

IN THE DISTRICT COURT OF NATRONA COUNTY, WYOMING  
SEVENTH JUDICIAL DISTRICT  
CRIMINAL ACTION NO. 19548-B

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THE STATE OF WYOMING,

Plaintiff,

vs.

JOHN HENRY KNOSPLER, JR.,

Defendant.

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
VOLUME VI of VII

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9:03 a.m., Monday  
December 22, 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.

A P P E A R A N C E S

FOR THE STATE:           MR. MICHAEL A. BLONIGEN  
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  and  
                              MR. DANIEL J. ITZEN  
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  and  
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ALSO PRESENT:            The Defendant

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1 P R O C E E D I N G S

2 THE COURT: Thank you. Please be  
3 seated and court will come to order. We convene  
4 in day six in the jury trial proceedings in the  
5 case of the State of Wyoming versus John Henry  
6 Knospler, Jr., Criminal Action Number 19548-B.

7 The Court notes the presence of the  
8 entire jury panel; Mr. Blonigen; Mr. Itzen;  
9 counsel for the Defense, Mr. Newcomb and Mr. Low;  
10 as well as the defendant.

11 The parties ready to proceed here with  
12 further trial proceedings, the State?

13 MR. BLONIGEN: We are, Your Honor.

14 THE COURT: And the Defense?

15 MR. LOW: Yes, sir, Your Honor.

16 THE COURT: Okay. Thank you very  
17 much.

18 I believe we were still in the direct  
19 examination of Mr. Norris.

20 MR. BLONIGEN: Yes, Your Honor.

21 THE COURT: Please come forward and  
22 be sworn. You understand you're still under oath  
23 from last week; is that correct?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Okay. Thank you very

1 much.

2 DIRECT EXAMINATION (Resumed)

3 BY MR. BLONIGEN:

4 Q. Mr. Norris, when we broke last week, you  
5 had just shown us some photographs and the T-shirt  
6 and an indication of bullet wipe around the entry  
7 hole into the T-shirt; is that correct?

8 A. Yes, it is.

9 Q. And did you -- we also began to talk  
10 about range of fire, and you began to describe how  
11 you did that. Would you explain range of fire  
12 testing to us.

13 A. Absolutely. If you remember, I used the  
14 analogy like throwing a handful of sand and how --  
15 and how as it moves further and further away from  
16 the hand, it's going to spread out. And that's  
17 very similar to what happens with a firearm, that  
18 as the firearm is fired, the bullet is going to  
19 come out of the barrel moving downrange. But in  
20 addition to the bullet, then you're going to have  
21 gases that are escaping, you're going to have  
22 partially burned and unburned gunpowder particles,  
23 and you're also going to have lead residues. And  
24 these are all things that are going to be coming  
25 out of the muzzle in addition to the bullet.

1           The gases, the burned and partially  
2 unburned gunpowder particles, the lead, those  
3 things are going to drop off fairly quickly. It's  
4 not set in stone, but a good kind of rule of thumb  
5 would be that you would expect to see these types  
6 of residues deposited on materials at about 36  
7 inches or maybe an arm's length away.

8           Beyond arm's length, then those residues  
9 are going to dissipate, and they're going to drop  
10 off. The bullet, of course, will keep going; but  
11 there won't be any residues that are deposited.  
12 And so when you see a bullet hole from a distance  
13 greater than, again, like I say, about 36 inches,  
14 then it'll be very common just to see nothing but  
15 a hole with a little bit of what I explained to  
16 you is lead wipe. Okay.

17           So lead wipe is just what it sounds like,  
18 it's lead particles that are on the surface of the  
19 bullet that are placed there through the --  
20 through it being fired. And so then as it comes  
21 into contact with some sort of target or some sort  
22 of surface, those materials just directly on the  
23 surface of the bullet are just going to be wiped  
24 off as it penetrates and then perforates whatever  
25 the target may be. And so you'll see a small ring



1 directly around the periphery, darkened ring, and  
2 those can be visible to the naked eye or it could  
3 also be visualized using chemical testing.

4 Q. Now, is there a standard within your  
5 scientific community of what you use -- what  
6 materials you use for these test firings?

7 A. When I create test firings at known  
8 distances, a very commonly accepted test material  
9 would be chemically uncontaminated jean twill  
10 cloth. Okay. So this is just a cotton cloth that  
11 is -- we purchase it from a chemical laboratory  
12 supply vendor, and it's known to be chemically  
13 uncontaminated so we're not introducing some  
14 unknown variable into the testing. And it's just  
15 a jean, kind of like a lighter jean twill. And  
16 it's been tested, and it's a suitable testing  
17 medium for a wide variety of different types of  
18 fabrics, and even in some instances skin, even  
19 though that wasn't a factor in this case.

20 Q. And will it make a difference whether  
21 that's a wet or dry cloth on your distance  
22 testing?

23 A. It won't make a difference. We're  
24 looking at the deposition of materials on a  
25 surface. Wet or dry, the materials are still

1 going to be deposited from a gunshot.

2 Q. And as far as the deposition of that  
3 material, would the fact that it's a white cotton  
4 T-shirt versus the fabric you used make any  
5 difference?

6 A. No. Again, like I say, the jean twill is  
7 a suitable testing medium for a wide variety of  
8 fabrics. There are probably some types, maybe  
9 like a leather or a real loose weave or plastic or  
10 rubber or some kind of odd material that it  
11 probably would not be suitable for. But for a  
12 wide variety of common fabric types, including a  
13 white cotton T-shirt, jean twill is suitable as a  
14 testing medium.

15 Q. Okay. Are these the same tests that are  
16 used throughout the relevant scientific community?

17 A. Yes, they are. The association that I'm  
18 a member of -- an international association called  
19 the Association of Firearm and Tool Mark Examiners  
20 comprised of over 500 firearms and tool marks  
21 examiners from all around the world -- has devised  
22 a procedures manual and a training manual  
23 indicative of standard practices in the community.

24 And so my -- the standard operating  
25 procedures and the training manual that I have

1 implemented at the crime lab in Cheyenne are  
2 consistent with what is the procedure laid out by  
3 the association.

4 Q. And are you certified by that association  
5 to do this sort of testing?

6 A. Yes. I received the certification from  
7 that association.

8 Q. In addition to that, when you completed  
9 your work in this case, was all your work reviewed  
10 by an independent examiner?

11 A. Yes, it was.

12 Q. And did he confirm all your testing and  
13 results?

14 A. Yes.

15 Q. So explain to us what you're going to do  
16 in this particular instance to test range of fire.

17 A. In this particular instance, I receive  
18 the evidence garment. I review the medical  
19 examiner's report and confirm that the entry hole  
20 is indeed the one in the front of the -- of the  
21 garment. And so I'm going to go ahead and test  
22 the garment itself. And there's two tests that  
23 I'm going to use, okay. The first one is called  
24 the Modified Griess Test for nitrites. When  
25 gunpowder burns, it produces a compound, NO<sub>2</sub>,

1 nitrogen, oxygen, okay. And so a nitrate would be  
2 NO3. The burned form, NO2, is a nitrite. And so  
3 this test is chemically specific for the presence  
4 of nitrites.

5 And so it's a colorimetric test. And so  
6 when -- when applied to the garment, what you have  
7 is you'll have a color change that will happen in  
8 the presence of these nitrites. And so basically  
9 what we do is we take a treated piece of photo  
10 paper, and so it's treated with the chemicals that  
11 are designed to change color; and then we steam  
12 the garment on top of this photo paper. And what  
13 you're left with, then, when you take the garment  
14 away is a mirror image showing if there were any  
15 nitrites present.

16 And what you'll have is you'll have these  
17 bright orange pinpricks which will actually show  
18 that this is the location of a piece of burned or  
19 partially burned gunpowder. And it makes it very  
20 nice -- very nice for viewing because you've got  
21 this photo paper, and then on it you'll have these  
22 very nice bright orange pinpricks that will show  
23 the location of gunpowder particles. The reason  
24 we do this is because these particles can be  
25 obscured from viewing with the naked eye. They

1 can be hard to see due to the color of the fabric  
2 or perhaps from blood or soiling that's present.  
3 And so by transferring it to this treated piece of  
4 photo paper, then we have a nice contrasting view  
5 of where the bullet hole is and then any  
6 surrounding burned or partially burned gunpowder  
7 particles that might be there.

8           The second test I'm going to perform is  
9 called the sodium rhodizonate test for lead. And  
10 so this is where I'm going to actually look for  
11 the presence of either small particles of lead or  
12 else vaporous lead. And so when you fire a gun,  
13 you'll oftentimes in the movies and in real life,  
14 too, you'll see a puff of smoke that might come  
15 out. Well, this smoke is containing vaporized  
16 lead. This is lead that is heated up and is moved  
17 from a solid into more of a vapor. And that smoke  
18 itself is very lead rich.

19           And so I'm looking for these lead clouds,  
20 if you will, and these deposits of lead that would  
21 come from the soot and from the smoke at a close  
22 range gun firing. And also, I'll be able to see  
23 lead wipe, like I told you, the ring around the  
24 periphery of the bullet hole. And if there's any  
25 particulate lead, sometimes you'll have small

1 chunks of the bullet itself that are becoming  
2 dislodged, jacket material that's beginning to  
3 come loose or whatever, especially if it's been  
4 through some sort of intervening object in the way  
5 of the bullet path. And so you'll see these  
6 things as well.

7 Q. Now, when you did the test on the  
8 T-shirt, you said it was a Griess test?

9 A. A Modified Griess Test and a sodium  
10 rhodizonate test for lead.

11 Q. What did you find when you did the first  
12 test, the Griess test -- G-R-I-E-S-S by the way --  
13 what did you find on testing the T-shirt?

14 A. The Modified Griess Test on the T-shirt  
15 showed positive for lead reaction on that area  
16 directly surrounding the bullet hole at the  
17 periphery of what I would call bullet wipe. What  
18 I did not see was any form of vaporized lead or  
19 particulate lead that I would expect to see at a  
20 close range.

21 Q. Did you preserve that in any way?

22 A. I'm sorry. I'm --

23 Q. You're going back? Okay. Did you have  
24 something to add to the previous answer?

25 A. I answered for the wrong test. The

1 Modified Griess Test is the test for the  
2 gunpowder, and I apologize. I was explaining the  
3 sodium rhodizonate test for lead. The Modified  
4 Griess Test is the test where I look for the --  
5 the gunpowder particles. And when I tested the  
6 garment using the Modified Griess Test for  
7 nitrites, I found very minimal or close to none.

8 Q. Okay. I'm going to show you an item,  
9 533. Is this the actual test you're talking about  
10 in this instance?

11 A. Yes. This is the test from the evidence  
12 garment, the Modified Griess Test looking for  
13 gunpowder particles.

14 MR. BLONIGEN: Move for the  
15 introduction of 533, Your Honor.

16 THE COURT: Any objection?

17 MR. LOW: No, Your Honor.

18 THE COURT: Exhibit 533 is received.

19 MR. BLONIGEN: See if we can't do  
20 this by --

21 Q. (BY MR. BLONIGEN) Can you see that well  
22 enough or should I hand the item back to you, Mr.  
23 Norris?

24 A. I think I can see it.

25 Q. So we see some little blue circles on

1       there below where you actually had the items.

2       What are these?

3           A.       Those are possible positive reactions.  
4       I'm not able to confirm, but I circled them as  
5       being possible.  The whole -- up above where it  
6       says entrance is where I indexed the actual -- the  
7       hole on the garment, and then the small circles  
8       are possible positive point reactions, which may  
9       be gunpowder particles.

10       Q.       Again, very few and scattered?

11       A.       Very few, no discernable pattern, and  
12       certainly not enough to make a determination as to  
13       range of fire distance.

14       Q.       Do you then do anything to confirm  
15       deposition from this firearm at similar distances?

16       A.       Yes.  So this is where I will take and I  
17       will use the firearm that was submitted and the  
18       ammunition like what was used in the original  
19       incident, and I will then make test shots at known  
20       distances starting at contact and then moving back  
21       known distances, again, looking at the pattern of  
22       gunpowder particles that's deposited that starts  
23       off very small, but then as the gun moves further  
24       and further back, you begin to see that pattern  
25       growing.  And so that's what helps me to determine



1 about how far away the gun was from the target at  
2 the time.

3 Q. Now, you used the very same firearm; is  
4 that correct?

5 A. Yes.

6 Q. And, in fact, in some of your testing  
7 here, did you use ammunition that was left in that  
8 gun?

9 A. Yes.

10 Q. If you don't use ammunition left in the  
11 gun, if you use laboratory stock, is it the  
12 precise same type of ammunition?

13 A. I will try to match it exactly. In this  
14 case, I did have enough ammunition submitted with  
15 the firearm that I had enough to test with.

16 Q. Okay. I'm going to hand you, then, four  
17 exhibits, 528, 529, 530, and 531. Are these the  
18 same tests conducted by you after having a known  
19 firing that indicated distance?

20 A. Yes, they are.

21 MR. BLONIGEN: Move for the  
22 introduction of 528 through 531.

23 THE COURT: Any objection?

24 MR. LOW: No, Your Honor.

25 THE COURT: Exhibits 528 through 531

1 inclusive are received.

2 Q. (BY MR. BLONIGEN) On the other hand,  
3 sir, this is at contact?

4 A. Yes.

5 Q. And again, how do you define contact?

6 A. This would be where the muzzle of the  
7 firearm is actually held touching the target.

8 Q. Okay. And at contact, did we see quite a  
9 different picture?

10 A. You see a little bit different picture.  
11 Okay. And so if you can see the orange -- the  
12 orange dots, the blue dot in the center is where  
13 I've indexed the actual bullet hole, and then  
14 you're beginning to see some orange reactions.  
15 And so there's, you know, and you've got it kind  
16 of scattered around. At contact, the fabric is  
17 kind of -- is blowing kind of in over itself, so  
18 you may have some particles that are showing up in  
19 kind of random locations.

20 But also at contact, it's important to  
21 remember that a lot of these materials are blowing  
22 right through and right into, so you're not seeing  
23 just a whole lot of gunpowder particle deposition.  
24 Lead will be a different story, and we'll see that  
25 in a minute, I believe. But the gunpowder

1 particles were so close to the fabric that a lot  
2 of the material that comes from the muzzle of the  
3 gun, the gunshot residue, is just simply blowing  
4 right through the back, and we're not seeing as  
5 heavy a deposition of gunpowder particles in this  
6 instance.

7 Q. Then from six inches?

8 A. Okay. So here now we're beginning to  
9 see -- we're beginning to see the gunpowder  
10 particles. So, you know, again, these are orange  
11 color reactions that the chemicals will react in  
12 the presence of these nitrites or these partially  
13 burned and unburned gunpowder particles. And so  
14 you see all the little pinpricks, these are all  
15 the little individual point reactions. And so  
16 each of these is indicative of an actual particle  
17 of gunpowder. And so you see a pretty strong  
18 concentration directly around the bullet hole, and  
19 then you can kind of see that it has a circular  
20 overall pattern to it. And, again, it's going to  
21 be that diameter of that circle that I'm going to  
22 be looking at to determine a distance.

23 Q. Then at 18 inches?

24 A. So now we've moved the gun back from 6 to  
25 18, so quite a ways, and you see the pattern has

1 grown. Density wise, the particles are more  
2 spread out and overall diameter is greater than  
3 what you saw at six inches. So this is showing  
4 that those particles, they're spreading outwards  
5 as they move further and further away from the  
6 muzzle of the firearm.

