. Are you refusing to answer my question? 15 Α. I already told you. 16 THE COURT: Mr. Andujar, here's how 17 I see it. The question was whether you made this 18 statement to Mr. Pilcher. Yeah. I told him -- I told him it was a 19 Α. 20 stab because I no hear no gunshot.
 - Q. (BY MR. LOW) But did you also, besides that, in addition to that, tell Mr. Pilcher that it was difficult to see because it was dark and snowing?
 - A. I don't think so I say that.

2.2

23

24

```
1
          Q.
                Are you mad right now?
 2
          Α.
                I'm not.
 3
          Q.
                Okay.
 4
          Α.
                Yep.
 5
                Sir, is it true that you saw Mr. Baldwin
          Q.
 6
      turn around and fall down right away?
 7
                Turn around?
          Α.
 8
          Q.
                Yes, sir.
 9
                What do you mean turn around? I say he
10
      fell face first.
11
                So I'll ask again just to make sure we're
12
      clear.
13
          Α.
                Okay.
14
           Q.
                Did you say, I just see him turn around,
15
      like, fall down right away?
16
          Α.
                He no turn around. He just fell down.
17
                Okay. So you're sure about that, he did
           Ο.
18
      not turn around; correct?
                Yeah, I'm sure.
19
          Α.
20
                Sir, at no time did you ever see Mr.
21
      Baldwin fall inside the car?
                Well, when he take off, he kind of hidden
2.2
          Α.
23
      from when he fell down, he just fell down when he
24
      take off.
```

Q. So you never saw him fall into the car,

1 did you? 2 Α. Not inside the car. 3 Q. And did you see the person in the car stab Mr. Baldwin? 4 5 Α. Nope. Sure about that? 6 Ο. 7 Α. Yep. Well, I thought he stabbed him 8 because I no heard no gunshot. 9 Did you see the man stab Mr. Baldwin? Q. 10 No, I didn't. Α. 11 Have you ever said, Oh yeah, you can see Ο. 12 about it because you can see he turned away when 13 he jumped back. 14 Now, having said that, here's the question. So did he -- did you see him reach 15 16 across inside the car and stab the guy through the 17 window or something? 18 And did you respond, Oh yeah, you can see 19 about it because you can see he turned away when 20 he jumped back. 21 Did you ever say that, sir, before?

- A. Hmm. If he turned around, is that what you're saying?
- Q. I'm just asking if you recall saying those words.

2.2

- 1 A. Can you repeat that?
- Q. I sure can, sir. And, in fact, I'll even back up a little bit and see if this helps at all; okay?
- So the guy stab right there, okay, because the guy just stab him right there.
 - A. No.

8

9

10

11

12

14

15

16

17

18

19

20

21

2.2

- Q. Just tell me if you've heard these words.
- A. Okay.
- Q. So did he, so did you see him reach across the car and stab the guy through the window or something?
- 13 A. No.
 - Q. And here are the words, and tell me if these are true or not: Oh yeah, you can see about it because you can see he turned away when he jumped back.

Did you say any of those things before?

- A. When he take off, yeah, because he just fell down. It happened quick.
- Q. Let me be precise. Is it true or not, did you ever say to anybody that you saw Mr.
- Baldwin get stabbed? Yes or no?
- 24 A. No.
- Q. And when asked, And he reached through

from the driver's seat, referring, sorry -- is the killer, the killer, he reached through from the driver's seat?

And did you say, Yeah?

Did you say that to that question, sir?

A. For -- I don't know I say yeah.

5

6

7

8

9

10

11

12

15

16

17

18

19

20

21

- Q. Okay. All right. Did you ever say to anybody before, sir, He be in the Navy, Marine, and all that kind of stuff and the war and all that kind of stuff he say he be in? Did you ever say that to somebody before?
 - A. He the one that say that.
- Q. Yeah, but did you tell somebody that you knew that and you'd said that?
 - A. No. I don't know that, but he the one said it.
 - Q. Yeah, but did you learn that evening from Mr. Knospler that he'd been in the Navy or the Marines or he'd been in the war?
 - A. He's the one told me.
 - Q. Oh, so you did learn that evening that he had been in the war?
- A. He the one tell me he went overseas,
 shooting people all over the world. That's what
 he said.

```
1
          Q.
               And he'd been in the Navy or the Marines;
 2
      right?
 3
               He say he went all over the world
          Α.
      shooting people.
 4
 5
          Q. Okay. So when I asked you earlier today,
 6
      and we wrote it down, that you had no idea he'd
 7
      been in the war and no one told you that before,
 8
      why did you say that?
 9
              No, no, no, no. That's not what I
10
      say, okay.
11
          Ο.
               Okay. I understand.
12
               Okay.
          Α.
13
               That's why we write these things down.
          Q.
14
          Α.
               Okay.
15
          Q.
               All right.
16
                    MR. LOW: Your Honor, is this a good
17
      place to break? I have a bit more, but I'm going
18
      to have to queue it up now.
19
                    THE COURT: Okay. Thank you.
20
               Yes, we'll go ahead and take our
21
      15-minute break, try to reconvene a little before
      3:45.
2.2
23
               Mr. Andujar, you can stretch your legs
24
      and --
25
                     THE WITNESS: Can I walk outside a
```

```
1
      little bit?
 2
                    THE COURT: Yes, but be back in 15
 3
      minutes.
 4
                    THE WITNESS:
                                   Thank you, sir.
 5
                    THE COURT: Court will stand in
 6
      recess.
 7
                            (At 3:29 p.m., a recess was
 8
      taken until 3:48 p.m.)
 9
                    THE COURT: Court will come to
10
      order. Please be seated. So the record is clear,
      after the afternoon break, we have the 13 members
11
      of the jury panel, counsel, defendant, and I note
12
13
      Mr. Andujar is back.
14
               You may continue with cross-examination.
15
                    MR. LOW: Appreciate it, Your Honor.
16
      Sir, would you be willing to turn on the computer
17
      station on this desk, please? And it will need
18
      the sound also. I don't know if that needs a
19
      special button, but.
20
                    THE COURT: Should be, and we're on
      the computer that's at table 3?
21
2.2
                    MR. LOW: Yes, sir. This one here.
23
      No signal? We have attorney's table number 2
24
      right here. Is there another jack we should try?
25
                    THE COURT: Any suggestion, Ms.
```

```
1
      Koski?
 2
                     MR. LOW: Clearly we have audio, but
 3
      I don't know why we don't have any video. It's up
      on the screen here, so. It's the one over here,
 4
      Your Honor, on the left.
 5
 6
                     THE COURT: Okay. I think we'll
 7
      have to proceed without --
 8
                     MR. LOW: Let's try the volume.
 9
                     THE COURT: -- The use of the
10
      technology.
11
          Ο.
               (BY MR. LOW) Sir, were you asked these
12
      questions and did you give these answers.
13
                            (A video is played in open
14
      court.)
15
          Q.
               (BY MR. LOW) Okay. Were you asked those
16
      questions, sir, and did you give those answers?
17
               Yeah, I might have did, yep.
          Α.
18
               So did that sound like your voice?
          Q.
19
               Yes, it's my voice.
          Α.
20
               Does someone you know in this town sound
          Q.
      exactly like you?
21
2.2
          Α.
               Well, he work for Automation. It wasn't
23
      Power Service.
24
               No, hold on. We're going nice and slow.
          0.
2.5
      You said just now that you might have said those
```

- 1 things. Is there someone else in this town who 2 could have made those sounds? Is that maybe not 3 you?
 - No, it's me. Α.
 - Oh, okay. Q.
 - Yeah. Α.