7 Q. Then finally from 24 inches?

8 A. Then again, diameter, less concentrated,  
9 overall -- I'm sorry, density is less concentrated  
10 and overall diameter is -- is, again, getting  
11 bigger. But even at 24 inches, you still have a  
12 very significant amount of gunpowder particles  
13 deposited on the target material.

14 Q. We'll talk about intervening targets a  
15 little bit more here in a minute, but if you have  
16 an intervening target like a window between the  
17 fired bullet or the fired gun and the person it  
18 strikes, will that prevent the deposition of these  
19 materials?

20 A. Yes, it will. A window or a curtain,  
21 anything that perhaps could be hanging or, you  
22 know, placed in between the final -- the final  
23 target of the bullet and the muzzle of the  
24 firearm, these particles, the gases, the lead,  
25 that will all hit the window and it would be

1 deposited on the window, the curtain, whatever the  
2 intervening object may be. And the bullet, of  
3 course, is going to punch through and continue on  
4 downrange; but these residues are going to be  
5 stopped by the first surface that they come into  
6 contact with.

7 Q. I'm going to hand you, then, a total of  
8 eight exhibits. Are these the test firings you  
9 did on the second test you performed as well as  
10 the photographs of those items right after they  
11 were tested?

12 A. Yes, they are.

13 MR. BLONIGEN: Move to introduce 508  
14 through 515, Your Honor.

15 THE COURT: Any objection?

16 MR. LOW: No, Your Honor.

17 THE COURT: State's Exhibits 508  
18 through 515 inclusive are received.

19 Q. (BY MR. BLONIGEN) By the way, we talked  
20 about intervening target just a moment ago. Would  
21 bullet wipe be present even if there was an  
22 intervening target?

23 A. It very well could be. As the bullet is  
24 passing through and going downrange, there could  
25 very easily be lead materials that are retained on

1 the surface of the bullet which could then be  
2 wiped off subsequently.

3 Q. Because bullet wipe is caused by the  
4 entry of the bullet itself?

5 A. Yes.

6 Q. This isn't the debris from the end of the  
7 gun?

8 A. Bullet wipe is material coming off of the  
9 bullet directly and not additional material.

10 Q. And let's begin here. Again, would you  
11 describe this, exactly how these tests are  
12 performed.

13 A. This is the sodium rhodizonate test for  
14 lead, which I mistakenly described earlier. So  
15 what you have is the dark reddish purple color.  
16 And this is also a colorimetric test, so it will  
17 turn colors with a positive reaction. So  
18 everywhere where you see this dark purple color,  
19 that is lead. What you're looking at is a  
20 positive for the presence of lead residues.

21 And so -- and even if you look in the  
22 bottom left-hand corner, you'll see a "T," and  
23 that -- that's a positive control that I use where  
24 I take a known standard, okay, and so this has  
25 been tested to be 99.9 percent pure lead. And

1 I'll just draw right on the fabric. Before I  
2 test, I'll just draw this little shape of a "T."  
3 And so then when I test it using the chemicals,  
4 it's going to turn positive, and I know for a fact  
5 that it is lead. And then when I see that it's  
6 turning and then I've got a very similar reaction  
7 happening with my test shot as well, I know that  
8 I've got -- that my tests are working properly.

9           So this would be a contact. And, you  
10 know, what you see is, you kind of see -- you  
11 don't see a very clean punched hole like a bullet  
12 hole like you might imagine, but rather you see  
13 this "X" shaped or "T" shaped tearing. I call  
14 that a stellate tear. And that's very, very  
15 common, indicative of a contact shot. You'll see  
16 that in fabric, you'll also see that in skin,  
17 perhaps a contact shot to skin. But you'll see  
18 this "X" or star-shaped tear very often.

19           And then, you know, directly surrounding  
20 the area where all these gases are being expelled  
21 from the muzzle at contact, then you've got, as  
22 you can see, this very heavy, concentrated, and  
23 thick deposit of lead residues all around where  
24 the stellate tear is. And so this would be very  
25 typical of a contact shot both in how the fabric

1 is torn in this manner and also in the amount of  
2 residues that are deposited.

3 Q. Also sometimes the imprint of a muzzle or  
4 a sight or something like that at contact?

5 A. There are times where you could see that.

6 Q. Now, on the T-shirt, we see a similar  
7 mark like this "T" is. Was that your control mark  
8 on that T-shirt?

9 A. Yes.

10 Q. So it's the same test you were using on  
11 the T-shirt?

12 A. Yes. It's a positive control used to  
13 verify that the test is working properly, the  
14 chemicals are performing the way they're expected  
15 to.

16 Q. And then this is the actual contact, the  
17 piece of cloth you used?

18 A. This is the actual piece of jean twill  
19 cloth, yes. So what you saw before was just a  
20 picture of this and showing the -- the stellate  
21 tearing and the heavy concentrated deposit of  
22 lead.

23 Q. Then, again, on this test, you're using  
24 the exact same firearm and the exact same  
25 ammunition; correct?



1 A. Yes.

2 Q. In this case, the ammunition came from  
3 the suspect weapon?

4 A. The ammunition that was submitted, yes.

5 Q. And it's the very same weapon, not a  
6 weapon like it?

7 A. It's the very same weapon.

8 Q. Now, in addition to that, on contact or  
9 close contact, do we sometimes have tissue, hair,  
10 things like that deposited upon the firearm?

11 A. There can be what we call blow back, yes.

12 Q. Did you observe anything like that in  
13 this instance?

14 A. I did not.

15 Q. Then, again, from six inches, does this  
16 show -- that's upside down perhaps. Does this  
17 show the lead and vaporous lead depositions from  
18 about six inches?

19 A. Yes.

20 Q. Okay.

21 A. So this is the actual, you know, or a  
22 photo of the jean twill that I shot, test fired at  
23 six inches. And so, I mean, here you can even see  
24 with your -- you know, you don't necessarily need  
25 chemical testing to be able to see the small

1 speckles of gunpowder that's deposited. And so,  
2 you know, this would be the -- a photo of the same  
3 piece of fabric that I initially -- that we looked  
4 at, the orange reactions from the Griess test; but  
5 here you can even see the gunpowder particles just  
6 by looking at it. It's very clear that you've got  
7 these small speckles. And what those are is, like  
8 I say, partially burned and unburned gunpowder  
9 that are ejected from the muzzle and then the  
10 purplish pink reaction for lead. And you can kind  
11 of see the halo effect, and that's just from  
12 the -- how that smoke is coming out. And it's in  
13 a -- it's in a circular shape because it's just  
14 come out of the muzzle, and it's been deposited in  
15 kind of that circular or halo look. But, again,  
16 these gases are very lead rich, and so they're  
17 going to test positive when they're -- for lead.

18 And so you have, again, a very heavy  
19 concentration directly around the hole itself.  
20 You have the gases kind of spreading out. And  
21 then if you look at the actual bullet hole, you  
22 can see the dark purple ring around it. That's  
23 the lead wipe. And you're going see that at any  
24 distance, it doesn't matter, 6 inches, 12 inches,  
25 you know, yards downrange, you're going to see

1 that lead wipe appearing again. That's just the  
2 surface being -- of the bullet wiping off on the  
3 material it's going through.

4 But no stellate tearing. It looks like  
5 what you would imagine a bullet hole would look  
6 like. It looks like a hole, not an "X" shaped  
7 rip. And so, you know, this would -- certainly,  
8 if I were to see this, I would say definitely  
9 close range but greater than contact.

10 Q. So this is actually chemical penetrating  
11 the surface that shows at least part of this  
12 reaction, that is, this is a chemical reaction,  
13 the vaporous lead actually being present and into  
14 the surface of the fabric itself?

15 A. Yes.

16 Q. Then if we look at the actual test firing  
17 from that, this is the actual test firing that we  
18 just took a photograph of; is that correct?

19 A. Yes. And -- well, I'm sorry. That's 18  
20 inches, I believe.

21 Q. Oh, excuse me. I placed the wrong one.  
22 I had that one in the other hand. This is the six  
23 inch; is that correct?

24 A. Yes. And that's simply what we just saw  
25 a photograph of.

1 Q. Okay. Now, at 18 inches, still quite a  
2 bit of material present?

3 A. Absolutely. You're beginning to see that  
4 vaporous lead starting to drop off. You don't see  
5 that halo look around it where the smoke is being  
6 deposited, but you're still seeing all these --  
7 all these specks are the actual particles of  
8 gunpowder themselves. This is gunpowder that's  
9 being deposited.

10 And still at 18 inches, you've got a very  
11 strong concentration of gunpowder being visible  
12 all around the bullet hole. And you see the very  
13 dark ring around the hole itself is the bullet  
14 wipe, but you don't see that halo look, that --  
15 where you've got the vapor lead rich smoke coming  
16 out that's beginning to dissipate already at 18  
17 inches.

18 Q. And this is the actual test firing?

19 A. It's the actual, and the reason I  
20 photograph these is that bright purple reaction,  
21 it can be a little bit -- it may fade over time.  
22 And so I photograph it directly after the test  
23 because that's when it's the most visible. Here  
24 it's still visible, but you can have a little bit  
25 of fading, so that's the reason why I photograph.

1 Q. Finally at 24 inches, obviously the  
2 bullet wipe still very much present?

3 A. Bullet wipe still very present. We still  
4 have a little bit of gunpowder even being  
5 deposited at 24 inches, not a whole lot. No  
6 vaporous lead deposits, no smoke, so you're  
7 beginning to see that pattern dropping off quite  
8 significantly at 24 inches.

9 Q. And again, preserved in the actual test  
10 firing itself?

11 A. Yes.

12 Q. Now, in the earlier test, you said an  
13 intervening target could prevent these materials  
14 except the bullet wipe from reaching the first  
15 surface entered by the bullet, in this case white  
16 T-shirt. Is that true of this testing and these  
17 matters as well?

18 A. Yes. Gunshot residue is going to be  
19 deposited on the first surface that it comes into  
20 contact with and not subsequent surfaces.

21 Q. As you reviewed the materials, was there  
22 an intervening target that seemed to be raised by  
23 those materials? That's a very poor question.  
24 Let me ask it this way. You said you had Dr.  
25 Carver's report; is that correct?

1           A.     Yes.  I reviewed the medical examiner's  
2 report.

3           Q.     And did it suggest an intervening target?

4           A.     There was -- he did mention that there  
5 was refractile material consistent with glass  
6 present on the epidermal surface of the bullet  
7 wound.  And in talking with the investigator and  
8 trying to ascertain some of the facts that were  
9 known about the case, I came to understand that  
10 there -- there was a window in question.

11                     And so my final, you know, my -- my  
12 results would be that the evidence, the bullet  
13 hole on the evidence was created by a firearm at a  
14 distance greater than from which these residues  
15 would be deposited because I didn't see any  
16 residues.  So my conclusion is that, well, it  
17 either was fired from a distance, you know,  
18 greater than that approximate arm's length or a  
19 distance greater from which you would expect to  
20 see gunshot residues deposited; or else there  
21 could have been an intervening object.  Again,  
22 those residues being deposited on the intervening  
23 object, the first surface they come into contact  
24 to.

25                     So in answer to the question, yes, there

1 was the possibility of an intervening object in  
2 this case. And in my mind, the reasonable  
3 explanation could have been that there might have  
4 been a window in between the -- the garment and  
5 the muzzle of the firearm.

6 Q. Now, you stated in addition to your  
7 laboratory work, you are charged with  
8 investigating actual crime scenes; is that  
9 correct?

10 A. Yes. I respond to crime scenes  
11 throughout the state.

12 Q. Is it unusual to have a crime scene where  
13 a firearm has been discharged through a car  
14 window?

15 A. Not necessarily, no.

16 Q. Okay. And even through a side car  
17 window?

18 A. Yes.

19 Q. Have you ever observed a side car window  
20 shot with a firearm?

21 A. Yes. In fact, I've shot them myself.

22 Q. And when that occurs, does the same thing  
23 happen each time the window is shot?

24 A. Not necessarily. The sides and the rear  
25 window of most vehicles are made out of what's

1 called tempered glass or double strength glass.  
2 And so this would be different than your glass  
3 that you have in your regular windows or, you  
4 know, doors and whatnot, which would be single  
5 strength glass or pane glass.

6           Tempered glass, which is in vehicles, is  
7 often referred to as safety glass because of how  
8 it breaks. And when it breaks, it will  
9 immediately fracture into hundreds, maybe  
10 thousands of very small square and rectangular  
11 shaped pieces, so these have somewhat dull edges.  
12 And the reason for them using it in vehicles is  
13 because when it breaks, you're not having those  
14 large shards of irregularly shaped glass flying  
15 all over the occupants of the vehicle. It will  
16 break into these very small pieces, and they're  
17 relatively dull. And so it's much safer for the  
18 occupants if they're involved in some kind of  
19 vehicle crash.

20           When these windows are struck by a bullet,  
21 as soon as the bullet perforates the window,  
22 instantly it's going to fracture and break into  
23 all these very small, square, rectangular shaped  
24 piece. That's often -- in the industry, that's  
25 often referred to as dicing, the window dices.



1 And so but it may or may not, at that point,  
2 behave like you would expect a window to behave.  
3 You might have seen from movies or whatever, you  
4 know, the glass being blown out or whatever. As  
5 the bullet perforates the window, the force is  
6 very concentrated. It's right there about -- the  
7 amount of surface area about as big as a  
8 .45-caliber bullet in this case.

9           So you'll have a little bit of glass  
10 flying outwards right where the bullet is, but  
11 then what happens to the window, it could be  
12 anybody's guess. I mean, I've shot these windows  
13 where they've remained hung into the frame so  
14 they're completely broken, shattered; but they're  
15 hanging in the window frame. They haven't  
16 dropped. And these are very fragile at this  
17 point. And if I were to approach one of these at  
18 a crime scene, what I would try to do would be to  
19 try to use tape and very, very carefully tape the  
20 glass in place so to preserve the bullet holes  
21 that may or may not be there.

22           But I've seen it to where you just walk up  
23 and touch it and gravity will just take effect,  
24 and you'll have the whole window just drop. If  
25 the vehicle were moved in some manner -- if we're

1 at a crime scene and we want to pack it, take the  
2 vehicle and load it up on a flatbed and take it  
3 into the lab for further processing or whatever,  
4 that would be a consideration because I'm sure as  
5 soon as we were to move that vehicle, then any  
6 kind of safety glass that was remained hanging in  
7 the precarious balance of the frame would probably  
8 drop.

9 And it's not uncommon that even in the  
10 literature, it's been published that oftentimes  
11 glass struck by high velocity bullets will behave  
12 somewhat counterintuitively, and they actually  
13 break inward towards the direction of the gunshot.  
14 And that's -- that's been documented in the  
15 literature, and that is something that I've been  
16 trained to look for as well.

17 Q. Did you find that where the glass was  
18 found was a very good indicator of the direction  
19 of fire?

20 A. In speaking with the investigators in the  
21 case, I came to understand that there was a large  
22 amount of glass deposited on the inside of the  
23 vehicle and some glass deposited on the outside.  
24 I was asked whether or not anything could be  
25 determined from this, and my answer was that I

1 really don't place a whole lot of evidentiary  
2 value on the location of the glass at all simply  
3 because there's just so many ways that it could  
4 have happened.

5 The glass could have remained hanging in  
6 the window and then perhaps later subsequently  
7 when the vehicle was driven and turned or maybe it  
8 hit a curb or anything, that glass could have been  
9 then knocked loose. The glass could have been  
10 knocked loose right at the -- right at -- in the  
11 location of the incident. It just -- there's just  
12 so many different ways that that glass could have  
13 been displaced that I just don't feel that the  
14 location of the glass is a very strong indication  
15 of the actual event sequences that could have  
16 happened.

17 Q. Now, in your observation, what -- you  
18 said the results can be very, very different  
19 from -- on different scenes, but what was the  
20 most com -- when you fired a bullet through a  
21 tempered glass window, what was the most common  
22 damage that would have occurred from the bullet  
23 shot itself? What did you see most often?

24 A. Generally, well, the glass will generally  
25 behave most commonly in one of two ways. The

1 first being that when the bullet goes through, the  
2 bullet goes through, and then the glass will just  
3 react to the force of gravity, and you'll see it  
4 just drop. And this has nothing to do with the  
5 direction of the bullet or anything else. It's  
6 just that the glass is now suddenly diced or  
7 fractured. And at that point, gravity just takes  
8 a hold and it just drops.

9 The second -- and this is still fairly  
10 common, would be that the bullet passes through  
11 and the glass remains hanging, fully fractured,  
12 but hanging in the frame. And then -- and then it  
13 can be, you know, sometimes even just the wind or  
14 just gravity, just whatever; and you'll see it  
15 drop at some point whenever it's acted on by some  
16 sort of outside force.

17 Q. Okay. And once it shatters or breaks,  
18 whatever, there are edges present that can cause  
19 injury?

20 A. The glass is designed to have edges that  
21 are more dull than what you would see in like a  
22 pane glass or window glass. But yes, it's glass,  
23 and of course the edges are still going to be  
24 relatively sharp.

25 Q. So do you believe that you'd be able to

1 predict a direction of fire from where glass was  
2 found given your testimony here today?

3 A. In this instance, no.

4 Q. Okay. Did you complete a report in this  
5 case on February 25th, 2014?

6 A. Yes, I did.

7 Q. And did you place your conclusions in  
8 that report to a degree of reasonable scientific  
9 certainty?

10 A. Yes, I did.

11 Q. And what was your opinion in this case as  
12 to range of fire or distance of the muzzle to the  
13 target?

14 A. Because in my testing I -- I went ahead  
15 and stopped testing -- test firing at 24 inches,  
16 what we saw on the screen was as far out as I went  
17 to where we saw a significant decrease in gunshot  
18 residues being deposited. And so with that, my --  
19 my report stated that the T-shirt was likely  
20 struck from a distance greater than 24 inches,  
21 assuming no intervening object was present.

22 Q. If there was an intervening object, that  
23 would account for the nature of the wound also?

24 A. It could be. It could be less than 24  
25 inches if there was an intervening object present.

1 Q. And just one final question to follow up  
2 to that. It could be both more than 24 inches and  
3 an intervening target, too, couldn't it?

4 A. Could be, yes.

5 MR. BLONIGEN: Thank you, Mr.  
6 Norris. That's all the questions I have.

7 THE COURT: Thank you, Counsel.  
8 Cross-examination on behalf of the  
9 Defense, Mr. Low.

10 MR. LOW: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. LOW:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. How are you today?

16 A. Doing very well. Thank you.

17 Q. How was your weekend?

18 A. Very good.

19 Q. How was Mr. Blonigen's?

20 A. I don't know.

21 Q. You didn't talk to him?

22 A. No, sir.

23 Q. What about before the weekend?

24 A. Yes, sir.

25 Q. How many times did you talk to him?

1 A. We had a pretrial meeting one time.

2 Q. One time?

3 A. And perhaps shortly before trial.

4 Q. Perhaps? You're not sure?

5 A. I discussed -- I did talk to him before  
6 trial.

7 Q. So you know how many times you have met  
8 with Mr. Blonigen, you're sure about that; right?  
9 I mean, you were there; right?

10 A. Yes.

11 Q. You were participating; right?

12 A. Yes.

13 Q. So how many times was it?

14 A. Maybe two.

15 Q. You're not sure?

16 A. Not exactly sure, no.

17 Q. What happened? How could you be so  
18 unsure now? Let them know, how could you be so  
19 unsure?

20 A. I met with Mr. Blonigen before trial,  
21 yes, I did.

22 Q. When?

23 A. More than once.

24 Q. How many times?

25 A. I'm not sure how many times.

1 Q. Why?

2 A. I don't recall.

3 Q. Well, what -- what caused your memory to  
4 fade so you don't recall?

5 A. I don't believe anything caused it, just  
6 simply the way it is.

7 Q. The way your memory is?

8 A. Yes.

9 Q. Okay. And did Mr. Blonigen ask you some  
10 questions?

11 A. Yes.

12 Q. What did he ask you?

13 A. We discussed my report.

14 Q. Yes. Anything -- did you discuss  
15 anything that was not in your report?

16 A. I'm not sure exactly what you're trying  
17 to get to here. I --

18 Q. Here's what I'm getting to. Did you  
19 discuss anything that was not in your report?

20 A. I don't believe anything of consequence,  
21 no.

22 Q. So you discussed nothing of consequence;  
23 correct?

24 A. I don't believe so.

25 Q. Did you all discuss this whole story



1 about glass breaking inward from a bullet shot?

2 A. Yes.

3 Q. But that was of no consequence; right?

4 A. That was part of what was -- that stemmed  
5 from my report.

6 Q. Oh, you believe that's in your report, do  
7 you?

8 A. I believe that that is -- my report is  
9 relevant to that question.

10 Q. Nice and easy. Let's not -- let's make  
11 sure we choose our words here. I want to make  
12 sure I'm real precise about this. You mean to  
13 tell us that in your report, you fully discussed  
14 this whole story about shooting windows with  
15 bullets and glass breaking inward from bullets and  
16 how it cracks and what it could mean? You're  
17 going to tell us you discussed that in your  
18 report; is that your testimony?

19 A. That was not in my report.

20 Q. Yeah, it's not, is it?

21 A. No.

22 Q. So you just had a private conversation  
23 with Mr. Blonigen himself about that; right?

24 A. I had conversations with the investigator  
25 with the DA's Office, yes.

1           Q.     But I'm not asking you about the  
2 investigator right now. I asked you about Mr.  
3 Blonigen. And my question is still the same,  
4 isn't it true that you had conversations, detailed  
5 conversations with Mr. Blonigen about how glass  
6 breaks; isn't that right?

7           A.     Yes.

8           Q.     And it's nowhere in your report, is it?

9           A.     No.

10          Q.     Well, do you realize that you have the  
11 ability to amend your report?

12          A.     Yes.

13          Q.     Supplement your report?

14          A.     Yes.

15          Q.     Add to your report?

16          A.     Yes.

17          Q.     Did you do that in this case?

18          A.     No.

19          Q.     Why not?

20          A.     I didn't see a need to.

21          Q.     Why not?

22          A.     There was -- I was never -- it never  
23 became an issue that I needed to address.

24          Q.     Are you saying that that evidence where  
25 you claim that you can shoot a bullet at a window

1 and all of a sudden the window glass is going to  
2 come back your way is completely irrelevant?

3 A. That's just experience that I've  
4 encountered.

5 Q. Well, he asked you to testify to it in  
6 this case as a possibility, didn't he?

7 A. Yes.

8 Q. Don't you think that's something that  
9 you're usually asked to put in your report to tell  
10 people about?

11 A. That wasn't part of my testing.

12 Q. I understand. But don't you think that  
13 opinion is important to tell people about if you  
14 believe that may have happened?

15 A. The report is simply the results of my  
16 testing.

17 Q. Do you believe, sir, that if you believe  
18 that could have happened, one of the  
19 possibilities, that that is something you're  
20 supposed to put in your report; yes or no?

21 A. No. I'm only going to put in the results  
22 of my testing. Now, if I'm asked something about  
23 my prior experience, then I'm going to -- I can  
24 explain that.

25 Q. So you only believe that you should only

1 put in your report results of testing; is that  
2 right? Is that your answer, sir?

3 A. Yes.

4 Q. Well, let's see if we can do this, then.  
5 Here's page 2 of your report; correct?

6 A. Yes.

7 Q. And these are the --

8 A. Copy of it.

9 Q. This is the result section; correct?

10 A. Yes.

11 Q. And here you write: Minimal gunpowder  
12 and/or lead residues were observed, however;  
13 correct?

14 A. Yes.

15 Q. And that means that you actually did find  
16 gunshot residue on the T-shirt itself; correct?

17 A. Very small amounts.

18 Q. Is that a "yes" or a "no"?

19 A. Yes.

20 Q. Well, sir, if there is a big window  
21 between the T-shirt and the gun, how do you  
22 account for finding gunshot residue on the T-shirt  
23 if you've said that it would stop it from going  
24 through?

25 A. The majority would be stopped. There

1 possibly could be some that might make it through.

2 Q. Well, it would have to go through a  
3 really small hole, wouldn't it?

4 A. Possibly.

5 Q. Well, you think it can go through a  
6 bigger hole, like maybe when the window has been  
7 busted out? Huh? Is that a possibility also,  
8 sir?

9 A. I would expect there would be a large  
10 amount that would go through a bigger hole.

11 Q. Well, let's look at the pattern that you  
12 preserved for us. Do you remember what exhibit  
13 number that was?

14 A. No, sir.

15 Q. Here, I've got it right here. I believe  
16 it's been received as 533. Is that it there, sir?

17 A. Yes.

18 Q. You think that that pattern represents  
19 gunshot residue on a T-shirt that's gone through a  
20 bullet hole? Let's make sure I get this close --  
21 well, you've got it here. The best way to do it  
22 is pull the T-shirt up.

23 Is that fair, sir? I'll give you the  
24 T-shirt if you'd like to compare.

25 A. That might be fair.

1 Q. And that hole represents the size of the  
2 bullet that went through the T-shirt?

3 A. The hole in the glass may or may not have  
4 been the exact size.

5 Q. Nice and slow.

6 A. We're talking approximately, yes.

7 Q. I didn't ask you that question. That  
8 hole would represent the size of the bullet that  
9 went through the T-shirt, "yes" or "no"?

10 A. The hole was approximately the size of a  
11 bullet, so yes.

12 Q. Well, do you believe that the hole in the  
13 glass was bigger than the hole in the T-shirt?

14 A. It could have been.

15 Q. Do you believe that the bullet when it  
16 hit the glass was one size and then it, like,  
17 shrunk miraculously and got really small before it  
18 hit the T-shirt?

19 A. No.

20 Q. Do you think that the bullet was pretty  
21 much the exact same size when it hit the glass as  
22 it would when it hit the T-shirt?

23 A. The glass may or may not break out in the  
24 exact same size, but approximately, yes.

25 Q. I'm not asking you what the glass does if

1       it breaks. Very specific here. I'm asking you  
2       that the size of the hole that the bullet would  
3       cause in the glass should be the same size as the  
4       hole that it causes in the T-shirt; isn't that  
5       right?

6           A.     Approximately speaking.

7           Q.     Yes. And then if we look at the pattern  
8       of the gunshot residue, oh, we got to zoom out a  
9       little bit here because it turns out there's a --  
10      there's another one up here, too; right?

11                   MR. LOW: Pointing to the upper  
12      left-hand corner of Exhibit 553 or 533, pardon me.  
13      Judge.

14           Q.     (BY MR. LOW) Correct?

15           A.     Yes. And, again, these are possible.  
16      These were not strong at all. So just in an  
17      effort to be conservative, anything that looks  
18      even remotely like it could be a positive reaction  
19      I've circled. But these weren't like the heavy,  
20      very visible point reactions that you were able to  
21      see before on the known shots. These are very  
22      small, almost -- almost invisible. But I circled  
23      them to be conservative.

24           Q.     You detected it and you used a test and  
25      these things came up; correct?

1           A.     There were some very small pinprick  
2 orange discolorations, yes.

3           Q.     And you can see the pattern here, I mean,  
4 that's a large circle, isn't it, sir?

5           A.     Eight and a half by eleven --

6           Q.     Well --

7           A.     -- is the size of the paper, so you can  
8 ascertain for yourself how large.

9           Q.     -- I don't understand.  If you say it's  
10 possible that the bullet went through the glass  
11 first, how could that disperse of a pattern going  
12 through a tiny hole all of a sudden then open up  
13 onto a T-shirt?

14          A.     I don't necessarily believe that all of  
15 that had to go through the tiny hole.

16          Q.     Well, let me see if can I ask it this way  
17 then, sir.  Are you telling this jury that you  
18 know for a fact that that window was up and the  
19 bullet got shot through the window glass?

20          A.     No.

21          Q.     Why aren't you telling them that?

22          A.     I'm not infallible.  I can't state -- I  
23 can offer a reasonable explanation of the evidence  
24 based on what I was able to observe.  But I don't  
25 know all things, and I'm not about to try to say



1       that I do.

2           Q.     Well, let's see if you tried to figure  
3     out if it happened or not. Did you take a piece  
4     of automobile glass and put it in front of you  
5     with the gun used in this case behind it and the  
6     T-shirt on the other side of the glass and shoot  
7     the bullet through the glass and at the T-shirt?

8           A.     No.

9           Q.     Why not?

10          A.     Well, as we discussed earlier, the -- the  
11     glass breaking may or may not happen the same way  
12     every time, so therefore, I wouldn't see how it  
13     would tell me very much usable information about  
14     how the actual sequence of events occurred.

15          Q.     So let me see if I can get this straight.  
16     No usable info about shooting it through the  
17     glass. So you're telling this jury that you had  
18     the ability to shoot it through the glass and at  
19     the T-shirt had you wanted to; correct? Correct?

20          A.     It's really not in the standard operating  
21     procedures that I use; however, I guess, correct.

22          Q.     Well, did somebody tell you not to do  
23     that?

24          A.     No.

25          Q.     Did somebody tell you how and how you

1       should not test so that you can try and reach the  
2       truth?

3             A.     No.

4             Q.     Is it your goal to reach the truth?

5             A.     It's my goal, yes.

6             Q.     If you recreate the scene as close to how  
7       it's supposed to have happened as possible, are  
8       you more likely to be able to closer approximate  
9       how and how it could not have happened?   Yes?

10            A.     Yes.

11            Q.     Yeah.  Sir, if I asked you whether or not  
12       that bullet was shot through the window, would you  
13       have to guess as to the answer as to whether it  
14       actually happened or not?

15            A.     No.

16            Q.     So you know what happened; is that what  
17       you're saying?

18            A.     No.

19            Q.     So you would have to guess as to how it  
20       happened, wouldn't you?

21            A.     No.

22            Q.     Well, if you don't know and I asked you  
23       to answer it and you wouldn't have to guess, how  
24       do you resolve those two?

25            A.     A guess would be just a blind assumption

1 based on no facts. I would offer you a reasonable  
2 explanation based on testing I performed.

3 Q. That's true. But you've offered us three  
4 reasonable explanations, haven't you? Haven't  
5 you, sir?

6 A. I don't believe so.

7 Q. Well, let's see. Let's put this back on  
8 here. Minimal gunpowder and lead residues were  
9 observed; however, a negative finding -- but you  
10 didn't find a negative finding, you have a  
11 positive finding -- for discharge residues could  
12 be -- could. Does that mean could or could not  
13 be, you don't know which it is? Is that correct?