5

6

9

16

17

18

19

20

21

2.2

- 7 Q. So you do hear that part where you said 8 that he's your buddy?
 - Α. Yeah.
- 10 Did you hear that? Q.
- 11 Α. Yeah.
- Why did you tell us today that you never 12 Q. 13 said that he was your buddy?
- 14 Α. Well, if I don't know the person name, I 15 call him buddy.
 - Whoa, whoa, whoa. Nice and slow. Q. did you say earlier today that you have never said or ever referred to Mr. Baldwin as your buddy? Why did you look at the jury and say that?
 - Well, like I say --
 - Now, look at them. I want you to explain Q. it to them.
- 23 Α. If he used to work at Power Service, I used to work at Power Service and he worked for 2.5 Automation, and so I maybe seen him, too.

```
1
               Sir, why did you tell the jury, though,
          Q.
 2
      earlier today that you never referred to him as
 3
      your buddy?
               No, I never seen him at Power Service. I
 4
 5
      told you the truth. Maybe I seen him over there,
      but I never talk to him over there.
 6
 7
                     MR. LOW: Let's go to 409, please.
 8
      And when you're ready, go ahead and play that.
 9
               (BY MR. LOW) Were you asked these
          Q.
10
      questions and did you give these answers?
11
                            (A video is played in open
12
      court.)
13
                     MR. LOW: Freeze, freeze.
14
               (BY MR. LOW) Did you just say that's
          Q.
15
      what make me more mad about that guy? Was that
16
      your voice saying that?
17
          Α.
               Yeah.
18
               So you were mad at Mr. Knospler; is that
          Ο.
19
      right?
20
               Well, he killed somebody.
          Α.
               Oh. So when I asked you earlier if you
21
          Ο.
2.2
      were ever mad at Mr. Knospler, why did you tell us
23
      in this courtroom, No, I've never said that
24
      before?
```

Well, I not mad at him; but at that

25

Α.

```
1
      moment I was because it's a crime.
 2
               Oh, so which is it? You were mad, you
 3
      weren't mad? I mean, how do we figure this out,
      sir?
 4
 5
                     MR. ITZEN: Well, Judge, I'm going
 6
      to object. The question is argumentative.
 7
                     THE COURT: Yes, it is
 8
      argumentative, so you may reask.
 9
          Q.
               (BY MR. LOW) Maybe I can ask it this
10
      way.
11
                     THE COURT: I'll sustain.
12
                (BY MR. LOW) Sir, did you take an oath
          Q.
13
      today?
14
          Α.
                What?
15
          Q.
                Did you take an oath today?
16
          Α.
                Oath?
17
               An oath.
          Q.
18
                What is that?
          Α.
19
                Thank you. Did you tell the court
          Q.
20
      reporter and this judge and everyone in this room
21
      that you would tell the truth?
2.2
          Α.
               Yep, I did.
23
          Q.
               And did you take an oath and raise your
24
      hand and say you swore you'd tell the truth?
25
                Yes, I did.
          Α.
```

```
1
          Q.
               Was that important to you to tell the
 2
      truth?
 3
          Α.
               Yep.
               Did that oath mean something to you?
 4
          Ο.
 5
                       I said it's true, yeah.
               Yeah.
          Α.
 6
               Okay. And isn't it true, sir, that back
          Q.
 7
      on the early morning of October the 4th, just
 8
      hours after this happened, you sat there and you
 9
      told an investigator, under recording, being
10
      recorded, that you were mad at Mr. Knospler; isn't
11
      that right?
12
               Well, who not going to be mad if you kill
      somebody?
13
14
          Ο.
               Yes. And as a result of you being mad,
15
      then you told us some other things; right? You
16
      kept saying some other things; right?
17
               Let me see. Let me hear it.
          Α.
18
          Q.
               Okay. Thank you.
19
                     MR. LOW: Please go to 711.
20
      sorry, 723.
21
                     THE DEFENDANT: 723?
2.2
                     MR. LOW: Yes.
23
          Q.
                (BY MR. LOW) When you were asked these
24
      questions, did you give these answers?
25
                             (A video is played in open
```

```
1
      court.)
 2
                    MR. LOW: Can you -- back it up.
                                                      I
 3
      need you to start at 719. Try there. Sorry. My
      fault. Sorry, sir.
 4
 5
                            (A video is played in open
 6
      court.)
 7
                    MR. LOW: Okay. Last time. Start
 8
      just at 711. That way there's no mistakes. I
 9
      guess I got the time stamp wrong. A few seconds
10
      off, 711.
11
                            (A video is played in open
12
      court.)
13
                    MR. LOW: That's good.
14
          Q.
               (BY MR. LOW) Did you just say that you
      saw him turn around? Did you hear yourself?
15
16
          Α.
               Yeah, when the car hit him, yeah, when
17
      the car take off.
18
              I could have swore we asked you if you
          Ο.
19
      saw him turn around, and you told us no, he just
20
      drop right on his face. Do you remember saying
21
      that just a little bit ago before the break?
2.2
          Α.
               I told you when he take off, he hit him
23
      kind of with the car.
24
               That's not my question.
          Q.
25
          Α.
               Okay.
```

1 Q. Nice and slow. 2 Uh-huh. Α. 3 See this part down here where we wrote Q. "he did not turn around"? Did you say that a 4 5 little bit ago before the break to this jury? 6 Α. Yeah. 7 Q. But now you just heard yourself say 8 clearly on there that you saw Mr. Baldwin turn 9 around and then fall. You heard that; right? 10 Α. Yeah. 11 Well, why did you say it then but you didn't say that today? 12 13 When he take off with the car, yes. Α. 14 Q. Sir, why did you -- why did you say it 15 differently today? MR. ITZEN: Well, Judge, I'm going 16 17 to object. He's trying to explain his answer. 18 THE COURT: Go ahead and answer, 19 sir. 20 Α. I just told you. 21 THE COURT: To the extent there's an 2.2 objection, I'll overrule, and you may answer and 23 you can explain. 24 Okay. So ask it one more time. Α. 25 (BY MR. LOW) Yes, sir. Thank you. Why Q.

```
1
      did you say today that you did not see him turn
 2
      around, but a year ago to this police officer, you
 3
      said you did see him turn around? Why did you
      tell us two different versions?
 4
 5
               Well, I told you, like I say earlier,
      when he leaving the car, when he fell down, yeah,
 6
 7
      that's what happened.
 8
          Ο.
               Yeah. You're explaining how it happened,
 9
      but I'm asking why all the different versions.
10
      Can you answer that question, please?
11
               When he leaving and hit with the car, he
          Α.
      turn around a little bit, yeah, because the car
12
13
      take off.
14
                     MR. LOW: Can you play at 8.00,
15
      please?
16
                     THE DEFENDANT: 8.00?
17
                     MR. LOW: Yes, please.
18
                            (A video is played in open
19
      court.)
20
                     MR. LOW: That's good.
                (BY MR. LOW) Were you just calling Mr.
21
          Q.
2.2
      Baldwin your buddy again?
23
          Α.
               Who?
24
               Mr. Baldwin.
          Q.
25
               If I don't know the name, like I say, if
          Α.
```

```
1
      I see you around and I don't remember your name.
 2
               You didn't remember Mr. Baldwin's name?
 3
               I just call you buddy if I don't know
 4
      your name.
 5
               I understand.
          0.
                    MR. LOW: 835, please.
 6
 7
                            (A video is played in open
 8
      court.)
 9
                    MR. LOW: All right. So let's go
10
      back now. We're going to play that again because
      it goes a little fast and we're going to listen to
11
12
      it one more time. Let's go and start right at
13
      825, hear a little more.
14
          Q. (BY MR. LOW) Listen to this, if you
15
      will, sir.
16
                            (A video is played in open
17
      court.)
18
          Q. (BY MR. LOW) Sir, did you just say, Oh
19
      yeah, I could see the guy get stabbed? Is that
20
      what you saw?
21
          Α.
               Yeah --
2.2
          Q.
             Okay. So --
23
          Α.
               -- I thought it was.
24
               -- please, for the ladies and gentlemen
          Q.
25
      of the jury, describe the knife that he used to
```

1 stab him. I mean, you saw it; right? 2 Yeah, I seen him when he fall down. 3 thought he stabbed because I no heard no gunshot. 4 Tell us about the knife. What did the Ο. knife look like? 5 6 Α. What knife? 7 The one you said you saw just now. Q. 8 MR. ITZEN: Judge, he didn't say that he saw a knife. 9 10 THE COURT: I'll sustain the 11 objection. That's not the precise statement, so 12 it would be inaccurate, so I'll sustain. 13 (BY MR. LOW) Let's do it this way. You Q. 14 said you saw him get stabbed; right? That's what it looked like because I no 15 Α. 16 heard no gunshot. 17 Q. And since you say you saw him get 18 stabbed, are you able to tell us what the knife looked like? 19 20 Α. No. 21 Well, you were looking at it the whole Q. 2.2 time? 23 Α. But I thought he was stabbed because I no 24 heard no gunshot.

I mean, like you said earlier, you never

25

Q.