14 A. It means it could be.

15 Q. Could also mean could not be? It's one  
16 or the other; right?

17 A. It means it could be.

18 Q. Well, let me see if I could do it this  
19 way. Who picked the words that went in that  
20 sentence?

21 A. That would be me.

22 Q. Did anybody tell you to change them?

23 A. No.

24 Q. Could you have picked words like  
25 absolutely?

1 A. Yes.

2 Q. And you didn't pick that one, though, did  
3 you?

4 A. No.

5 Q. Could you have picked definitely?

6 A. Yes.

7 Q. But you didn't pick that one, did you?

8 A. No.

9 Q. Could you have picked may be?

10 A. Yes.

11 Q. Is may be a synonym for could be?

12 A. Possibly.

13 Q. And may be means we don't know one way or  
14 the other; right?

15 A. Correct.

16 Q. Could be means the same thing, one way or  
17 the other, doesn't it?

18 A. Yes.

19 Q. Okay. So now we know that it could be  
20 one way or not. The result of, number one,  
21 intervening objects in the bullet's flight path;  
22 right? Is that what it says there, sir?

23 A. Yes.

24 Q. And there's a comma right after that.  
25 Flight path, comma. You see that?

1 A. Yes.

2 Q. Which means now you've got another thing  
3 coming; right?

4 A. Yes.

5 Q. You put that comma in there?

6 A. Yes.

7 Q. A loss or reduction of particles due to  
8 outside forces.

9 You put that in there; correct?

10 A. Yes.

11 Q. You got a comma there again; right?

12 A. Yes.

13 Q. And then you chose this word, or, from  
14 the firearm being fired from a distance beyond  
15 which residue is deposited on the target material.

16 So it could be intervening objects or  
17 outside forces or fired from a distance; correct,  
18 sir?

19 A. Yes.

20 Q. Well, which one of the three is it?

21 A. I believe the most probable would be  
22 number one.

23 Q. Well, did you put that in your report?

24 A. No.

25 Q. See, that's what I don't understand. If

1       you thought that was the most probable, that's a  
2       significant fact; right? Right?

3           A.     Yes.

4           Q.     So why did you decide not to put that in  
5       your report and say for the very first time ever  
6       in your entire history today --

7                   MR. BLONIGEN: Well, Your Honor, I'm  
8       going to object. That assumes he never said any  
9       such thing before, which there is no evidence of  
10      that.

11          Q.     (BY MR. LOW) In this case, have you said  
12      that before, sir?

13                   THE COURT: I'll overrule. You may  
14      answer.

15          Q.     (BY MR. LOW) Why the first time today?

16          A.     I don't believe this is the first time  
17      I've ever said that before ever.

18          Q.     Oh. So who did you say that to before?

19          A.     I've discussed that with colleagues, with  
20      the investigator, with the DA's Office.

21          Q.     Any reason why you would discuss that  
22      with so many people, but since this is being  
23      reviewed by your peers, I guess, or a supervisor,  
24      why would you withhold it from that person?

25          A.     I don't believe I'm withholding anything.

1 It's in there. It says intervening object.

2 Q. Oh, whoa, nice and slow. You know the  
3 part where you said the probable explanation is,  
4 number one, and then you have this review like Mr.  
5 Blonigen said so that somebody other than you can  
6 review it for accuracy. Why would you withhold it  
7 from that person? Because probable is not in here  
8 as to which one it was. Why would you withhold  
9 that?

10 A. I don't believe I withheld it.

11 Q. Well, it's not in here, is it?

12 A. I --

13 Q. Is it?

14 A. No, it's not.

15 Q. So why would you withhold it, then?

16 A. I didn't withhold it.

17 Q. It's not in your report. Why would you  
18 withhold it from the report?

19 MR. BLONIGEN: Your Honor, he's  
20 answered this question at least three times.

21 Q. (BY MR. LOW) Why would you withhold it  
22 from your report?

23 A. There was no --

24 THE COURT: Hold up if you would.  
25 It was directly responded to, so I'll sustain.

1 Q. (BY MR. LOW) Well, I guess we'll -- I  
2 guess we'll have to guess why you withheld it  
3 then.

4 MR. BLONIGEN: Well, Your Honor,  
5 that's an inappropriate comment and an  
6 inappropriate suggestion.

7 THE COURT: I'll strike the comment.

8 Q. (BY MR. LOW) Well, let's see what you do  
9 say in here. Oh, by the way, when you wrote this  
10 report, were you trying to put all relevant  
11 information in it?

12 A. I was trying to put the results of  
13 testing.

14 Q. And your conclusions on the testing;  
15 right?

16 A. Yes.

17 Q. Okay. Well, let's see what you put in  
18 here for your conclusions, then.

19 Using the pistol, submitted cartridges  
20 therefor, substantial lead and/or gunpowder  
21 residue patterns were deposited at distances out  
22 to at least 24 inches. Therefore, the T-shirt was  
23 likely struck from a distance greater than 24  
24 inches assuming no intervening object was present.

25 Assuming; correct?



1           A.     Yes.

2           Q.     Well, how come nowhere in that report  
3 does it say it was 36 inches?

4           A.     I stopped at 24.

5           Q.     Right. But why today did you say that  
6 the distance was 36 inches?

7           A.     I did not say that.

8           Q.     You didn't say that when Mr. Blonigen was  
9 asking you those questions?

10          A.     No, sir, I did not.

11          Q.     Okay. So if we heard that, you didn't  
12 mean to say that; is that right?

13          A.     I did not say anything about this firearm  
14 and 36 inches.

15          Q.     Okay. What about arm's length? We heard  
16 that several times, too. Why did you say that  
17 because that's nowhere in your report about arm's  
18 length, is it?

19          A.     What I was explaining was that is a very  
20 common rule of thumb, but I did not say that was  
21 the case with this particular firearm, this  
22 particular ammunition. I said that from an  
23 investigator's standpoint, a common rule of thumb  
24 would be that residues are typically deposited out  
25 to about a distance of 36 inches or perhaps arm's

1 length.

2 Q. Typical is nice, but you had the exact  
3 gun in this case; right?

4 A. Yes.

5 Q. Why didn't you go out to 36 inches?

6 A. 24 inches was sufficient for what I was  
7 looking at.

8 Q. So you didn't go out to 36 inches because  
9 you didn't think it was important?

10 A. Because I didn't think it was necessary.

11 Q. Right. So how long is John Knospler's  
12 arm?

13 A. I do not know.

14 Q. You'd have to guess, wouldn't you?

15 A. I don't know how long his arm is.

16 Q. If I asked you to tell us, you'd have to  
17 guess; right?

18 A. I would say that I don't know.

19 Q. You don't want to say the word *guess*  
20 today, do you?

21 A. I don't know how long his arm is, sir.

22 Q. Did Mr. Blonigen tell you, whatever you  
23 do, don't answer my question by saying yes, you'd  
24 have to guess? Did he tell you that?

25 A. No, sir.

1 Q. You sure about that?

2 A. Yes, sir.

3 Q. Okay. Well, would you like to know the  
4 truth? Would it help you in your analysis if you  
5 had facts? Would it?

6 A. I believe that I had facts in my  
7 analysis.

8 Q. Would it also help you if you had  
9 additional facts?

10 A. Perhaps.

11 Q. Let's have Mr. Knospler come up, and  
12 we'll measure his arm right now; okay? Stand  
13 here. And I want you to hold that, and I want you  
14 to put your left hand out, palm up. I want you to  
15 pull this back here, straight up, and put the  
16 button down.

17 What does that say, sir?

18 A. I'm sorry. Am I supposed to?

19 Q. What does the distance on the tape  
20 measure show, sir?

21 A. Approximately 40 inches.

22 Q. And how many feet is that?

23 A. A little bit more than three feet.

24 Q. Is that exactly what it says here, and  
25 that is three feet, four inches?

1           A.     Approximately.

2           Q.     What does the gunshot residue pattern  
3 look like on a T-shirt with this particular gun  
4 and this particular ammo at three feet four  
5 inches? What does it look like, sir?

6           A.     I can't say for sure.

7           Q.     You'd have to guess; right?

8           A.     I would have to offer you a reasonable  
9 explanation.

10          Q.     So let's see if we can do this, then.  
11 Outside forces. Before we go to the outside  
12 forces, you mentioned a Griess test. Do you  
13 remember that?

14          A.     Yes.

15          Q.     And the Griess test is a way that you can  
16 measure to see if there's gunshot residue present;  
17 right?

18          A.     Yes.

19          Q.     Is there any other test that somebody can  
20 do to measure gunshot residue?

21          A.     Yes.

22          Q.     What is it?

23          A.     There's another test called the Walker  
24 test.

25          Q.     Anything else?

1           A.     I assume there's probably a wide variety  
2 of tests that may or may not be possible.

3           Q.     When you say you assume, you're not  
4 familiar with those in your field as a --

5           A.     I -- I don't purport to say that I'm  
6 familiar with every test that could be devised to  
7 detect the presence of gunshot residue, no.

8           Q.     Is there a test that's more accurate than  
9 the Griess test, more precise, finer, smaller  
10 particles?

11          A.     Perhaps. I'm not sure.

12          Q.     Well, did you ask the DA or the  
13 investigator if they took any gunshot residue  
14 samples of Mr. Baldwin's body?

15          A.     You need to define what you mean by  
16 gunshot residue because there's two different  
17 types. So which kind are you referring to?

18          Q.     Before we get to the two kinds, I'm just  
19 asking you if you asked them if they took any  
20 samples.

21          A.     I don't recall if I asked that specific  
22 question or not.

23          Q.     Well, did they give you any information  
24 that they took any samples?

25          A.     I believe they did, yes.

1 Q. Well then, I don't understand. If --  
2 you're aware they took samples; right?

3 A. Sir, I don't know. Samples of what?

4 Q. Of Mr. Baldwin's body for gunshot  
5 residue.

6 A. And I need you to explain the question  
7 and tell me what kind of gunshot residue you're  
8 referring to.

9 Q. Let me see if I can do it this way.  
10 Here's an easier way to do it. Tell us all the  
11 materials that you were given to review in  
12 preparation for making your testing. What did  
13 they give you to review?

14 A. I reviewed the medical examiner's report.

15 Q. Right. What else? Anything else?

16 A. I received information from the  
17 investigator as far as statements he'd received  
18 from witnesses and crime scene investigation, and  
19 I reviewed the evidence.

20 Q. What evidence?

21 A. The T-shirt, the firearm, the ammunition.

22 Q. Anything else?

23 A. That's all I can think of.

24 Q. And the witness statements and the crime  
25 scene that you just mentioned, were you given

1 reports or did someone just tell you what they  
2 wanted to tell you?

3 A. I was given verbal information.

4 Q. Right. They just told you some stuff;  
5 right?

6 A. Yes, sir.

7 Q. Tell us exactly what you were told, then.

8 A. I don't recall exactly what I was told.

9 Q. Well then, what do you think you were  
10 told?

11 A. I was told that there could be some  
12 question as to whether or not the window was up or  
13 down. I was told that it happened in the parking  
14 lot of the bar. I was told that it was snowing  
15 that night. I was told that the vehicle had  
16 moved, that perhaps there might have been impact  
17 on a separate vehicle. These are all things I was  
18 told.

19 Q. And, therefore, you were not told  
20 anything about some samples being taken for  
21 testing for gunshot residue? They didn't tell you  
22 or show you anything about that?

23 A. I know some samples that were taken for  
24 gunshot residue, but I don't know what kind of  
25 gunshot residue you're talking to. There are at

1 least two different types, and they're very  
2 different.

3 Q. I understand that. But before we get to  
4 what the results were, I'm just asking you if you  
5 were made aware that samples were taken.

6 A. I was made aware that there were some  
7 samples taken, yes.

8 Q. And what did you find out when you must  
9 have asked what the results were? What did they  
10 tell you?

11 A. The samples that were taken would have no  
12 bearing on anything that I do because it would be  
13 a different kind of gunshot residue entirely.

14 Q. Okay. So are you under the impression  
15 that any tests that would have been done for  
16 gunshot residue on Mr. Baldwin's body are  
17 irrelevant to this case?

18 A. I don't believe I understand your  
19 question.

20 Q. I'm asking you if somebody took samples  
21 of Mr. Baldwin's body for gunshot residue, you  
22 think that's -- those are irrelevant to this case?

23 A. That's not what I said at all.

24 Q. I'm asking you, do you think that's  
25 irrelevant?



1 A. I do not think that would be irrelevant.

2 Q. Do you think it would be relevant?

3 A. I can't say whether it would be relevant.

4 Q. You'd have to guess?

5 A. I can't say.

6 Q. Did they tell you why they never tested  
7 those samples?

8 A. No, sir.

9 Q. Did you ask them why?

10 A. I don't even know that they never tested  
11 those samples. I have no knowledge of this.

12 Q. That's right. They didn't tell you  
13 anything about them, did they?

14 A. I don't -- I really don't know what  
15 you're talking about.

16 Q. That's okay. Unfortunately, you weren't  
17 given that information; correct?

18 A. Okay. I don't know what you're referring  
19 to right now.

20 Q. And, sir, they didn't give you any of the  
21 crime scene pictures either, did they?

22 A. I don't believe I reviewed crime scene  
23 photos in this case, no.

24 Q. So let's now talk to you a little bit  
25 about the Griess test. And tell us, when testing

1 with the Griess test, is understanding the outside  
2 conditions, outside forces important for you to  
3 understand to help you make a conclusion in this  
4 case?

5 A. Could be, yes.

6 Q. Yeah. Because that might explain why  
7 there's no particulate matter on the T-shirt you  
8 looked at; correct?

9 A. It could be important in this case.

10 Q. Uh-huh. Well, tell us the detailed  
11 experiments that you did so you could fully  
12 appreciate what the outside forces were so that  
13 allows us to understand your conclusion that  
14 you've made. What exactly did you do to test for  
15 the outside forces?

16 A. I've already explained exactly what I  
17 did.

18 Q. So you did nothing is what you're going  
19 to tell us, you just don't want to say that;  
20 right? You did nothing; right?

21 A. Again -- the testing that I did, we take  
22 into account every variable that we can. Some  
23 variables are going to have an influence on the  
24 testing; some are not.

25 Q. You did nothing to test and ascertain the

1 outside forces; isn't that true, sir?

2 A. Well, could you explain which outside  
3 forces you're referring to?

4 Q. You're the one who put the word down  
5 there as a possibility or a could be. What did  
6 you mean? You're not sure?

7 A. Not sure. I'm not sure what you're  
8 asking is what I'm saying.

9 Q. All right. I understand. This is  
10 difficult. We'll see if we can do it this way.  
11 Is one outside force the weather?

12 A. It could be.

13 Q. And tell us exactly how the weather in  
14 this case with this T-shirt affected what you  
15 found?

16 A. I can't say that it did or did not affect  
17 what I found.

18 Q. Can't say one way or the other, can you?  
19 Can you?

20 A. No.

21 Q. And what was the weather at the time that  
22 the bullet hit the T-shirt exactly?

23 A. I was told that it was snowing.

24 Q. Anything else?

25 A. That's what I was told.

1 Q. Yeah. Were you told anything else?

2 A. No.

3 Q. What about the wind? Were you told  
4 anything about that?

5 A. No.

6 Q. Did you look it up?

7 A. No.

8 Q. Did you get on one of the geological  
9 surveys that's recorded every single day to find  
10 out what the wind was that day?

11 A. No.

12 Q. If the wind blows into the window because  
13 someone just punched it out and then the shot  
14 comes and there's wind blowing in, could that have  
15 affected whether the fine, misty, microscopic  
16 particles can travel all the way to the T-shirt?

17 A. They're not microscopic. And it may  
18 affect it, but it shouldn't affect it too much at  
19 close range like that.