1 took your eyes off this the entire time; right? 2 Α. Uh-huh. 3 Correct? Ο. Yeah, because I calling people to come 4 and see in the door --5 I understand. 6 Ο. 7 -- what's going on. 8 Q. You claim you never took your eyes off 9 this the entire time; right? 10 Yeah, I did for when I called the people, Α. like I told you earlier, I call the people to come 11 12 and see. 13 And since you were watching the entire Ο. 14 time, you saw the guy get stabbed, just like you told the detective that morning only hours after 15 16 it happened; right? 17 Α. Yeah. 18 And since you saw the guy get stabbed Q. 19 through the window, please describe what the knife 20 looked like. 21 It wasn't no knife. I thought it was a 2.2 stab because I no heard no gunshot. 23 MR. LOW: Will you please go to 24 1056. 25 (A video is played in open

```
1
      court.)
 2
                     MR. LOW: Freeze.
 3
                (BY MR. LOW) And finally, he just walk
          Q.
      out because he talking about just killing people.
 4
 5
               He walk -- I walk out. I walk away from
      where he's sitting.
 6
 7
          Q.
               So that was you you were referring to?
 8
          Α.
               Yeah. I walk -- I stand up.
 9
          Q.
               Got it.
10
               And I tell -- say don't talk about that,
          Α.
11
      and he told me he going to tell me anyway.
12
          Q.
               Yes, sir. I understand.
13
                     MR. LOW: Now what I want you to do
14
      is play -- Your Honor, I want to play the
15
      videotape that the good Investigator Ellis played
16
      the other day; but can we try on another station
17
      because mine is not working, and it's critical to
18
      this cross-examination? So I'd appreciate some
19
      help if I could borrow it.
20
                     THE COURT: Sure.
21
                     MR. LOW: Can I give this to someone
2.2
      to play?
23
                     MR. BLONIGEN: We don't have a
24
      computer is the problem, but we can use this
```

station here.

```
1
                    MR. LOW:
                               Best I can do is try, but
 2
      it may not work again. I appreciate your
 3
      kindness, though. It's nice of you.
               And I don't know if you're able to get
 4
 5
      that up, Your Honor, but there it is here.
      switch the monitors, sir, over to this side?
 6
 7
                     THE COURT: We did, to attorney
 8
      station number one.
 9
                    MR. LOW: I think this is one.
10
                     THE COURT: If I had to make a
11
      quess, it may be the computer and the
12
      compatibility because we had trial two weeks ago
      where those stations, four and two, worked fine.
13
14
                    MR. LOW: Well, we won't play it,
15
      but we've played it before and we'll just figure
16
      it out in the meantime. But I think we got the
17
             Thank you very much.
      idea.
18
                     THE COURT: Thank you very much.
19
      After we break tonight, I'd be willing to offer
20
      Ms. Chaney and Ms. Koski to at least give as much
      input as they can on it, so.
21
2.2
          Q.
               (BY MR. LOW) And lastly, sir, isn't it
23
      true that you saw your buddy get hurt; isn't that
24
      right?
2.5
          Α.
               Yep.
```

1 And when you saw your buddy got hurt, it Q. 2 made you feel bad? 3 Yeah. Α. And because it made you feel bad, you 4 miss him, as you should. He's your buddy; right? 5 I seen the person before. If I don't 6 7 know the name, I'm going to call him buddy. 8 Ο. Yes. And you miss him because he's no 9 longer here; right? 10 Yeah. I mean, he was a human being and Α. 11 he was celebrating his birthday. And a result of missing your buddy caused 12 Q. 13 you some pain? 14 Α. Of course. Somebody having fun in the bar celebrating his birthday, yeah, people going 15 16 to be upset I think. 17 Q. And when you know we're in pain, it makes 18 us angry. Makes you angry, doesn't it, sir? 19 Α. No. 20 And as a result, isn't it true that, Ο. well, you've exaggerated a little bit because 21 2.2 you -- you believe Mr. Knospler is responsible for 23 it; isn't that right? 24 MR. ITZEN: Judge, I'm going to

object. He's commenting on credibility to the

```
1
      jury and -- of the witness, and that's the
 2
      province of the jury.
 3
                     THE COURT: It's argumentative, so
      I'll sustain.
 4
 5
               (BY MR. LOW) And because you were angry,
          Ο.
      you -- well, you've embellished today, haven't
 6
 7
      you?
                     MR. ITZEN: Well, Judge, same
 8
 9
      objection.
10
                     THE COURT: I'll overrule. You may
11
      answer.
12
               Repeat it again.
          Α.
13
               (BY MR. LOW) And because you're angry,
          Q.
14
      you've said some things today that just aren't
15
      true; isn't that right?
16
          Α.
               No.
17
               And what you really know that happened,
          Ο.
18
      sir, is that evening, you watched Mr. Baldwin walk
      out the front door; correct?
19
20
          Α.
               Yeah.
               And then he makes a right and he walks
21
          Q.
2.2
      off to the right-hand side of the parking lot from
23
      as you're looking out the window; correct?
24
          Α.
               Yep.
25
               And you see him walk over to that car,
          Q.
```

```
1
      don't you, sir?
 2
          Α.
                Yep.
 3
                And you see him walk around the car and
          Q.
      stand at the driver's window; isn't that true?
 4
 5
          Α.
                He was on the passenger side first.
 6
                That's fair. You first see him walk to
          Ο.
 7
      the passenger side and try and open the door
 8
      handle; right?
 9
          Α.
                Yes, sir.
10
                And then you see him walk around to the
          Q.
11
      driver's side; correct?
12
          Α.
                Yep.
13
                And at this point, part of the car is
          Q.
14
      between you at the front door and Mr. Baldwin;
15
      correct?
16
          Α.
                Excuse me?
17
                Thank you.
          Q.
18
                Say that again.
          Α.
19
                Yes, sir. Thank you. And now, as he
20
      walks over to the driver's side, the car is
21
      between Mr. Baldwin and you standing inside of
2.2
      Racks Club; isn't that true, sir?
23
          Α.
                No. He walk in the front of it, and I
24
      can see the whole thing. I was watching.
25
                Yes, sir.
          Q.
```

1 A. Okay.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

2.2

23

24

- Q. And during the time you're standing

 inside Racks Bar, you begin to look around the

 bar, you begin to talk to some people; isn't that

 true, sir?
 - A. Yeah. I call the people to see because I thought they having sex in the car.
 - Q. And you divert your attention from watching outside; isn't that true, sir?
 - A. Yeah, for how long it take to call a few person to come and see what's going on out front.
 - Q. In fact, sir, you even stopped watching because you went to open the door to let two ladies exit the bar; isn't that right, sir?
 - A. Yeah. People walk in and out all the time at the bar.
 - Q. Yes, sir. And sometimes you actually would turn around all the way and walk away from the front door while Mr. Baldwin is still out there; isn't that right, sir?
 - A. To call the people to come and see what's going on outside.
 - Q. Yes, sir. And you diverted or you looked away from Mr. Baldwin, what, how many times did you say?

1 Α. I walk a few time, but it happened quick. 2 Yeah, I called the people to see what's going on 3 outside. 4 Ο. Yes. 5 Α. Yeah. 6 And you're aware there's video cameras Q. 7 inside that bar; correct? 8 Α. Video? 9 Q. Yes, video cameras inside that --10 Yes, video. Α. 11 And you're aware that the video cameras Ο. 12 record everything that happens; isn't that true? 13 Α. Yeah. 14 Q. And you're aware there's a video camera 15 that looks right at the front door; right? 16 Α. Yeah. 17 And you believe that the video camera Q. 18 accurately records things that happen at the front 19 door; right? 20 Α. Yeah. 21 And the next time you go back and you Q. 2.2 look, you see Mr. Baldwin turn and fall to the 23 ground; isn't that right? 24 He just fell down, yep. Α.

Thank you.