20 Q. Oh. Oh, close range.

21 A. Less than about arm's length.

22 Q. Let's not put that word in there. Hold  
23 on. Let's go nice and slow. If these particles  
24 are in a gas in a cloud and a wind blows in, could  
25 that affect how far they travel?

1 A. Possibly.

2 Q. You're not sure?

3 A. It could possibly -- I'm sure it could  
4 possibly affect it.

5 Q. So the answer is yes, it could affect  
6 them; right?

7 A. Yes.

8 Q. So you don't know what the wind speed  
9 was, you don't know what direction it was blowing,  
10 and you did nothing to try and figure it out;  
11 isn't that right?

12 A. Yes.

13 Q. Okay. What about water? Could that  
14 affect the particles on the T-shirt?

15 A. I don't believe so, but possibly.

16 Q. Well, let's see if we can do it this way.  
17 You're aware that if somebody uses the Griess  
18 test, that they have to be aware if the T-shirt --  
19 or I'm sorry -- the material you're going to test  
20 was subjected to water; isn't that correct, sir?

21 A. That's not a typical consideration, no.

22 Q. No?

23 A. No.

24 Q. You think water has nothing to do with  
25 whether the particles could be present or not?

1           A.     I think particles are going to be  
2 deposited on the surface whether it's wet or dry.

3           Q.     Right. That's not my point. Let's  
4 suppose they're on the surface, you're with me so  
5 far? Yes?

6           A.     Yes.

7           Q.     Just like you're saying, you throw the  
8 sand up there, and it's clinging to the material;  
9 right? You with me so far?

10          A.     I'm with you.

11          Q.     And then all of a sudden, I put water on  
12 it. Could water wash some of those particles  
13 away?

14          A.     It might cause some to be removed. I  
15 don't believe it will cause all of it.

16          Q.     But all of them weren't removed. There  
17 were particles on the T-shirt, you found them;  
18 right?

19          A.     Possibly.

20          Q.     So water is a consideration for you to  
21 figure out whether there could be something else  
22 that would have removed some particles that could  
23 have been there; right?

24          A.     Water could be an outside force, yes.

25          Q.     And how much time did you spend trying to

1 figure that out, if there was any water that  
2 washed these particles away? How much, sir, out  
3 of your entire time, what, 30 minutes, 15 minutes,  
4 how much time did you spend? You can say it.  
5 It's all right. We already know. Zero; right?  
6 Zero minutes spent trying to figure that out;  
7 right?

8 MR. BLONIGEN: Your Honor, he didn't  
9 let the witness respond to the question.

10 THE COURT: I think I agree. Go  
11 ahead and conclude your answer. Go ahead.

12 A. When I examined the shirt, I'm going to  
13 look for -- for evidence of blood or washing or  
14 something like that. And I didn't see -- I saw  
15 blood evidence present on the shirt. And so, you  
16 know, did I consider it, yes; but is it something  
17 that I spent a definite amount of time on, I can't  
18 necessarily say.

19 Q. (BY MR. LOW) So did they show you any  
20 pictures of how soaking wet the T-shirt was?

21 A. Yes, sir.

22 Q. They did?

23 A. Yes.

24 Q. See, we went through it earlier, and I  
25 specifically asked you exactly what it was that

1 you were shown. Do you remember that? We spent  
2 time doing that just a couple minutes ago.

3 Remember that?

4 A. Yes.

5 Q. And I even asked you, did they show you  
6 any pictures, and you said what?

7 A. You asked me about crime scene photos,  
8 and I didn't see crime scene photos.

9 Q. You didn't see a wet, soaking T-shirt?

10 A. I saw photos from the hospital.

11 Q. Oh, but did you see any wet soaking  
12 T-shirt pictures at the crime scene?

13 A. I didn't see crime scene photos.

14 Q. So you have no way of knowing how wet the  
15 T-shirt was at the crime scene, do you?

16 A. No.

17 Q. Well, did they show you any reports about  
18 how long the body sat out in the snow?

19 A. No.

20 Q. Did they tell you how hard it snowed that  
21 night?

22 A. It was a big snowstorm.

23 Q. Pretty heavy; right?

24 A. From what I understand, yes.

25 Q. Did they tell you that body sat out there



1 for about four and a half hours getting snowed on?

2 A. I don't know if I remember four and a  
3 half hours, but I do recall hearing that it had  
4 set out there for a while.

5 Q. Uh-huh. And what about the way the body  
6 falls in the snow? Could that brush off some of  
7 those particles?

8 A. Possibly.

9 Q. Did they tell you that the body fell  
10 facedown?

11 A. I don't believe it would, again, remove  
12 all.

13 Q. I didn't ask you that. Did they tell you  
14 that the body fell facedown?

15 A. No.

16 Q. That might affect your conclusions in  
17 your report; right?

18 A. Possibly, but I don't really believe it  
19 would.

20 Q. Possibly?

21 A. Possibly.

22 Q. So you mean to tell me that if you are  
23 considering ways that particles could be removed  
24 from the T-shirt, that's not going to possibly  
25 change your mind at all?

1           A.     I would expect there to possibly be a  
2     reduction in the overall density, but I don't  
3     think I would expect there to be a reduction to  
4     the point that a discernable pattern would no  
5     longer be visible.

6           Q.     But there was a pattern visible; right?

7           A.     No, sir.

8           Q.     No, sir?

9           A.     There was not sufficient particles there  
10    for a pattern.

11          Q.     We've got -- we got four dots there;  
12    correct?

13          A.     Yes.

14          Q.     But you decide you don't want to call  
15    that a pattern; right?

16          A.     No.   That's insufficient for  
17    determination of a gunshot residue powder pattern.

18          Q.     I'm not asking you to determine the  
19    distance from it.   I'm just asking you to  
20    determine whether there's particles there, and  
21    they're clearly there; right?

22          A.     Again, potential.

23          Q.     So water is a consideration as to why  
24    particles are gone, you already said it, and blood  
25    is another consideration as to why particles are

1 gone; correct?

2 A. Why there would be a reduction.

3 Q. Yes, sir. And there was plenty of blood  
4 on this T-shirt; correct?

5 A. Yes.

6 Q. Another one is intervening contact with  
7 other things on the T-shirt. In other words,  
8 things that are touching it and can remove the  
9 particles; right?

10 A. I'm not sure what you mean.

11 Q. Well, for example, if I have the T-shirt  
12 here, and I take a rag and I go up and down the  
13 T-shirt like that, will that remove some of the  
14 particles?

15 A. It could.

16 Q. And it would; right?

17 A. Again, there could be a reduction. I  
18 don't believe it would remove deposits of vaporous  
19 gas, but there may be some reduction, yes.

20 Q. Yes. And did they tell you if any rags  
21 has been used to wipe up and down the T-shirt?

22 A. No.

23 Q. Were you aware that there was three bar  
24 rags out there that the people trying to  
25 resuscitate him used to press up and down on the

1 T-shirt and move all around the chest?

2 A. No.

3 Q. That was withheld from you, wasn't it?

4 A. I was not aware of it.

5 Q. Okay. What about somebody with gloves on  
6 pushing on the T-shirt and moving it around in the  
7 chest? Could those gloves remove or reduce the  
8 particles like you say?

9 A. Could.

10 Q. What about the T-shirt being inside of a  
11 bag and the bag rubbing on the T-shirt? Could  
12 that brush the particles off?

13 A. Potentially.

14 Q. Did you test the body bag?

15 A. No, sir.

16 Q. And when the T-shirt came to you, was it  
17 sealed in a plastic bag?

18 A. I believe it was -- may have been  
19 plastic. I think it was a paper bag.

20 Q. Yeah. It was wadded up in a paper bag;  
21 right?

22 A. Yes.

23 Q. Did you test the inside of the paper bag?

24 A. No, sir.

25 Q. Okay. So could have been fired through

1 glass you say; right?

2 A. Yes.

3 Q. Because that would stop some of the  
4 particulate matter from ending up on the T-shirt;  
5 right?

6 A. Yes.

7 Q. Are you aware, sir, that there was  
8 chemical testing done on the inside of the car  
9 door?

10 A. No.

11 Q. They didn't tell you that?

12 A. I might have heard about some testing,  
13 but I'm not aware of results or anything else.

14 Q. You didn't follow up on that anyway;  
15 right?

16 A. Not particularly, no.

17 Q. Well, let me see if can I ask it this  
18 way. Let's pretend there is a car door right  
19 here, and we're going to put the windowsill right  
20 here. You with me?

21 A. Yes.

22 Q. And let's suppose that the window is  
23 down, okay, or gone. You with me?

24 A. Yes.

25 Q. And let's suppose there's some broken

1 glass on the ledge of the window. You with me?

2 A. Yes.

3 Q. And let's suppose now I'm leaning inside  
4 the window, and now the ledge of the car -- I'm  
5 just showing you -- is right here, right at my  
6 chest level. And suppose now that gun is three  
7 feet four inches away or more, and it shoots this  
8 way and the particles are coming this way. Could  
9 that door panel block some of those materials from  
10 winding up on my T-shirt?

11 A. Yes.

12 Q. How much time did you spend trying to  
13 figure out if a car door prevented the particles  
14 from landing on the T-shirt? How much time?

15 A. Zero minutes.

16 Q. Would that be one of these intervening  
17 objects that Mr. Blonigen asked you about?

18 A. Could be.

19 Q. Could that prove that, in fact, not all  
20 of the particles that might be there couldn't make  
21 it there; but the window was, in fact, already  
22 busted out?

23 A. A car door could definitely be an  
24 intervening object.

25 Q. So which one is it? Was the window

1       busted out and the car door got some of the  
2       materials or was the glass out? Which one?

3           A.     That's not for me to say.

4           Q.     I understand that but you're the  
5       scientist here. You'd have to guess; isn't that  
6       the truth?

7           A.     Well, I'm certainly not going to  
8       embellish.

9           Q.     You'd have to guess, though, wouldn't  
10      you, if I asked you to tell us which one it was;  
11      right?

12          A.     That's not for me to say.

13          Q.     You don't want to say?

14          A.     I don't want to say.

15          Q.     Okay. Let me ask you this. What if  
16      there was some pictures of that car door and up on  
17      the ledge -- like you said, the glass doesn't  
18      always just fall out and crumble, a lot of times  
19      it stays around the rim. You've seen that before;  
20      right?

21          A.     Some of the glass may be retained, yes.

22          Q.     Yes. And what if the person is bending  
23      over, the window is already busted out, and  
24      there's glass sitting up on the frame like this  
25      and you're leaning over, and then the bullet

1 comes. Just before it crosses the threshold, it  
2 hits some of that broken glass and then goes in  
3 the wound. Isn't that just as possible, sir?

4 A. That is one of many possibilities.

5 Q. So which is it? Was the window up and he  
6 shot through a fresh glass window or did it hit  
7 broken glass that was sitting on the ledge because  
8 we know the guy was down and his chest and the  
9 bullet hole was right there at that entry level.  
10 Which one of the two was it, sir?

11 A. That's not for me to say.

12 Q. You'd have to guess, wouldn't you?

13 A. There could have been an intervening  
14 object.

15 Q. You don't know?

16 A. That's what I can say.

17 Q. You don't know for sure, do you?

18 A. Nobody does.

19 Q. Well, don't you think the Government  
20 ought to know that before they bring charges of  
21 murder against somebody?

22 MR. BLONIGEN: Your Honor, that's an  
23 improper argumentative question. Counsel knows  
24 it.

25 THE COURT: I'll sustain and strike



1 and admonish counsel to stay away from those type  
2 of questions.

3 MR. LOW: Yes, Your Honor.

4 Q. (BY MR. LOW) Nobody knows that.

5 Distance of 24 inches. Man is in the  
6 window, his chest is at the ledge sticking  
7 through, somebody else slides over to the  
8 passenger side, arm out, away from, gun to the  
9 side, what's that distance, sir?

10 A. I don't know.

11 Q. Well, we can narrow it down, though,  
12 can't we? It's three feet four inches or greater;  
13 isn't that right?

14 A. Possibly.

15 Q. But more than possibly. There is a fact  
16 in this case that clears that up for you, isn't  
17 there? Did you consider that?

18 A. I'm not sure where you're going.

19 Q. Well, let me see if I can help you, then.  
20 You testified that the gun in this case  
21 stovepiped; right?

22 A. Yes.

23 Q. And that the cartridge was sticking out  
24 of the top of it; right?

25 A. That's how I received it, yes.

1 Q. Yes. And that means that when the gun  
2 was fired, it was limp wristed; correct?

3 A. I didn't -- I don't know.

4 Q. You said that it was indicative of  
5 something being limp wristed. Didn't you say  
6 that?

7 A. I said that was one reason or possible  
8 explanation for why a cartridge would be  
9 stovepiped, but there are other explanations.

10 Q. Oh, I understand. But that's at least  
11 one you said. You did use the word limp wristed;  
12 right?

13 A. I did say the word limp wristed.

14 Q. Now, let's see if we get this right. In  
15 order for that gun to fire right, let's make sure  
16 I'm accurate here. I'm going to go down to the  
17 ground. If I want that discharging mechanism to  
18 work properly and I hold a steady arm like you're  
19 trained to shoot it, like someone who's been  
20 trained to shoot a firearm would, when that gun  
21 recoils, I've got a stiff back behind it and now  
22 the mechanism can work and it won't limp wrist;  
23 isn't that correct?

24 A. Yes.

25 Q. And did anybody tell you what John's

1 military background was of shooting this weapon?

2 A. No.

3 Q. They didn't tell you that?

4 A. No.

5 Q. So now if you're holding it single hand  
6 and you've got it off to the side and you've got  
7 your hand out here, isn't that the position that  
8 could easily cause a limp-wristed shot?

9 A. Possibly.

10 Q. Oh, you know, a few other things about  
11 this gun, I thought they're worth commenting on.  
12 I'd like to show you this again, 204. Now,  
13 quickly, you're familiar with glocks, that's a  
14 type of gun; correct?

15 A. Yes.

16 Q. And it's a kind of gun that oftentimes is  
17 carried by law enforcement?

18 A. There are some law enforcement agencies  
19 that carry glocks, yes.

20 Q. And there's a lot of gun manufacturers  
21 who make guns that they're called semi-automatic?

22 A. Yes.

23 Q. That means you have to squeeze the  
24 trigger every single time you want a round to come  
25 out?

1 A. Yes.

2 Q. Just like that one?

3 A. Yes.

4 Q. It's a standard pistol; correct?

5 A. Yes.

6 Q. Okay. Some of these handguns don't have  
7 a safety on them, though, do they?

8 A. Perhaps. Yeah, there could be a gun with  
9 no safety, yes.

10 Q. You don't know?

11 A. It depends on how you're going to  
12 describe safety. I don't really understand where  
13 you're going with this either.

14 Q. I know but nice and slow. Some guns  
15 don't have a safety on them, do they?

16 A. It's possible that a gun might not have a  
17 safety feature.

18 Q. For example, a glock, it has no safety  
19 mechanism on it, does it?

20 A. That's incorrect.

21 Q. Well, if I squeeze the trigger -- if  
22 there's a round in a glock and I squeeze the  
23 trigger, what's going to happen?

24 A. It will fire.

25 Q. Okay. If there's a round in the chamber

1 on that one, will it -- and I don't squeeze the  
2 handle and I don't hit the thumb release, will it  
3 fire?