MR. LOW:

```
1
               Your Honor, that's all I have.
 2
                     THE COURT: Thank you very much.
 3
               Anything on redirect, Mr. Itzen?
 4
                     MR. ITZEN: Yes, sir.
 5
                      REDIRECT EXAMINATION
 6
      BY MR. ITZEN:
 7
               Mr. Andujar, why do you call people
          Q.
 8
      buddy?
 9
          Α.
               If I don't remember the name, it's what I
10
      do, you know, because I don't want to say
11
      something wrong. If -- I do it all the time.
12
          O. All right. Now, you talked to
13
      Investigator Ellis; correct?
14
          Α.
               Yeah.
               And you told him you saw Mr. Baldwin's
15
          Q.
16
      head on the table; correct?
17
          Α.
               Yes, I did.
18
               And that you tried to get Mr. Baldwin a
      cab home?
19
20
          Α.
               Yes, sir, I did.
               And he said, Those are my friends?
21
          Q.
2.2
          Α.
               Yep.
23
          Q.
               And you saw the car, and it was backed
24
      into the parking spot?
2.5
          Α.
                Yep.
```

```
1
           Q.
                And you saw the marijuana cigarette, the
 2
      joint fall from the defendant's pants or hand;
 3
      correct?
                Yes, sir.
 4
           Α.
 5
                And that's what you told Investigator
           Q.
 6
      Ellis?
 7
           Α.
                Yep.
 8
           Q.
                You told Investigator Ellis you saw Mr.
 9
      Baldwin lean on the windowsill with his hands?
10
           Α.
                Yep.
11
                And then he falls down; correct?
           Ο.
12
           Α.
                Yes.
                And after that, the car drove away?
13
           Q.
                Yes.
14
           Α.
                And when it did, it was spinning its
15
           Q.
      tires; correct?
16
17
           Α.
                Yeah.
18
                The times that you told us about, you
           Q.
19
      know, you said it happened around midnight or
20
      those things, are those estimates or are you sure
21
      that's when that occurred?
                Yeah, it's, I mean, midnight something,
2.2
           Α.
23
      yeah.
24
                And where are you working now, sir?
           Q.
25
                In town.
           Α.
```

```
1
          Q.
               All right. Do you work at Racks anymore?
 2
               No.
          Α.
 3
                    MR. ITZEN: Just a moment, Judge.
                    THE COURT: Yes.
 4
 5
               (BY MR. ITZEN) How long has it been, Mr.
          Ο.
      Andujar, since you, Mr. Guill, and Ashlee Logan
 6
 7
      worked together?
 8
          Α.
              Oh, I can't remember how long it's been.
 9
      I mean, how long we worked together?
10
               No, since you all worked together.
          Q.
11
               Oh, I can't remember. Don't remember.
      Can't remember.
12
13
                    MR. ITZEN: All right. Fair enough.
14
      Thank you, sir.
15
                     THE COURT: Thank you very much.
16
               Any request for recross, Mr. Low?
17
                    MR. LOW: No thank you, sir.
18
                     THE COURT: Thank you, Mr. Andujar.
19
      Thank you for your patience with us.
20
                    THE WITNESS: May I be released from
      my subpoena?
21
2.2
                     THE COURT: Yes, you may.
23
                    MR. ITZEN: Yes. His mother is
24
      having heart surgery in the Dominican Republic.
25
                     THE WITNESS: Yeah, she have
```

```
1
      surgery.
 2
                     THE COURT: You're free to go and
 3
      you're excused. Thank you, sir.
 4
               The State of Wyoming may call its next
 5
      witness.
 6
                     MR. ITZEN: Your Honor, the State
 7
      would call Westy Guill.
 8
                     THE COURT: Mr. Guill, please come
 9
      forward. The clerk will give you the oath, and
10
      then you'll sit over the other side once your
11
      sworn.
12
                     THE WITNESS: Okay.
13
                     THE CLERK: Please raise your right
14
      hand. You do solemnly swear that the testimony
15
      you will give in the case before the Court will be
16
      the truth, the whole truth, and nothing but the
17
      truth, so help you God?
18
                     THE WITNESS: I do.
19
                     THE CLERK: Around the table and
20
      over to that chair.
21
                     THE WITNESS: All right.
2.2
                          WESTY GUILL,
23
      called for examination by the State, being first
24
      duly sworn, on his oath testified as follows:
2.5
```

1 DIRECT EXAMINATION 2 BY MR. ITZEN: 3 Good afternoon, sir. Q. Good afternoon. 4 Α. 5 Could you please state your name. Q. 6 Westy Guill. Α. 7 Q. And could you spell your last name. 8 Α. G-U-I-L-L. 9 All right. Do you recall the night of Q. 10 October 3rd of last year, the early morning hours 11 of October the 4th? 12 Yes, I do. Α. 13 And where were you working back then? Q. 14 Α. At Racks Gentlemen's Club. 15 0. All right. And what did you do at Racks? 16 I was a bouncer. We didn't really have a Α. 17 manager, but, I mean, I did a lot of everything 18 for the most part but served as a bouncer. 19 All right. Now, Mr. Guill were you Q. 20 convicted of a felony in California? 21 Α. Yes. 2.2 Q. And was that in 2006? 23 Α. Yes, sir. 24 What was that for, sir? Q. 25 I was in college at Sacramento State Α.

playing football. And a buddy of mine that was playing football there, we went to a casino. And on our way home from the casino that night, the kid that was with me actually sat in the backseat of my car and threw a rock out of my car at a car going the opposite direction. And it happened to go through the window, hit the driver on his chin, and he crashed and had surgery on his face.

Q. And what were you convicted of?

2.2

- A. Assault with a deadly weapon and four counts of felony vandalism.
- Q. All right. Now, what time did you arrive at work the night of Racks -- or the night of October 3rd at Racks?
- A. Roughly around six o'clock. I was running a tiny bit late that night because I had picked up a dancer that had just flown in from North Carolina at the airport.
 - Q. And how was business when you arrived?
- A. Maybe, like, five or six customers. It was pretty slow.
- Q. And were there any problems inside the bar that night at all?
- A. In the bar? No. We didn't have any issues. We didn't have any fights or anything

```
1
      like that. The only technically -- like, we
 2
      didn't have altercations. The only problem that
 3
      we actually had at one point that night was
      actually asking him to leave because of him having
 4
 5
      some drugs on him.
 6
              All right. And you say "him." Can you
      tell me what he's wearing?
 7
 8
          Α.
               What's that?
 9
          Q.
               Can you tell me what he's wearing?
10
               The guy in the red tie.
          Α.
11
                    MR. ITZEN: Your Honor, may the
      record reflect he's identified the defendant?
12
13
                    THE COURT: Shall not. There's two
14
      red ties.
15
                    MR. ITZEN: I'm sorry.
16
            (BY MR. ITZEN) Can you tell me where
          Q.
17
      he's seated?
18
          A. Over there in the middle of those two
19
      men.
20
                    MR. ITZEN: Your Honor --
21
                    THE COURT: Shall so reflect.
                                                    Thank
2.2
      you.
23
          Q. (BY MR. ITZEN) Now, was there a group of
24
      people celebrating a birthday there that evening?
25
          Α.
               Yes.
```

- Q. How many people were in the group?
- 2 A. Three.

2.2

- Q. And do you recall generally where they were seated inside the bar?
 - A. I think for most of the night, they were somewhat on the far end of the bar near the pool tables, somewhat near the -- the stage.
 - Q. All right. And let me show you 338.

 MR. LOW: Oh, I'm sorry. Thank you,
 yes.
 - Q. (BY MR. ITZEN) And it's a little hard to see. Does that generally show the area where they were seated?
- A. Yes.
 - Q. And you can touch your computer screen and draw circles and things.
 - A. Yeah. It was like -- I think it was right here. If I can -- if it's not -- the table to the right, there's two pool tables. The one that's directly in front of the pool table on the right roughly -- it might even be that exact table, that exact area.
 - Q. All right. Thank you. Now, did you meet a Kade Baldwin that night that was part of that group?

1 A. Yes.

2.2

- Q. How would you describe his level of intoxication?
 - A. He was pretty drunk for the entire time he was there. I mean, it seemed like they were all pretty drunk. I would say all three of them for the most part. And it was very well known that it was his birthday. I think at some point I even announced it on the microphone that the girl I think he was with or somebody that he was with had asked me to announce that it was his birthday, and I think they were calling him the birthday boy or whatever it was.
 - Q. All right. And did there become a time that evening that Kade's friends had left him?
 - A. Yes.
 - Q. Do you recall about what time that was?
 - A. 12:00, 12:15 or so. It was very shortly -- it had to have been right before we realized that he was asleep at that table.
 - Q. Now, at that point, had the defendant already left the bar?
 - A. Yes, sir.
- Q. Do you recall what time he left the bar or approximate?

A. 10:30 I think.

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2.2

- Q. And after Kade's friends had left, was
 Kade any problem inside?
 - A. No. He was asleep when we realized his friends were gone.
 - Q. All right. Can you explain that to us? What do you mean by asleep?
 - A. He was facedown on his arms like this on the table asleep, not moving. And that was when Andujar had noticed that he was asleep, walked over there and woke him up. And I was kind of scanning the bar for his friends, looking for his friends so we could tell them to go home.
 - Q. All right. Were his friends found inside?
- 16 A. No.
- Q. Was he combative when he was woken up?
- 18 A. No.
 - Q. When he stood up, what did you notice about his balance?
 - A. He was drunk. I think it was pretty obvious to everybody that he was kind of -- at that point, he was stumbling around a little bit.
- Q. How was the defendant going to get home, did you know?

- A. Andujar had told him that he was going to get him a taxi, and that's why he woke him up.

 And they were walking towards the front. I met with them halfway as they were walking to the front door, and he had told him -- he said he was going to get him a taxi, his friends left. I said, Yeah, I can't find them. And at that point, we were walking to the front door, and that was what the arrangement was going to be. And at that time when we got the door, he walked out the door and said that he was going to his friends' car.
 - Q. All right. And did you watch him walk out into the parking lot?
 - A. Yes.

- Q. Where did he go into the parking lot?
- A. He went out -- if you were to go out our door, he basically went straight out and headed west a little bit. The car that he was going to, if you're looking out our front door, was about 50 feet to the right, but it was backed in facing our building.
 - Q. All right. Was it backed into a stall?
- 23 A. Yes.
- 24 Q. Let me show you 333.
- MR. LOW: Thank you.

1 Q. (BY MR. ITZEN) Does that show where Mr. 2 Baldwin was walking and where the car was? 3 Yeah. Α. 4 And as he walked across the parking lot, Ο. 5 was there anything in his hands? 6 Α. No. 7 0. And did you see -- did you see Kade when 8 he got to the car? 9 Α. Yes. 10 What side of the car did he go to first? Q. 11 The passenger side. Α. 12 And what did he attempt to do once he got Q. 13 there? 14 Α. He was knocking on the window. 15 Q. All right. 16 And at that point, I mean, we made the Α. 17 assumption that his friends were in the car and 18 they weren't letting him in because they might 19 have been doing something inappropriate. 20 Q. Having sex? 21 That was our assumption. Α. 2.2 Q. Describe this knocking on the window. 23 He was just knocking as if he were

knocking on a door. It wasn't -- it didn't -- to

me, it didn't seem like he was pounding on the

Α.

24

window or anything like that. And I think that it -- that was the main reason why we made the assumption that we did is because it -- I think that he thought he was trying to get into his friends' car, and I don't think he was trying to break into it or anything like that.

2.2

- Q. All right. After that -- after you saw that, what did you do?
- A. Walked away for about, I don't know, could have been a minute or so. I don't know. It wasn't that long. And then Andujar and Ashlee Logan called me back, came back, and he was on the driver's side and he was face first in the ground. And his feet were moving, his head was bobbing up and down. And again, we thought that he caught his friends doing -- or having sex, and that he was laughing and he fell over because he was drunk. That's honestly what we all thought.
- Q. All right. On the driver's side, did you ever see him standing there when you came back?
 Was he already facedown?
- A. I believe he was just facedown, I believe.
- Q. And do you recall if he landed on a side or was it face and belly to the ground if that

makes sense?

2.2

- A. He was facedown, but he was kind of on his side, on his left side. When I got to him, his face was on the snow with his face facing this way, and he was kind of leaned over this way. But I guess it wasn't completely on the side, but it wasn't completely on his face.
- Q. All right. Did you move the body at all once you got there?
 - A. No.
- Q. Now, when you first saw him and you were inside and he was in the snow, was the vehicle still there?
- A. No. When I saw -- when I saw him on the ground?
 - Q. Yes, sir, when Andujar called you back.
 - A. The vehicle had already gone.
- Q. All right. And when you saw the vehicle when Kade was knocking on the passenger side, could you tell if it was running at all?
- A. I couldn't tell if it was running. Just the headlights were on. That's all I knew.
 - Q. All right.
- A. It was snowing. It's kind of hard to see, like, at that point, if a car is running, you

- I couldn't see that. I just saw the headlights
 - Q. All right. Now, you went out and checked on Kade?
 - A. Yes.

2.2

- Q. Could you tell if he was injured?
- A. When I got to him, he was making a funny noise. I told the officers it sounded like he was snoring. It was, like, more of, like, a wheeze. And once I had got there, at that point still, I didn't know what had happened to him. And then I saw blood on the snow and on the backside of him, and I lifted up his shirt and I saw the wound on the backside.
- Q. All right. Do you recall on which side of the body you saw the mark on the back?
- A. Yeah. It was the right side, like, right probably towards the bottom of his rib cage.
- Q. And what did it look like, sir, when you lifted up the shirt?
- A. Just like -- I -- personally, I thought he got stabbed. It looked like just, like, a one-inch gash. And it was really quick. The moment I saw it, I jumped, and I ran through the

```
1
      parking lot inside to make a phone call to the
 2
      police; but it had already been done.
 3
              Had you ever seen things like that
          Ο.
      before?
 4
 5
          Α.
               Never.
 6
               Allow me to show you 315.
          Q.
 7
                     MR. ITZEN: If I may approach, Your
 8
      Honor.
 9
                     THE COURT: You may.
10
               (BY MR. ITZEN) Do you recognize that
          Q.
11
      photograph?
12
               First time I've seen it.
13
               All right. What does -- do you recognize
          Q.
14
      what's depicted in it?
15
          Α.
               Yeah.
16
               And what's depicted in it?
          Q.
17
               There's a man laying in the snow being
          Α.
18
      treated or worked on. It looks like the crime
19
      scene.
20
               Is that where Mr. Baldwin was?
          Ο.
21
               Yeah, absolutely. That's him right there
2.2
      in the picture.
23
                     MR. ITZEN: All right. State would
24
      move to introduce 315.
```

THE COURT: Any objection?

1 MR. LOW: No, sir. 2 THE COURT: Exhibit 315 is received. 3 (BY MR. ITZEN) Now, did you have any Q. interaction with the defendant that evening? 4 I did. 5 Α. And did you -- can you explain what 6 7 interaction you had with him? 8 Α. I -- at one point in the night, I think 9 it was very shortly before he was asked to leave 10 by Andujar, I was on the opposite side of the bar 11 from the front door, and he approached me and 12 stated to me that he wanted to party and that he 13 wasn't an undercover cop, and he asked me if I 14 could get him cocaine. 15 And I said to him, I said, I don't 16 understand why you're asking me that because I 17 work here. And I said, You might have been better 18

off asking a dancer or whatever the case may be, but I told him he needed to get away from me.

And he put his hands up and he said, I'm really sorry. I'm not an undercover cop. I just like to party.

19

20

21

2.2

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24

25

And I told him, I said, You need to get away from me.

And he went to the other side of the bar.

```
1
      And then later that night, not even when he was
 2
      actually kicked out later that night, I was told
 3
      by Andujar that he caught him with a --
 4
                     MR. LOW: Objection, hearsay.
 5
                     THE COURT: Would be hearsay, so
 6
      I'll sustain and we'll shut it off there.
 7
               (BY MR. ITZEN) Now, let me show you 343
          Ο.
 8
      which has been admitted into evidence. Does that
 9
      show you roughly where that conversation occurred?
10
               Yes. I was on the far end of the metal
          Α.
11
      bars on the bar, those two gold bars.
12
               All right. Do you recall the last time
          Q.
13
      that you worked with Andujar and Ashlee Logan and
14
      yourself?
               Not that I know of, no. I don't remember
15
          Α.
16
      the last time I worked with both of them.
17
               All right. Are you still employed at
          Ο.
18
      Racks?
19
          Α.
               No.
20
               When did you leave there?
          Q.
21
          Α.
               August.
2.2
          Q.
               Of this year?
23
          Α.
               Yes. Yeah.
24
                     MR. ITZEN: Your Honor, if I could
25
      just have a moment.
```

THE COURT: Yes, you may.

2.2

- Q. (BY MR. ITZEN) Did you have a conversation with Sonny Pilcher that evening about somebody doing a rain dance in the parking lot?
- A. Yes. He called me roughly around the time that I was picking up that dancer, like I said, at the airport. And he had mentioned that there was someone in the parking lot acting funny, trying to drive around the parking lot looking for a certain parking space or whatever the case may be, and he was dancing funny, and I think he fell over. And that's when Sonny called me and said, Hey, there's somebody in the parking lot acting kind of goofy, and it looks like he might be casing to rob this place.

I said, Are you serious?

And he said, Yes. He said, I just talked to him, he said that he was just parking his car in a good spot where he could see it from inside the building, but, you know what, I had a funny feeling about this guy. You need to get to work.

- Q. All right. And that's around the 5:30 time frame?
 - A. Yeah.

MR. ITZEN: Thank you for your time.

```
1
      Mr. Low will have a few questions for you.
 2
                     THE WITNESS: Okay.
 3
                     THE COURT: Thank you very much,
      Counsel.
 4
 5
               Cross-examination, Mr. Low.
                     MR. LOW: Yes, thank you, Your
 6
 7
      Honor. Appreciate it.
 8
                        CROSS-EXAMINATION
 9
      BY MR. LOW:
10
               Afternoon, sir.
          Q.
11
               Afternoon.
          Α.
12
               What are you doing for a living now?
          Q.
13
               What's that?
          Α.
14
               I said what are you doing for a living
          Q.
15
      now?
16
               I'm not working right now. I'm living
          Α.
17
      back in California.
18
               And what I wanted to ask you, sir, is at
          Ο.
19
      some point, you see Mr. Andujar looking out the
20
      front windows -- I'm sorry, the front doors
      watching Mr. Baldwin; true?
21
2.2
          Α.
               No.
23
               And he asked you to come over and watch
24
      with him as you look out the front doors watching
2.5
      Mr. Baldwin leave, sometime after midnight; true?
```

- 1 A. No.
 2 Q. So true that you never once looked out
 3 the front doors, the glass doors, and watched Mr.
 4 Baldwin walk over to the car?
 5 A. He never once asked me to come to the
 6 door. That's why I said no to you.
 - Q. Okay. So let me see if I can ask this, then, this way. At some point, you're looking out the front doors and you're watching out there in the parking lot; right?
- 11 A. Yes.