4 A. No.

5 Q. That's what's unique about this gun  
6 unlike, say, the Freedom Arms gun that's made here  
7 in Wyoming, where if I squeeze the trigger on a  
8 Freedom Arms gun, it'll fire; correct?

9 A. Yes.

10 Q. Yes. But on this gun, you see this  
11 leather here on the handle? See that little --  
12 that leather right there that goes in and out?

13 A. Grip safety, yes.

14 Q. Yes, it's a grip safety, which means you  
15 have to be squeezing the grip in order for it to  
16 fire; right?

17 A. Yes.

18 Q. Will not fire unless you're squeezing it;  
19 correct?

20 A. Correct.

21 Q. That's a safety mechanism; right?

22 A. Yes.

23 Q. To keep from false firing it; right?

24 A. It could possibly prevent an accidental  
25 discharge, yes.

1 Q. And then you also notice that it has  
2 another safety on the side of it. Now, this is  
3 the thumb safety; correct?

4 A. Yes.

5 Q. And when the thumb safety is in place, in  
6 order to fire it, you have to actually click the  
7 safety off with your thumb?

8 A. Yes.

9 Q. You have to do them both before it'll  
10 fire; correct?

11 A. Yes.

12 Q. There's actually a third safety on this  
13 gun, isn't there, and it's the hammer in the back?

14 A. Yes.

15 Q. You have to have the hammer pulled all  
16 the way back before it'll fire; right?

17 A. Yes.

18 Q. So in order to fire that gun, you have to  
19 hold it in your palm and squeeze it; correct?

20 A. Yes.

21 Q. You have to release the thumb trigger or  
22 safety; correct?

23 A. Yes.

24 Q. And the hammer has to be back; correct?

25 A. Yes.

1 Q. And then you can pull the trigger and  
2 fire?

3 A. Yes.

4 Q. How long does it take to do that?

5 A. I don't know.

6 Q. You didn't try it?

7 A. I don't know how long it takes someone to  
8 do that.

9 Q. So isn't it fair to say that somebody  
10 could put a magazine in this gun, chamber a round,  
11 and still have the gun be very safe because as  
12 long as you don't pull the handle or squeeze the  
13 handle, hit the thumb safety, and pull the  
14 trigger, you're going to be fine; isn't that  
15 right?

16 A. Repeat the question again.

17 Q. I will. It's a long one. Somebody could  
18 chamber a round with this pistol and the way it's  
19 designed is that you can carry it around and still  
20 have it be safe because it will not fire unless  
21 you squeeze the handle, hit the thumb safety, and  
22 have the hammer back; isn't that correct, sir?

23 A. Are you asking if it's safe to carry it  
24 with a round in the chamber?

25 Q. With this particular model, yes, sir.

1           A.     Yeah.

2           Q.     Yes.

3                   THE COURT:   Counsel, why don't we  
4     take our morning break at this juncture.  We're a  
5     little past 10:30.  Ladies and gentlemen of the  
6     jury, we'll take a break until 10:45.  Keep in  
7     mind the admonitions not to discuss the case with  
8     anyone, including with one another; not to permit  
9     anyone to discuss the case with you; do not try to  
10    learn anything about the case from outside the  
11    courtroom; to avoid all publicity and accounts  
12    there may be concerning the matter; and keep your  
13    minds open until you've heard all the evidence.

14                   We'll go ahead and take our morning break  
15    at this time and reconvene a little over ten  
16    minutes at 10:45.  Court is in recess.

17                               (The following proceedings were  
18    held in open court, out of the presence of the  
19    jury:)

20                   THE COURT:   Mr. Low, you wish to be  
21    heard?

22                   MR. LOW:    Yes, sir, briefly.  Topic  
23    is exactly what we spoke about on Friday.  I told  
24    you that everywhere I go, on the last witness you  
25    hear something brand new that's nowhere anywhere.



1 And in this particular case, that new information  
2 is all this information with regards to windows  
3 being shot out and the glass coming backwards and  
4 literature on that. That is an absolutely brand  
5 new opinion, nowhere contained in his report. We  
6 never got discovery of that, we never got  
7 disclosure, and we never got that scientific data.  
8 That is in direct violation of not only the  
9 rulings, but the motion that I filed Friday.  
10 Somehow I knew it was coming. Submit.

11 MR. BLONIGEN: Your Honor.

12 THE COURT: Okay. Mr. Blonigen.

13 MR. BLONIGEN: The finding of the  
14 intervening target is his -- all underlying  
15 materials were provided that were produced at the  
16 lab. He is simply talking about his experiences  
17 as an examiner. There's no piece of paper that  
18 hasn't been provided. If you look at Rule 16 --  
19 because I guess all of a sudden Rule 16 applies  
20 now -- it says that -- it talks about his  
21 conclusions and his testing. There is nothing --  
22 if he gets into experience, why he's saying what  
23 he's saying, there is absolutely no violation of  
24 Rule 16 or that motion or any order of this Court.

25 THE COURT: Well, to the extent

1       there's a request to strike this witness or strike  
2       a portion of his testimony, I'll deny any request.

3               Once again, from the outset, discovery in  
4       this case was problematic. The Defense expressly  
5       refused the Court's proposal to enter a Rule 16  
6       discovery order in this case. I know there was a  
7       follow up *Brady versus Maryland* order that was  
8       requested by the Defense, but we have that  
9       problem; and once the Defense declined that  
10      standard order of discovery, I think we needed to  
11      take up any discovery requests independent of that  
12      and by separate motion, and we didn't have any  
13      motion.

14              Additionally, one of the ways that a case  
15      can be managed, much like a civil case, is to have  
16      a proposal for discovery that would require the  
17      identification of expert opinions, require  
18      disclosure of reports, structure time lines for  
19      discovery; and we did not have that in this case,  
20      once again, because, I think, of the declination  
21      of the Defense to have Rule 16 discovery and  
22      because there was no specific request of the  
23      Court.

24              So it looks like to me that the parties  
25      were stuck with coming into the trial with some

1 room for there to be opinions that may not have  
2 been precisely and specifically delineated, for  
3 matters to be discussed outside the scope of the  
4 reports. And Rule 26.2 only is -- which the Court  
5 did order, only applies to witness statements.  
6 And I think that's a little bit different than  
7 what's proposed here.

8 In any event, I think with those  
9 comments, I'll just note I don't think I can  
10 strike a witness or strike an opinion. And I'll  
11 surely give leeway. There has been substantial  
12 cross-examination and challenge that can be  
13 interjected by that means.

14 MR. LOW: If I may, Your Honor,  
15 quickly, then. I'm sorry. If I may.

16 THE COURT: Go ahead.

17 MR. LOW: Thank you. Well, since  
18 we're saying that the discovery rules don't apply,  
19 then I'd like to have my experts back that you  
20 ruled could not testify because we did not  
21 disclose the evidence. And I will remind you that  
22 we did disclose the evidence. And I will remind  
23 you that experts do not give evidence; they simply  
24 comment on it.

25 And since you're now saying that this

1 evidence gets to stand because Mr. Blonigen didn't  
2 have to give it to me, I want my experts back.  
3 And I want my evidence about Mr. Baldwin's  
4 aggressive attitudes before this happened to come  
5 into evidence because I have experts who are going  
6 to comment on that evidence. We disclosed them.  
7 And since we don't have to say what they're going  
8 to say and we don't have to produce reports  
9 because you said we refused and everybody was  
10 happy with that, well then, what's good for the  
11 goose is good for the gander. And I'd like to  
12 have that back.

13           And lastly -- and then I'm going to shut  
14 up, which I know will make you happy -- I would  
15 like to remind you that on Friday, we did file a  
16 motion asking for additional discovery and  
17 materials turned over because I suspected we were  
18 going to hear this. And I was assured by Mr.  
19 Blonigen that that would not happen, and it did.  
20 So I want to make sure we remind you that we did  
21 ask, and now you're saying we didn't. And so that  
22 motion, I think, clearly said we did ask.

23           He had the entire weekend to provide that  
24 to us. He had the conversation with the  
25 gentleman, he knew it was coming, and he

1 purposefully, intentionally withheld it. And now  
2 I'm at a disadvantage because I do not have an  
3 opportunity to call an expert and refute that junk  
4 science I just heard about because it's junk  
5 science, Your Honor. And I have no way to respond  
6 to it because as soon as I try to, he's going to  
7 say, Oh, I can't get an expert because he's not on  
8 the witness stand. So what -- what are we going  
9 to do about that because I'm prejudiced now?

10 MR. BLONIGEN: Well, Your Honor,  
11 first, he asked me if the witness would give an  
12 opinion, to the exclusion of all other reasons,  
13 was that -- was that bullet fired through the  
14 window. I said he's not going to talk about that.  
15 He's going to talk about the possibility that it  
16 happened. I think that's what we heard.

17 Secondly, the other rulings the Court has  
18 made in those other two instances have nothing to  
19 do with this issue, Your Honor. The Court --  
20 well, first there was a late disclosure of the  
21 CVs; but the Court ruled on the type of evidence  
22 his experts wanted to present.

23 Secondly, Your Honor, as to also the  
24 character issue, the Court has, again, ruled on  
25 that; and the two have nothing to do with what

1 we're discussing here right now.

2 THE COURT: And I'd agree with you,  
3 those other prior rulings were made independent of  
4 discovery problems. They were based upon the  
5 requirements of Wyoming law as to the evaluation  
6 of that particular type of evidence independent of  
7 discovery. So the positions of both parties are  
8 noted. I think the Court would stand by its  
9 ruling, and we'll go from there. Court will stand  
10 in recess.

11 (At 10:39 a.m., a recess was  
12 taken until 10:49 a.m.)

13 (The following proceedings  
14 were held in open court, in the presence of the  
15 jury:)

16 THE COURT: Thank you much. Please  
17 be seated. Court will reconvene after the morning  
18 break. And I purposely kept it short hoping we  
19 can keep on track to get the evidence concluded  
20 and the case presented to the jury in the next two  
21 days, so thank you for your understanding in that  
22 regard.

23 The Court notes that the entire jury  
24 panel, defendant, Defense counsel, counsel for the  
25 State are present. And is Mr. Norris still here?

1                   Mr. Blonigen, is your witness, Mr.  
2 Norris, still here?

3                   MR. BLONIGEN: He was there two  
4 seconds ago. I'm sorry.

5                   THE COURT: Okay. Thank you. I  
6 was --

7                   MR. BLONIGEN: I thought he was  
8 coming in. He was here just five seconds ago.

9                   THE COURT: Thank you for checking.  
10 I just didn't see him and knew that we needed to  
11 have him back on the witness stand.

12                   MR. BLONIGEN: He was just there a  
13 second ago, Judge. I don't understand where he  
14 went.

15                   THE COURT: Thank you, Mr. Norris.  
16 Continued, cross-examination, Mr. Low.

17                   MR. LOW: Thank you, Your Honor.  
18 Appreciate it.

19                   Q. (BY MR. LOW) And, sir, you said you  
20 inspected the T-shirt?

21                   A. Yes.

22                   Q. Visually?

23                   A. Yes.

24                   Q. And did you note anything about the  
25 T-shirt other than the blood stains and the -- and

1 the bullet hole in the front?

2 THE WITNESS: Your Honor, may I  
3 refer to my notes to refresh my memory?

4 THE COURT: Any objection?

5 MR. LOW: No, sir.

6 THE COURT: You may do so.

7 Q. (BY MR. LOW) And while you're looking,  
8 sir, does that mean you don't remember?

9 A. It means I'm refreshing my memory.

10 Q. I guess we can interpret that to mean you  
11 don't remember. Is that fair if we did that?  
12 Sir, is it fair if we did that?

13 A. I'm sorry. I was --

14 Q. Yeah. If you're refreshing your memory,  
15 is it fair for us to assume that you don't  
16 remember the answer to my question?

17 A. I didn't answer your question yet.

18 Q. Because you don't remember what the  
19 answer is; correct?

20 A. I'm refreshing my memory.

21 Q. Okay.

22 A. So I note visual appearance as received,  
23 lead wipe present, no stellate tearing. And there  
24 were -- I have blood staining noted. I have some  
25 markings showing unidentified defects. Entrance



1 hole, approximately one and a quarter inches down  
2 from the neckline, approximately seven inches over  
3 from the right seam. Exit hole approximately 11  
4 inches down from the neckline and approximately  
5 nine and a half inches over from the -- the right  
6 side of the shirt. So that was what I noted in my  
7 notes.

8 Q. Anything else?

9 A. No.

10 Q. So the defects were the entrance wound in  
11 the front and the exit wound in the back?

12 A. Those were some of the defects.

13 Q. What were the other ones?

14 A. I have noted some unidentified defects.

15 Q. What are they?

16 A. Small holes.

17 Q. Where were they on the T-shirt?

18 A. On the lower right side and a little bit  
19 on the front right side. So kind of lower rear  
20 and a little bit to the lower side, lower front.

21 Q. Well, let's take a look at that T-shirt  
22 now and see what we can see there. Did you notice  
23 if there are any defects on the right sleeve?

24 A. No. Didn't note it.

25 Q. Would it surprise you to know that there

1 are, that there's cuts in the T-shirt there?

2 A. No.

3 Q. Why not?

4 A. There could be.

5 Q. Okay. What about on the -- is this the  
6 right side of the T-shirt you're talking about?

7 A. Yes.

8 Q. And as we look at these, these are all  
9 holes here; is that correct?

10 A. Yes.

11 Q. What were those caused from?

12 A. I don't know.

13 Q. Anywhere else? Are there holes anywhere  
14 else?

15 A. Little bit to the kind of the right rear  
16 and maybe a little to the side. I -- they may or  
17 may not all be part of the same general group,  
18 but.

19 Q. What about the right front? Are there  
20 some holes there as well?

21 A. A small amount. The front, slash, side.  
22 It's hard to say when the shirt is laying flat  
23 versus if it was on a person, but.

24 Q. Well, if you count them up, is it your  
25 memory that there's one, two, three, four holes on

1 the right side of the lower part of the T-shirt;  
2 is that right, sir?

3 A. I have five noted.

4 Q. You have five holes? Where did you note  
5 that, sir?

6 A. Five small arrows pointing to.

7 Q. Okay. Now, if we have pictures of the  
8 holes in the right, you can see the holes right  
9 here, can you not?

10 A. Yes.

11 Q. How did those escape your attention, sir?

12 A. Which holes?

13 Q. The ones right here where my finger is  
14 pointing, the right sleeve. See that hole right  
15 there? Here. Don't take my word for it. Go  
16 ahead and look at it. Tell me what you see right  
17 there.

18 A. Possibly a small defect. I don't know  
19 what I'm really looking at there.

20 Q. What does it look like you're looking at?

21 A. I don't know what it looks like.

22 Q. I mean, you had this T-shirt out of the  
23 bag; right?

24 A. Yes.

25 Q. And you were able to inspect it for

1 material closely; right?

2 A. I inspected it visually, yes.

3 Q. Because you're looking for evidence;  
4 right?

5 A. Yes.

6 Q. And you have a keen eye for evidence;  
7 isn't that right?

8 A. Basically, I'm -- after reading the  
9 medical examiner's report and then looking for the  
10 wounds that are associated with his report is what  
11 I'm looking for.