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- Q. And you're looking over to the car over to your right, and you say you believe you see Mr. Baldwin walk over to the car?
 - A. Yes.
- Q. And you can't tell what color the car is because the whole thing is covered in snow; correct?
- A. And because the headlights were on. They were so bright.
 - Q. Yes, sir. And the windshield is covered with snow; correct?
 - A. I don't know.
- Q. You were looking at it; right?
- 25 A. Yeah, but I wasn't looking at the

1 windshield. 2 Q. Oh, okay. And as you're looking out 3 there, you see Mr. Baldwin standing on the -- what would be the opposite side of the car from you, 4 correct, the driver's side? 5 No. He was on the passenger side when I 6 7 was looking. 8 Q. Thank you. So when you were watching, 9 Mr. Baldwin is on the passenger side? 10 Α. Yes. 11 Did -- at some point, did he go to the driver's side? 12 13 Α. Yes. 14 Q. All right. So at some point, you're 15 watching him, he's standing on the driver's side; 16 right? 17 I saw him on the ground on the driver's Α. 18 side. 19 Did you ever see him standing on the 20 driver's side knocking on the glass? I -- I want to say I did, but I -- I've 21 2.2 been having a hard time trying to remember all 23 this.

It was just -- it was a very emotional

Did you say just a little bit --

24

25

Q.

Α.

- and wild night, but I know what I saw. You know what I mean?
 - Q. I understand. And when it -- when we're experiencing heavy emotion, sometimes it's hard to perceive things accurately, at least for you; is that true, sir?
 - A. It would be true for anybody.
 - Q. Yes, true for anybody. And so you're not sure whether you saw Mr. Baldwin banging on the driver's side glass or not; is that fair?
 - A. I definitely saw him banging on the passenger side, I will say that; but on the driver's side, I can't recall if I actually walked back and watched that happen or not.
 - Q. Okay. And thank you for the clarification. Saw -- what word do you feel better with, *knock* or *bang*, on the passenger window?
 - A. Knock.

4

5

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2.2

- Q. Thank you. I want to be fair. And then he went over to the driver's side; correct?
 - A. Yes.
- Q. And at that point, you see him what you think is looking in the window?
 - A. At that point on the driver's side?

Q. Yes, sir.

2.2

- A. I -- when I came back to the door, he was laying down in the snow.
 - Q. I haven't got there yet. I want to go nice and slow, and I'm going to tell you where we're at at each time; okay? So nice and easy. You're still looking through the front glass doors, and you're watching Mr. Baldwin walk from the passenger side over to the driver's side. You with me?
 - A. I didn't -- I didn't see him walk over there.
 - Q. You didn't see that? Well, you did see him knocking on the passenger side window; right?
 - A. Yes.
 - Q. So you must have diverted your attention away for a while, and next time you look back, all of a sudden now he's on the driver's side?
 - A. Yes.
 - Q. Is that because you walked away?
 - A. Yes.
 - Q. And when you came back, the reason why you came back to the door is because Mr. Andujar said, Hey, hey, come here, come here; is that correct?

- 1 A. Yes.
- Q. You guys were inside the bar, you walk

 away because you thought it was over; and then Mr.

 Andujar says, Hey, come back, come back?
 - A. Uh-huh.
 - Q. Sorry?
- 7 A. Yes.

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- Q. And when you come back, when you look out there, what you see is Mr. Baldwin laying in the snow?
- 11 A. Yes, sir.
 - Q. And so we can orient ourselves, if you're now -- and pretend you're at the front door looking out. You look at the car, car is facing out with the headlights on facing out; correct?
 - A. Yes.
 - Q. And then as you look at Mr. Baldwin laying on the ground, you can see his head, and his head is facing towards the building and his feet are facing towards the back lot; is that fair?
 - A. Yes.
 - Q. And you saw that he was appearing to lay partially on the side of his face and partially on his side; correct?

1 A. Yeah.

4

- Q. And you're looking at him, you can see his chest and his face area; correct?
 - A. I believe so, yeah.
- Q. So that means he would have had to have been laying on his left side; isn't that true, sir?
- 8 A. Yeah.
- 9 Q. Not his right side. He was laying on his left side; correct?
- 11 A. Yeah, I believe that's what I said.
- 12 Q. I'm sure you did. I just want to make

 13 sure we're clear. Sir, when you believe that Mr.

 14 Knospler asked you to buy some drugs, you didn't

 15 ask him to leave the premises; correct?
- 16 A. No.
- 17 Q. You told him to go talk to the girls
 18 about that; is that right?
- A. I said that he should have asked them and not me.
- Q. Okay. And is that because, sir, you believe that them girls are crazy?
- A. In that industry, I believe those girls are just a little different.
 - Q. Do you believe that they're crazy?

1 Α. Sometimes. 2 And do you believe that -- well, that 3 they have a lot of drama; and, well, that every one of them has got a bit of a screw loose? 4 5 Α. Yeah, pretty much. And I'm not putting words in your mouth, 6 Q. 7 are these, in fact, your own words, sir? 8 Α. Yes, sir. 9 That's what you told the police officer Q. 10 the night when he interviewed you; correct? 11 Α. Yeah. 12 You told them, in fact, that your job 13 there is probably the worst job in the bar because 14 you have to manage all these gals; right? 15 Α. I did say that, yes. 16 And you said they're full of drama, Q. 17 constantly with the drama; right? 18 Α. Yep. 19 Because, see, in the industry or at this 20 bar at least, their job is to dance for men; correct? 21 2.2 Α. Yeah. 23 Q. And some women? 24 Α. Yep.

And what they try and do is convince the

25

Q.

```
1
      people in there to give them money for their
 2
      dances; correct?
 3
          Α.
               Yes.
                $25 per song; correct?
 4
          Ο.
 5
          Α.
                Yes.
 6
                And that's about -- average song about
          Ο.
 7
      three minutes long?
 8
          Α.
                Roughly. Three and a half.
 9
                And the girls there have to use their --
          Q.
10
      let's call it charisma to try and induce men to
11
      take money out of their wallet and give it to
12
      them; correct?
13
          Α.
                Yes.
14
          Q.
                And it would be fair to say that if
15
      they're able to get a man to buy one, two, three,
16
      or more songs, that that would make them feel good
17
      because they're making money during the time
18
      they're there?
19
                I would assume, yeah.
          Α.
20
                However, you've definitely seen girls who
          Q.
21
      aren't happy when they will spend -- let me ask it
```

A. Yes.

money; correct?

2.2

23

24

2.5

this way. You've seen girls go up and sit with a

guy, and they'll sit there a while and get no

1 And you've heard girls over the time that Q. 2 you've worked there as a bouncer complain about 3 men who they sat with for periods of time, and the men wouldn't buy them a lap dance; isn't that 4 true? 5 Absolutely. I mean, I was their safe 6 7 place. Anybody that worked there, bartender, 8 bouncer, whatever, that's who they came to talk 9 to. That's who they felt safe with. 10 Thank you. And the girls were -- well, 11 oftentimes happy or felt better if they're getting 12 paid to dance; but oftentimes are not happy and 13 sometimes may be judgmental towards people who 14 were not paying them; isn't that true, sir? 15 MR. ITZEN: Well, Judge, I'm going 16 to object to that. 17 THE COURT: Grounds for your 18 objection? 19 MR. ITZEN: It calls for 20 speculation, Judge. 21 THE COURT: Mr. Low, your response? 2.2 MR. LOW: Yes. This gentleman just 23 said that over his career, they go to him quite 24 often, and he has heard girls say all kinds of

stuff about how the dances with the men are going,

- so he has a lot of experience with the kind of things they complain about. There's no speculation, Your Honor.
 - THE COURT: Looking at the question on the screen, it's a little bit awkward, but I'll allow. You may answer.
 - A. Can you repeat your question?
 - Q. (BY MR. LOW) I can. I can ask a better question. I hope I can ask a better question.