12 Q. I understand. You have a keen eye for  
13 evidence; right?

14 A. I inspect evidence. I inspect for  
15 evidence, yes.

16 Q. And are you any good at it?

17 A. I've been trained to do it.

18 Q. So you don't miss a thing; right?

19 A. I didn't say that.

20 Q. Do you miss some things?

21 A. It's possible.

22 Q. Is it possible or probable?

23 A. It's possible.

24 Q. Did you note any tears in the T-shirt on  
25 your report on the -- from the right sleeve?

1 A. No.

2 Q. Since you saw some pictures of the --  
3 what does that look like to you, sir?

4 A. That looks like a tear.

5 Q. And can't you actually confirm now by  
6 looking at the T-shirt, now that someone pointed  
7 it out to you, that that's actually in the T-shirt  
8 itself?

9 A. Yes.

10 Q. Why didn't you put it in your report?

11 A. This is not my report.

12 Q. Yeah. Why didn't you note it in your  
13 report?

14 A. I didn't note any of the other defects in  
15 my report either.

16 Q. That's right, you didn't. But when I  
17 asked you about that and you said you wanted to  
18 refer to your report, you didn't actually look at  
19 your report, you looked at someone else's, didn't  
20 you?

21 A. This is my -- this is not my report.  
22 This is my examination record, case notes. And  
23 no, it's not somebody else's. This is mine.

24 Q. Okay. So if it's yours, why did you not  
25 put the defect in the right sleeve into it?

1           A.     I don't know.

2           Q.     Could it be because you missed it and you  
3 never saw it?

4           A.     It could be.

5           Q.     It's not just could be, it's probably,  
6 isn't it?

7           A.     And also because it really doesn't have  
8 any bearing on the examination that I was  
9 performing.

10          Q.     Your testimony had no bearing on your  
11 examination?

12          A.     My testimony?

13          Q.     Are you saying that that tear in the  
14 T-shirt has no bearing on your testing; is that  
15 what you're saying?

16          A.     I really didn't know -- I mean, the  
17 unidentified defects, I made note of them, but  
18 then that's all.

19          Q.     Well, you didn't make note of this one,  
20 did you?

21          A.     No.

22          Q.     And you said because it had no bearing;  
23 correct?

24          A.     It doesn't really have any bearing over  
25 the test that I was asked to perform, no.

1 Q. Well, here's my question to you. If  
2 you're going to sit in front of this jury and take  
3 a solemn oath as a scientist to tell us that you  
4 believe it's probably the result of it going  
5 through an object, which is what you said, and you  
6 don't consider all of the evidence, just a few  
7 pieces that would probably clear that up for you,  
8 don't you think that's something that you ought to  
9 consider before you make these conclusions?

10 A. I don't believe I made those conclusions.

11 Q. I mean before you wrote this report that  
12 we have and before you testified on the stand,  
13 nobody ever told you that this person had a blunt  
14 trauma force to the right hand; isn't that  
15 correct?

16 A. I heard there was some injuries to the  
17 hand.

18 Q. And they didn't show you pictures of it,  
19 did they?

20 A. No.

21 Q. They didn't show you pictures of the  
22 dicing and the cutting to the back of the hand,  
23 did they?

24 A. No.

25 Q. They didn't show you the injury to the

1 front or to the bottom of the arm and the dicing  
2 that the coroner or the medical examiner testified  
3 to, they didn't show you the pictures, did they?

4 A. No.

5 Q. They didn't show you this picture either  
6 of the injury to the upper shoulder or arm area?  
7 Sorry. Let me zoom out.

8 THE COURT: Counsel, since you  
9 referred to it a couple times, let's have the  
10 exhibit number, if you wouldn't mind. Thank you.

11 MR. LOW: Your Honor, sorry. Your  
12 Honor, this is Defense Exhibit Z, as in Zebra, for  
13 evidence.

14 THE COURT: Very good.

15 MR. LOW: Thank you, Your Honor.

16 Q. (BY MR. LOW) And they didn't show you  
17 this picture either?

18 A. No.

19 Q. So when trying to figure out what could  
20 have caused that glass to break, isn't it  
21 reasonable to consider that somebody may have  
22 punched the glass to the point where it gave them  
23 a blunt force trauma to the right hand, glass  
24 stuck in the right hand, injuries to the right  
25 wrist, injuries to the right forearm, and injuries



1 to the upper right arm as to what may have caused  
2 that glass to break?

3 A. That may be a probable explanation.

4 Q. May be?

5 A. May be, yes.

6 Q. And they didn't give you any of that  
7 before they asked you to write this conclusion,  
8 did they?

9 A. No. I heard that there could be a  
10 possibility that the window was punched out.

11 Q. They didn't give you any of the facts,  
12 the pictures before they asked you to write your  
13 report, did they?

14 A. I did not view that picture before my  
15 report, no.

16 Q. And they didn't -- Mr. Blonigen didn't  
17 say, You know what, I'd like to rule this out with  
18 you as I prepare you to testify to things that are  
19 not in your report because you did have that  
20 conversation; right?

21 MR. BLONIGEN: Well, Your Honor,  
22 that just had a whole bunch of assumptions about a  
23 conversation that never took place.

24 MR. LOW: All right. Let's do it  
25 again, so I'm fair.

1 THE COURT: I'll sustain as to the  
2 form.

3 Q. (BY MR. LOW) You did have a conversation  
4 before testifying; correct?

5 A. Yes.

6 Q. And you did converse about things you  
7 were going to testify to that are not in your  
8 report; right? Right?

9 A. No.

10 Q. Oh, okay. So that whole thing about the  
11 glass breaking and it can fall inside, that's in  
12 your report?

13 A. No.

14 Q. Okay. You had a conversation about that,  
15 though?

16 A. I had a conversation about my report.

17 Q. So when Mr. Blonigen had a conversation  
18 with you about what you were going to testify to  
19 that's not in your report, did he go to the  
20 trouble to show you this picture so that you could  
21 make a better decision as to whether that was  
22 accurate or not?

23 A. I don't believe I recall having seen that  
24 photo prior to just now when you showed it to me.

25 Q. Would you like to ask him now why he

1 didn't show it to you?

2 A. No, sir.

3 Q. Well, when he gets up and asks you some  
4 questions, we'll see if he can answer that.

5 MR. BLONIGEN: Your Honor, again,  
6 the editorial comments are inappropriate.

7 THE COURT: I'd sustain and strike  
8 as to the last comment of counsel.

9 MR. LOW: Your Honor, one second. I  
10 believe that's the last part I have.

11 Thank you, Your Honor. Appreciate it.

12 THE COURT: Thank you, Counsel.

13 Redirect examination, Mr. Blonigen.

14 REDIRECT EXAMINATION

15 BY MR. BLONIGEN:

16 Q. Are you an expert on everything?

17 A. No, sir.

18 Q. And each of you in the lab, do you each  
19 have a separate job duty?

20 A. Yes.

21 Q. Is there also value to not knowing all  
22 the information as a forensic scientist?

23 A. There can be.

24 Q. And what particularly is the danger if  
25 you're given one side's view of everything before

1 you do your testing?

2 A. I'm not sure if it's an actual danger or  
3 perceived one, but there could be a perception  
4 that maybe that it was some sort of bias that may  
5 have been introduced.

6 Q. And you don't analyze the gunshot residue  
7 kits, do you?

8 A. I don't analyze primer residue kits. So  
9 this would be residues that discharge from the  
10 primer of the cartridge case. What I analyze  
11 would be more of the gunpowder residues that come  
12 from the muzzle of the firearm.

13 Q. And Ms. Malone did the gunshot residue in  
14 this case, didn't she?

15 A. She is our trace analyst who does gunshot  
16 residue in a number of cases, yes.

17 Q. Counsel suggested several scenarios with  
18 a limp wrist, and he had the person leaning way  
19 over in the seat and things like that. Is it also  
20 consistent simply fired from here, boom, in front  
21 of the body?

22 A. Yes, that could be.

23 Q. Still don't have that arm locked to give  
24 you the firm foundation for the shot; right?

25 A. That could be an explanation as well,

1       yes.

2           Q.     Intoxicated people might not hold a  
3       firearm well?

4           A.     Possibly.

5           Q.     Now, he talked about, you know, putting a  
6       window up and shooting through it and having a  
7       T-shirt sitting behind it. Do you remember those  
8       questions?

9           A.     Yes.

10          Q.     Do use a scientific method when you test  
11       for things?

12          A.     Yes.

13          Q.     In using the scientific method, what do  
14       we have to have to have a valid experiment for  
15       scientific results?

16          A.     Well, the scientific method is -- some of  
17       you probably remember about it from high school  
18       science class or maybe you have a child who does  
19       the science fair. But basically, you state a  
20       problem, you form a hypothesis, you gather data,  
21       you interpret the data, and you reach a  
22       conclusion. And so one of the -- one of the  
23       pitfalls that should be avoided would be coming to  
24       a conclusion and then designing testing to support  
25       what you've already decided.

1           If in the course of an analysis, you don't  
2 consider reasonable alternative explanations for  
3 an event, then what you're doing is really not  
4 science at all. And so what I -- what I've done  
5 here is consider a reasonable explanation for an  
6 event. Now, does that mean I'm saying infallibly  
7 that it had to have occurred this way? I'm saying  
8 no, that, you know, here's the evidence, and here  
9 would be at least one reasonable explanation for  
10 that. Could there be others? Yes. And in this  
11 instance, I believe there's one that's probably  
12 more likely.

13           Q. Now, if you talk about the tests like  
14 counsel talked about, are there any unknown  
15 variables you couldn't account for that would  
16 prevent proper experimentation in this case?

17           A. Absolutely.

18           Q. Okay. What kind of things?

19           A. I mean, an unknown variable is -- a  
20 variable is unknown for that very reason, it's  
21 unknown. But there could be -- there could be  
22 things that -- I guess if you could rephrase the  
23 question, that might help me a little bit.

24           Q. Well, let me put some more specifics into  
25 it. Did any -- was anybody able to tell you where

1 the gun was held in this case?

2 A. No.

3 Q. Was anybody able to tell you the angle  
4 the gun was held at?

5 A. No.

6 Q. Was anybody able to tell you if the --  
7 the bullet was traveling at a certain angle when  
8 it hit the body as opposed to when it left the  
9 gun?

10 A. No.

11 Q. If you have tempered glass, does it  
12 change the trajectory of the bullet?

13 A. There absolutely can be deflection after  
14 a bullet has gone through glass, yes.

15 Q. Substantial deflection?

16 A. It can be substantial.

17 Q. Was there any way to know the degree of  
18 deflection caused by the window if it occurred?

19 A. There's no way to know at this point, no.

20 Q. So you couldn't put together an  
21 experiment that would be scientifically valid as  
22 described by counsel?

23 A. If we're trying to -- if we're trying to  
24 piece together the trajectory of the bullet as  
25 it's coming out of the muzzle based on a downrange

1 trajectory, maybe like a trajectory through the  
2 body, that's something that I wouldn't do --

3 Q. Okay.

4 A. -- simply because there is that chance of  
5 deflection. The trajectory through the body may  
6 or may not be an accurate representation of the  
7 actual trajectory of the bullet as it left the  
8 muzzle.

9 Q. So your findings have to be viewed in  
10 light of all the other evidence in the case?

11 A. Yes.

12 Q. You don't interpret the whole case?

13 A. No.

14 Q. Did you see any wipe marks on the  
15 T-shirt, what appeared to be wipe marks to you?

16 A. You mean as far as color of the fabric or  
17 something that's --

18 Q. Just, you know --

19 A. -- deposited.

20 Q. -- lots of times it seems we get a cloth  
21 wiped across something, you'll see a wipe mark.

22 A. Oh, wipe?

23 Q. Yeah.

24 A. I heard white.

25 Q. Okay.



1           A.     I did not observe marks that I thought  
2 looked like wipe marks.

3           Q.     You made a report in the case. Does your  
4 report have every bit of knowledge you ever had  
5 about something in it?

6           A.     No, no, sir.

7           Q.     What does it have?

8           A.     It has relevant -- the results to the  
9 testing that I performed.

10          Q.     Okay. And you were asked about somehow a  
11 bullet magically hits a piece of glass sitting on  
12 a windowsill and it goes into the body. For  
13 instance, would you look at the angle of the  
14 wound?

15          A.     Possibly.

16          Q.     And if a bullet -- is a bullet bigger on  
17 the base of it or on the nose of it?

18          A.     The base.

19          Q.     So if it picks this little piece of glass  
20 off the window, and I don't know how that happens,  
21 but the base would still somehow impact probably  
22 the surface of the windowsill, wouldn't it?

23          A.     Base impact?

24          Q.     Let me rephrase that. Can you see a way  
25 a bullet neatly picks a piece of glass off a

1 windowsill without damage to the windowsill?

2 A. Again, it -- it's hard -- it's hard to  
3 say. I --

4 Q. That would be pretty remarkable, wouldn't  
5 it?

6 A. It could be.

7 Q. And when you say stuff is possible, does  
8 that mean it's probable?

9 A. No, not necessarily. It means that in  
10 the realm of all events, I suppose.

11 Q. So when he asked you if it's possible  
12 that the residue was a lot on the wet T-shirt,  
13 things are possible, aren't they, but did you see  
14 any evidence of that?

15 A. No.

16 Q. Now, in addition to your report, you also  
17 have a lot of materials you produce in the lab and  
18 you were looking at some of them, weren't you,  
19 when you were on the stand?

20 A. Yes.

21 Q. Could you show the jury how much material  
22 underlies that report just in printed form? Do  
23 you have it with you?

24 A. Yes.

25 Q. About half an inch?

1           A.     This is the report here, and this would  
2 be relevant notes.

3           Q.     Okay.  So there's a lot more to this than  
4 just the report?

5           A.     Yes.

6           Q.     And when a technical review is done by an  
7 outside expert, does he just look at your report  
8 or does he look at all these things?

9           A.     No, he looks at the whole entire thing.

10          Q.     And in addition to that, you provided  
11 that to the attorneys?

12          A.     Yes.

13          Q.     And also, if somebody wants to call you  
14 up, including a defense attorney, and talk to you,  
15 you'll talk to them, won't you?

16          A.     Yes.

17          Q.     Anybody ever call you?

18          A.     Yes.

19          Q.     Who?

20          A.     All kinds of interested parties.  
21 Attorneys for both sides.  In fact, we -- the way  
22 our laboratory is set up, we perform testing for  
23 Public Defender's Offices as well as prosecuting.

24          Q.     Okay.  Did you have any contact from  
25 Defense counsel in this case?

1 A. No, sir.

2 Q. You were available, weren't you?

3 A. Yes.

4 Q. Does anything that you discussed here  
5 with counsel today change your opinions as you've  
6 expressed them in direct examination at all?

7 A. No.

8 MR. BLONIGEN: That's all the  
9 questions I have, Your Honor.

10 THE COURT: Thank you very much,  
11 Counsel.

12 Anything on recross?

13 MR. LOW: Yes.

14 RECROSS-EXAMINATION

15 BY MR. LOW:

16 Q. Sir, you just said on redirect that there  
17 are other reasonable conclusions?

18 A. Yes.

19 Q. And you can't guess which one is which;  
20 correct?

21 A. I'm sorry, which one of what?

22 Q. Well, you said if there's other  
23 reasonable conclusions besides the one Mr.  
24 Blonigen wants you to adopt, you can't guess which  
25 one is true, can you?

1           A.     I can opine based on the testing that I  
2 performed.

3           Q.     Well, any one of the three that you pick,  
4 or more, is still a guess, isn't it, because  
5 there's other reasonable conclusions; correct?

6           A.     It's not a guess.

7           Q.     Mr. Blonigen asked you to guess, didn't  
8 he?

9           A.     No, sir.

10          Q.     Okay. So you can tell us, then, which  
11 one of the reasonable conclusions it definitely is  
12 beyond a reasonable doubt?