 Sir, you've heard the girls complain to you before about men they've sat with for a good period of time, and the men wouldn't give them any money; isn't that true?
 - A. Yes.

2.2

- Q. And they can sometimes tend to be -- I guess the word is judgmental, you know, calling them names or saying ugly things about them because they just don't like them?
 - A. I don't agree with that.
- Q. Sure. And that night, that evening, you saw Mr. Baldwin in the bar you said celebrating his birthday; correct?
- A. Yes.
- Q. And he, at one point, got brought up onto the stage; isn't that true?

1 Α. Yes. 2 Now, normally, none of the patrons or 3 paying customers for dancers are ever allowed on the dance stage; correct? 4 5 Α. At that bar? 6 Ο. Yes. 7 Α. No. At that time, that was okay. That 8 was called a hot seat. 9 Let me -- I didn't ask it right. 10 the gals are up there dancing, you got the pole, 11 you're there to make sure men don't come off the 12 floor and get up on the stage with them; correct? 13 Α. Yes. 14 Q. However, there is an exception to that general rule, and it's called the hot seat; right? 15 16 Α. Yes. 17 And the hot seat is someone special there Ο. 18 in the audience, say, like a birthday, you bring a 19 chair up on the stage where the girls are dancing; 20 right? 21 Α. Yes. 2.2 And you sit the man in the chair; 23 correct? 24 Α. Yes. 25 And then all the dancers, every one of Q.

- 1 them that's in the club working, come out on the 2 stage; right? 3 Α. No. How many of them come out? 4 5 One. And if they wanted any more, it was an additional \$20 per dancer. So usually you'd 6 7 see one or two up there at the most. 8 Q. All right. And they come out there, and 9 they give him a hot dance or a hot --10 Α. It's called a hot seat. 11 Hot seat, and everybody now gets to watch that? 12 13 Yes. Α. 14 And you got to pay for that? Q. 15 Α. The customer that goes on the stage does 16 pay for it, yes. 17 And besides the hot seat, you saw Mr. Ο. 18 Baldwin buying other dances from the gals; right? I don't recall. 19 Α. 20 And some of his friends were getting Ο. dances as well; isn't that true? 21 2.2 Α. Don't recall. I was not on that side of 23 the bar.
 - Q. And the girls were pretty happy about that, weren't they?

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1
          Α.
               The dancers?
 2
               Yes, sir.
          Q.
 3
               I don't know.
          Α.
               But isn't it true that through the course
 4
          Ο.
 5
      of the evening, for almost five hours, at no point
      did Mr. Knospler ever give any one of the girls
 6
 7
      any money to dance for him? Isn't that true, sir?
 8
          Α.
               I don't know the answer to that question.
 9
          Q.
               You didn't see him dance with anybody,
10
      did you?
11
               Not that I know of.
          Α.
12
                     MR. LOW: Thank you. I appreciate
13
      your time, sir. Thank you, Judge.
                     THE COURT: Thank you. Redirect
14
15
      examination, Mr. Itzen?
16
                     MR. ITZEN: Just a question, Judge.
17
                     THE COURT: Okay. Go ahead.
18
                      REDIRECT EXAMINATION
      BY MR. ITZEN:
19
20
               Did Mr. Baldwin get a hot seat? Is that
      what it's called?
21
2.2
          Α.
               I believe so.
23
              All right. And that's when you're up on
          Q.
24
      the stage; correct?
25
               Yeah. And that's why I said I announced
          Α.
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1
      his birthday, I'm pretty sure that I said it's his
 2
      birthday, he's going on stage and all that.
 3
               And that's where the hot seat occurs?
          Ο.
 4
          Α.
               (Nodded.)
 5
                                Thank you for your time,
                    MR. ITZEN:
      sir.
 6
 7
                    THE COURT: Anything on recross?
 8
                    MR. LOW: No thank you, sir.
 9
                    THE COURT: Okay. Thank you,
10
      Mr. Guill. You're excused from any subpoena and
11
      you're free to go. Thank you, sir.
12
               I have a telephone conference at 5:00, so
13
      if the State wants to proceed for 15 minutes, we
14
      can do that. Do you have a witness ready?
15
                    MR. BLONIGEN: We have a witness
      ready, Judge. I don't think we could finish her
16
17
      probably today, so it's up to --
18
                    MR. ITZEN: I quess it's up to the
19
      Court.
20
                    MR. BLONIGEN: Your Honor, let me
      correct that actually because I just thought we'll
21
2.2
      need equipment set up to do that, so it'll take
23
      more than ten minutes.
24
                    MR. LOW:
                              There's an issue we can
25
      take up with the time that's left.
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MR. BLONIGEN: We do have a brief scheduling issue to address with the Court also.

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THE COURT: Okay. Let's do this.

Ladies and gentlemen of the jury, we're going to excuse you for the day. Please be back at 9:30 again tomorrow morning. Once again, I have a hunch we're running late in this case, and I wish we could start earlier; but my schedule prohibits that.

But please keep in mind all the rules and admonitions given to you several times. The one I'd emphasize this afternoon is your job is to be jurors, not investigators. Way too often, we've had situations where -- I'm thinking of a car accident case that a good friend, Judge Park, had, where a gentleman decided to go out and do measurements and take a look at this intersection and become an investigator. And if we should do that, if you should be influenced from trying to learn something about the case from the bar that was involved here, something online or talking to somebody, we would end up with a mistrial. please avoid that and keep your minds open until you've heard all the evidence in the case.

Thank you for a long day of service, and

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1
      see you tomorrow at 9:30. The jury is
 2
      excused.
 3
                            (The following proceedings
      were held in open court, out of the presence of
 4
 5
      the jury:)
                     THE COURT:
                                 Please be seated.
 6
 7
      the record should reflect the jury has exited.
 8
      And I'll give counsel a brief minute or two if
 9
      there's something we need to take up.
10
                    MR. LOW:
                              There is, Your Honor.
11
      Thank you.
12
                     THE COURT: Mr. Low.
13
                    MR. LOW: I'm requesting and I'm
14
      asking to call a witness not only out of order but
15
      during Mr. Blonigen's case in chief. I'll give
16
      the witness. The witness's name is Dr. Melinek.
17
      And Dr. Melinek is scheduled to come in this
18
      evening, and I need her to testify tomorrow
19
      morning because then she has to get back on a
20
      plane, fly back to Oakland, get on another plane,
      and fly with her family to New York where she will
21
2.2
      be through the holidays. And as a result, I'm
23
      asking if we can call her tomorrow morning.
24
               I gave her the schedule that we talked
2.5
      about at the trial readiness conference on
```

1 December the 3rd, and at that time we were told a 2 five-day estimate. And based on that, I tried to 3 put her as late as possible. And she told me she could not testify on Friday, only Thursday. And 4 5 at that time, at five days, I figured I'd be in my case in chief or just beginning. So I didn't hear 6 7 until the start of this trial by Mr. Blonigen that 8 I guess he informed the Court that he thought we 9 were going to go longer than five days, and that 10 was the first I heard about that was on Monday. So as a result, I'm stuck. And that's why I'm 11 12 requesting that we call her out of turn. Submit, 13 unless you have some questions. 14 THE COURT: And this is the 15 pathologist? 16 MR. LOW: It's a pathologist, Your 17 Honor, forensic pathologist, yes, sir. 18 THE COURT: At the pretrial 19 conference, I made specific inquiry about 20 potential witness problems or need to call witnesses out of order. At that time, you weren't 21 2.2 aware of this potential difficulty? 23 MR. LOW: Had no awareness because, 24 again, we're on a five-day schedule, and this 2.5 hadn't been brought up at that time. So that's

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      why I had to -- I thought we were great, there was
 2
      no conflict.
 3
                    THE COURT:
                                 Seems that the witnesses
      are taking extremely long periods of time. Are we
 4
 5
      looking at using up the entire day?
                    MR. LOW:
                              No, sir. What you're
 6
 7
      going to find -- this is what you need to know.
                                                         Ι
 8
      know what you're asking. Based on what I heard
 9
      today, there was a good doctor, and he testified
10
      pretty close to his report. And so that's going
11
      to very much shrink up her testifying. In fact,
12
      most of the issues I was going to talk to her
13
      about are not an issue. And so it would be much
14
      shorter than I had anticipated as far as the
      amount of time she'll be on there. I -- clearly,
15
      I can't attest to Mr. Blonigen; but from my point
16
17
      of view, shorter than what we even heard today
18
      from Mr. Carver.
19
                    THE COURT: Maybe an hour of direct
20
      or something?
2.1
                              No, sir. No, sir. We're
                    MR. LOW:
2.2
      talking 15, 20 minutes, 25 minutes.
23
                    THE COURT: On direct?
24
                    MR. LOW: On direct, sir.
2.5
                    THE COURT: Okay. Mr. Blonigen.
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MR. BLONIGEN: Well, Your Honor, I think two issues I better bring up with you here is, you know, when we were at the pretrial conference, I said I think we can get it done in a week; but I have no clue what they plan for their case, none whatsoever. I hadn't had one scrap of paper, not even a CV. We move into the trial, Judge, I'm not saying we're just a little behind, we are grossly behind. We are behind two days already.

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Here's my concern with Dr. Melinek, and I had an opportunity to talk to her last Friday.

Counsel was kind enough to arrange for that. And although the Court did order the CVs be delivered a week before trial, I did get them on Wednesday, I did talk to them on Friday. The problem is the pathology. I mean, there might be a few things; but most of the things with Dr. Carver she told me she didn't have a substantial disagreement with.

But when I spoke to her, she was relying a good deal on this report of John Daily's. We believe there are some major issues with Mr. Daily's report.

Secondly, Judge, she will be allowed to testify before we put on much of the forensic

evidence that we believe could be used in the case. So if -- there's two problems. If she just basically back doors in John Daily's report without our chance to challenge some of the things that are in there, then we have a situation, Judge, where we're not able to attack that report at all. So it could be prejudicial to our presentation of evidence is what I'm telling you, and it always is when you interrupt the case.

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But I was hoping that we'd be further along; and at least if we had to do this, you know, it wouldn't be such a big deal. But it is kind of a big deal. What I'm going to recommend to the Court and say to the Court is this. I would be willing to waive any requirement that she be here in person if she could testify by phone, she could testify by Skype. I'd be willing to accept that and stipulate to that rather than require her to be physically here. And that would allow us to develop the evidence, but yet still not impair the case as -- you know, it's not perfect, but I thought it might be a reasonable compromise.

Secondly, Judge, and I think we got to address this and address it soon because the

jurors are going to ask. There is no way in heck we finish this thing in five days. It's not even close. And somewhere we're going -- sometime we're going to have take the bull by the horns with Christmas coming up next week and deal with it. And, I mean, it's a very serious time problem. We're going through -- we had a 15-minute direct on Ashlee -- I'm forgetting the last name now -- yesterday.

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MR. LOW: Logan.

MR. BLONIGEN: We had a two-hour cross-examination. You know, we haven't done a case together before, so it's hard to calculate when you haven't done a case with attorneys. But we're running into major, major time considerations here, Judge. And I don't know what the Court is going to do about them, but I feel I should tell the Court that I believe this is a -- it's the elephant in the room. We've got a big time issue here.

But my -- Judge, it would prejudice us

the way that -- if it's put on tomorrow morning,

is what I'm saying. And I think there's an

alternative, although not as good as an

alternative, of delaying it and doing it by other

than having the doctor physically present in the
courtroom.

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about this witness relying upon Mr. Daily's report, which may be challenged at the time it's proposed for introduction? I presume Mr. Daily is going to be here, but I don't know that for sure either.

MR. LOW: Your Honor, I can't tell you about his conversation with her because I didn't have it, so that -- you know, what he said, I'm sure, is true; but I don't know. But I can tell you this. Dr. Melinek is a world-class Harvard grad, top of her class, forensic pathologist. She's the gal who did all the autopsies for 9-11. And there is no way that the only thing she looked at was doctor -- I mean John Daily's report. She just had that thing sent to her by me a day before. When he called her, she had no file in front of her, she had no records in front of her, she had no documents in front of her. He was asking her questions, and she had to go from her memory.

But you're going to find out, and I can submit it to you because we can pull it right up

for you, everything she read in this case, it's been absolutely everything, the hundreds of pictures, hundreds of pages of the evidence, every single coroner report, all of it. She's reviewed every single thing in this case there is to review, and she's one of the most well prepared people I've ever seen. So John Daily's report has nothing to do with her opinion.

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THE COURT: What time would you propose to have her testify, first thing in the morning or in the afternoon or?

MR. LOW: I would propose in the morning. And like I said, I can't recall exactly what time her flight is in the afternoon, but I'm concerned we'll bump up against that if we need to call someone else first in the morning and they're not too long. But yes, if you're asking my preference, I'd say the morning. And Mr. Blonigen is correct, it does put me at a disadvantage also because she has to testify before his other forensic, you know, people; and that puts us at a disadvantage. But it's -- I don't have a choice right now unless, you know, unless we can arrest her when she gets here, but that's probably not going to happen.

THE COURT: Do you have a -- I hate to even use the word, short witness anticipated first thing in the morning?

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MR. BLONIGEN: I don't know if we have such a thing in this case, Judge. Also, Judge, I have witnesses with problems, too. I have a lab person supposed to leave town on Monday. I have people on plane tickets still sitting in hotel rooms. You know, I know we try to accommodate people, but there reaches a point in time where it's the wrong time in the case, and it's not fair to the other party. It is our -- and having that witness here before she leaves on Monday is my problem, no doubt about it. But that's -- you know, I think in this case, to -- to admit this testimony before the State has the ability to build its case is very prejudicial.

THE COURT: I agree. I agree that there's a prejudice to the State. This is just sort of a personal preference, however. Whenever possible, I try to accommodate especially expert witnesses, so I'll allow for Dr. Melinek to be called out of order at 10:15 tomorrow morning, holding counsel to the 15- to 20-minute direct examination time estimate. And I will take a look

at this, but I may preclude any testimony where there is substantial reliance on Mr. Daily's report alone; and I will give leeway to the State to challenge that, to interject objections. And quite honestly, if I'm caught in a quagmire there, I may preclude areas of testimony if -- the only term I can think of right now is there's substantial reliance on Mr. Daily's report or his findings. And to the extent that she is going to do a recitation of Mr. Daily's findings or conclusions, I may preclude that also. So with those guidelines, I'll allow.

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MR. LOW: Yes, sir. And this might help. If anyone is insinuating that I'm bringing her as a substitute for Mr. Daily, rest assured that's not going to happen. She's got her own opinions, and it will be pithy and to the point.

THE COURT: The second matter,

Mr. Blonigen is absolutely correct, looking at the witnesses in this case and the areas of proposed testimony, we're substantially behind schedule. I think what I'll try to do is ask counsel to check on availability Monday and Tuesday of next week or, if not available, after Christmas, the week following. I believe my January 5 trial stack

1 might be a place where I'm available, but let me 2 take a look at it, let the parties take a look at 3 their schedules, and I'll try to give the jury a heads up. But at least tomorrow and Friday, I'll 4 5 try to plow ahead and maybe we can cut down the lunch hour, maybe we can work a little bit late, 6 7 I'll try to do that. And I'd be more than open to 8 any solutions that counsel may have or any options 9 you think we may need to take up. 10 Quite honestly, I'm sitting here thinking maybe I didn't do a good job at pretrial 11 12 conference of saying both sides are absolutely 13 sure this five days is going to be enough. usually, it is, even for a homicide case. 14 15 respect very much that things have gone slow, and 16 so we'll need to adjust. 17 MR. LOW: If I can say, Your Honor, 18 I want to first tell you that I appreciate how 19 patient you've been. We -- we could not 20 anticipate all those witnesses were going to challenge --21

THE COURT: Counsel, no ingratiating the Judge, please.

MR. LOW: I want to point out -THE COURT: I don't take that well.

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1 MR. LOW: I'm sorry. Here's what I 2 meant to say, then. No one here could anticipate 3 that all those witnesses were not going to remember what they had said in the past so that I 4 5 had to sit here and force and go through line by 6 line, remind them what that they had said in the 7 past over and over. 8 And I just wanted to say that I think 9 what's going on here is, hey, the guy from out of 10 town is taking too long. And I just want to make 11 sure we're aware that these witnesses are not 12 willing to say the same things they said a year ago, and I have to do that. It would go faster if 13 I didn't. 14 THE COURT: Thank you very much. 15 16 Court will stand adjourned. We'll start 17 up promptly at 9:30. 18 (The trial proceedings recessed at 5:01 p.m., December 17, 2014.) 19 20 21 22 2.3 24 25

1	<u>CERTIFICATE</u>
2	
3	I, JONI L. CHANEY, Official Court
4	Reporter within and for the Seventh Judicial
5	District Court of Wyoming, do hereby certify that
6	I reported by machine shorthand the proceedings
7	contained herein and that the foregoing 858 pages
8	constitute a full, true, and correct transcript.
9	Dated this 8th day of June, 2015, at
10	Casper, Wyoming.
11	
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13	JONI L. CHANEY, RPR Official Court Reporter
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