13          A.     I can tell you which one seems the most  
14 probable.

15          Q.     Okay. Even though you weren't given any  
16 evidence about someone punching a glass window out  
17 and you didn't look at any of it; right?

18          A.     I can tell you which one seems to be the  
19 most probable.

20          Q.     And let's go back to the window. Here's  
21 the windowsill. Are you with me?

22          A.     Yes.

23          Q.     Window frame of the door.

24          A.     Yes.

25          Q.     I'll finish the rest of the door. Door

1 handle. You okay with that?

2 A. Okay.

3 Q. Can this be -- these blue squiggle lines  
4 be broken glass that's sitting on the windowsill?

5 A. Possibly.

6 Q. I mean, for the sake of the drawing, can  
7 you adopt that?

8 A. For the sake of the drawing, yes.

9 Q. All right. Did anyone show you any  
10 pictures of the door?

11 A. No.

12 Q. Did anybody show you if there's any glass  
13 hanging on the sill of the door?

14 A. No.

15 Q. So if the gun is inside and the person's  
16 leaning somewhere over this door sill, isn't it  
17 possible that a bullet could have come through  
18 some of that glass that's broken already on its  
19 way out?

20 A. I think I already testified that it could  
21 be possible.

22 Q. Yeah. You can't tell one way or the  
23 other, can you?

24 A. It's possible.

25 Q. You cannot tell one way or the other,

1 then, can you?

2 A. I cannot.

3 Q. You cannot; right? And clearly, you can  
4 see that door sill would block those materials  
5 from making it to the T-shirt; correct?

6 A. At least the bottom half of them.

7 Q. Did they tell you that they tested the  
8 inside of that door panel, and guess what it had  
9 on it? Did they tell you that they found GSR  
10 residue on the inside of the door panel?

11 A. No.

12 Q. So could these facts have given you --  
13 helped you form a more accurate conclusion?

14 A. If there was no residues found on the  
15 inside of the door panel, then that would cause me  
16 to think that perhaps the bullet came through up  
17 higher.

18 Q. But they did find residues on the inside  
19 of the door panel, so that makes you think what?

20 A. Could be lower.

21 Q. Could be. You can't tell; right?

22 A. Cannot tell.

23 Q. Would you like to ask Mr. Blonigen why he  
24 didn't give that to you?

25 A. No.

1 Q. Okay.

2 MR. LOW: One last check, Your  
3 Honor, if I may.

4 Q. (BY MR. LOW) Oh. Do you know if --  
5 well, you weren't aware of the bar towels out in  
6 the parking lot, were you?

7 A. Was not aware.

8 Q. So you didn't get an opportunity ever to  
9 test them to see if there was any of these  
10 particulate matters in there, in the bar towels.  
11 You never got the chance, did you?

12 A. No.

13 Q. And the thing about wiping, is it your  
14 understanding that if you got a white T-shirt full  
15 of blood, that all you need to do to remove the  
16 blood is wipe it with towel? Because if so,  
17 there's a lot of people in this room that would  
18 like to hear about that because I'm not aware you  
19 can do that. Is that how you can clean a shirt  
20 full of blood is just wipe it and it just  
21 disappears?

22 A. I don't know.

23 Q. You've never done laundry? No?

24 A. That would be outside of the scope of  
25 what I'm here to testify about.



1 Q. Oh, you can testify to these things;  
2 well, but as a former Marine, I think you said,  
3 you don't know how to do laundry?

4 A. I know how to do laundry, sir.

5 Q. All right. Well, you ever had to try to  
6 clean blood off a T-shirt?

7 A. Possibly.

8 Q. Doesn't come off so easy, does it?

9 A. I don't recall.

10 Q. Clearly, just wiping it a little bit  
11 ain't going to remove it, is it?

12 A. Probably not.

13 Q. Probably not.

14 MR. LOW: Thank you. That's all I  
15 have.

16 THE COURT: Thank you very much,  
17 Counsel.

18 Thank you, Mr. Norris. You may step  
19 down, and you're excused and released from my  
20 subpoena in the case.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: The State may call its  
23 next witness.

24 MR. BLONIGEN: State would briefly  
25 recall Dr. Carver.

1 THE COURT: Doctor, please come  
2 forward and be sworn. Counsel, if you'd move the  
3 display board. I guess maybe you can get through  
4 there.

5 MR. LOW: Pardon me, sir. Sorry  
6 about that.

7 THE COURT: Thank you.

8 THE CLERK: You do solemnly swear  
9 that the testimony you will give in the case  
10 before the Court will be the truth, the whole  
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please be seated.

14 DR. JOHN CARVER,  
15 called for examination by the State, being first  
16 duly sworn, on his oath testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BLONIGEN:

19 Q. Would you state your name for the record,  
20 please.

21 A. John Carver, C-A-R-V-E-R.

22 Q. And you're the same Dr. Carver that  
23 testified earlier in the case?

24 A. Yes, I am.

25 Q. Just to clear up a few points that arose

1 through Dr. Melinek's testimony and the past  
2 testimony, was there an x-ray done of the right  
3 hand in this case?

4 A. Yes, there was.

5 Q. Was there any evidence of fracture at  
6 all?

7 A. No, there wasn't.

8 Q. Now, you indicated in your testimony, I  
9 believe in your report, that the bullet struck the  
10 first rib and fractured it?

11 A. Correct.

12 Q. And does that remain your opinion?

13 A. Correct.

14 Q. You did the dissection in this case?

15 A. Yes, I did.

16 Q. Now, also, consider a scenario where Mr.  
17 Baldwin is leaning forward through the window and  
18 extends his arm fully, causing cuts on broken  
19 glass to the shoulder. Are you aware of something  
20 like that has been hypothesized?

21 A. Yes.

22 Q. I'm going to show you a photograph of  
23 those marks. And are those the marks we're  
24 talking about?

25 A. Yes.

1           Q.     Does the scenario I just gave you and  
2 these marks, is there any inconsistency between  
3 those two things?

4           A.     I would say the evidence would be  
5 stronger for a motion of the arm through the  
6 window if they were longitudinally oriented along  
7 the arm rather than roughly horizontal or only  
8 slightly angled the way they are.

9           Q.     They don't seem to be running the right  
10 way, then?

11          A.     If the entire arm was being, you know,  
12 extended through the glass, I would expect to see  
13 those lacerations on the forearm running along the  
14 length of the forearm and running longitudinally  
15 along the upper arm, too.

16          Q.     So you would expect far more lacerations  
17 along the surface of the arm than you saw?

18          A.     I'm not saying I would expect more; I  
19 would say that would be stronger evidence for that  
20 scenario.

21                   THE COURT:   Counsel, if you'd  
22 identify the exhibit so we have that for the  
23 record.

24                   MR. BLONIGEN:   120, Your Honor.

25                   THE COURT:   Thank you.

1 Q. (BY MR. BLONIGEN) And shouldn't -- if  
2 Mr. Baldwin was leaning on the car and leaning  
3 forward at the time he suffered his injuries,  
4 would the injuries you saw on his arm be  
5 consistent with him falling into already broken  
6 glass?

7 A. I think that's a possible scenario, too.

8 MR. BLONIGEN: Okay. Thank you,  
9 Doctor. That's all I have.

10 MR. LOW: Which --

11 THE COURT: Cross-examination. Go  
12 ahead.

13 CROSS-EXAMINATION

14 BY MR. LOW:

15 Q. Which one of the two scenarios is it,  
16 Doc?

17 A. I don't know.

18 Q. You'd have to guess?

19 A. I think either of them is possible.

20 Q. So they're both reasonable, then?

21 A. I think either is possible. I can't know  
22 which actually happened.

23 Q. So each is reasonable, then?

24 A. I think they're each possible.

25 Q. Okay. Thank you. Oh, lastly, didn't you

1 say when you were here last time that you didn't  
2 take any x-rays of the right hand?

3 A. I said I didn't remember taking any, and  
4 then I referred to my report, and there was no  
5 reference in my report to that x-ray.

6 Q. So the x-ray you just testified to here  
7 today, you didn't take it; correct?

8 A. No, that's incorrect. It was taken at  
9 the time of the autopsy.

10 Q. So your office took it?

11 A. It's on the disk with the other x-rays  
12 that are referred to in the report taken at the  
13 same time.

14 Q. I believe you. I'm asking you, just so  
15 there's no confusion, who took the x-rays?

16 A. X-ray technicians at McKee Medical Center  
17 are called into the morgue to take those x-rays.

18 Q. Is that where you performed the autopsy?

19 A. Correct.

20 Q. Okay. Do you recall whether you got to  
21 see that x-ray or not?

22 A. I know I saw that x-ray.

23 Q. Okay.

24 A. Because it's -- it's on a digital machine  
25 on a card, and it's displayed at the time of the

1 autopsy.

2 Q. You just forgot that you saw it?

3 A. I just forgot to put it in the report.

4 MR. LOW: Okay. Thank you.

5 THE COURT: Anything on redirect,  
6 Mr. Blonigen?

7 MR. BLONIGEN: No, Your Honor.

8 That's it. May Dr. Carver be excused?

9 THE COURT: Yes. You're free to go.  
10 Thank you.

11 MR. BLONIGEN: At this point, Your  
12 Honor, State would rest.

13 THE COURT: Okay. The Defense wish  
14 to be heard outside the presence of the jury  
15 before we go to the Defense's case?

16 MR. NEWCOMB: Yes, Your Honor.

17 THE COURT: Okay. Very good.

18 Ladies and gentlemen of the jury, I'm  
19 going to excuse you at this time. Can't excuse  
20 you for lunch just yet, but we'll get word to you  
21 whether we may extend it into a full luncheon  
22 break here in just a few minutes. The ladies and  
23 gentlemen of the jury are excused.

24 (The following proceedings were  
25 held in open court, out of the presence of the

1 jury:)

2 THE COURT: Please be seated. And  
3 with the jury having exited, anything before we go  
4 forward either with the advisement of the  
5 defendant concerning his rights to testify or to  
6 not testify or any other matters before we go  
7 ahead to evidence from the Defense?

8 MR. NEWCOMB: Yes, Your Honor.

9 THE COURT: Mr. Newcomb, go ahead.

10 MR. NEWCOMB: With your permission,  
11 we would like to move for judgment of acquittal.  
12 And with the Court's permission, we've prepared a  
13 written document, if I could hand it to the Court.

14 THE COURT: Certainly, yes.

15 MR. NEWCOMB: It has not been filed  
16 yet, Your Honor.

17 THE COURT: I'll make sure --

18 MR. NEWCOMB: Okay. Thank you.

19 THE COURT: -- a copy is filed in.  
20 Go ahead, Counsel.

21 MR. NEWCOMB: Your Honor, Dr.  
22 Melinek's testimony established a prima facie case  
23 that Mr. Baldwin was the aggressor and that Mr.  
24 Knospler acted in self-defense. And the evidence  
25 to that is consistent with his theory of



1 self-defense. In light of that, the State has not  
2 proved beyond a reasonable doubt, as it is  
3 required to, that Mr. Knospler did not reasonably  
4 perceive a threat to immediate bodily injury under  
5 the circumstances and did not act in a reasonable  
6 manner.

7 Without that proof beyond a reasonable  
8 doubt, the State has failed to make its case, and  
9 we would ask for a judgment of acquittal. And a  
10 secondary layer, the State's evidence has not  
11 demonstrated that Mr. Baldwin [sic] acted  
12 purposely and with malice nor does the evidence  
13 show that or establish that he acted voluntarily  
14 under the heat of passion or involuntarily and  
15 recklessly.

16 And with that, Your Honor, we would  
17 submit in the absence of questions from the Court.

18 THE COURT: Thank you very much,  
19 Counsel.

20 The State, Mr. Blonigen.

21 MR. BLONIGEN: Your Honor, of course  
22 the Court is well familiar with the standard under  
23 Rule 29 that we must presume the evidence of the  
24 State is true, giving it every fair and reasonable  
25 inference, and leaving out completely evidence

1 inconsistent therewith.

2 Judge, first, the defendant has to  
3 apprehend serious bodily harm or death, not bodily  
4 injury as stated in the memo submitted by counsel.  
5 And the Court is familiar also with the standards  
6 in Wyoming. *Eckert versus State* and a number of  
7 other cases following on that, Judge, held that a  
8 malice may be inferred from the use of a deadly  
9 weapon.

10 In addition to that, Your Honor, you have  
11 the lack of any history of hostility between these  
12 two individuals, the fact the defendant was in the  
13 bar that night talking about killing people,  
14 shooting people. And I would note Dr. Melinek,  
15 she stated it could be -- the injuries could be  
16 consistent with -- how she phrased it is the arm  
17 going through the glass. It was very interesting.  
18 In many places, she wouldn't say punched out the  
19 window; she said "going through the glass." And  
20 of course, if it went through the glass after the  
21 shot's fired, that's no evidence of self-defense  
22 at all.

23 Moreover, Your Honor, there has been  
24 no -- absolutely no evidence that the defendant's  
25 apprehensions in this case would be reasonable,

1 even if they existed.

2 And for all those reasons, Your Honor, I  
3 think the -- on both the greater and the lesser  
4 included offenses, the matter is joined for the  
5 jury's determination at this time, and judgment of  
6 acquittal under Rule 29 would be improper.

7 THE COURT: Anything in rebuttal,  
8 Mr. Newcomb?

9 MR. NEWCOMB: Yes, Your Honor. In  
10 reverse order. It is not Mr. Knospler's burden to  
11 disprove self-defense; it is the State's burden to  
12 prove he did not -- could not and did not act in  
13 self-defense. And the transcript will reflect  
14 what the transcript reflects; but I would ask the  
15 Court to examine Dr. Melinek's testimony, and I  
16 believe she said that the evidence is consistent  
17 that Mr. Baldwin punched the window.

18 Thank you, Your Honor.

19 THE COURT: Thank you very much.

20 First of all, I note that the motion for  
21 judgment of acquittal comes within Rule 29 of the  
22 Wyoming Rules of Criminal Procedure. It is a  
23 motion that rests on the sufficiency of the  
24 evidence. In reviewing the jury instructions,  
25 I've taken a close look at the elements of murder

1 in the second degree that are required to be  
2 shown. And I must note that as I was going, I was  
3 giving some thought to the components of evidence  
4 that may go directly to each of those elements.

5 I note that Mr. Blonigen is correct,  
6 under cases such as *Chavez versus State*, the  
7 inferences that may attend to the conflicting  
8 evidence and to the circumstantial evidence in  
9 this case, I think, need to be viewed in the light  
10 favorable to the State. And based upon my review  
11 and analysis, I understand that there are  
12 significant issues that may attend to  
13 self-defense. Mr. Newcomb is absolutely correct  
14 as to the burden of proof required of the State  
15 when self-defense is asserted and where there has  
16 been some showing. I believe the Defense is  
17 correct that there is Dr. Melinek's testimony that  
18 provides one theory and one argument for acquittal  
19 in the case.

20 But I do not see where there is an  
21 insufficiency of evidence as to the elements of  
22 murder in the second degree, and so the Court will  
23 deny the motion for judgment of acquittal in this  
24 case.

25 Anything from the Defense before we go

1 forward with Defense evidence, Mr. Low?

2 MR. LOW: Yes, sir. Thank you.

3 Appreciate it.

4 We also filed a motion this morning,  
5 motion to strike certain testimony, reconsidering  
6 renewal of the motion to exclude. I don't know if  
7 you got a chance to review that and if now is an  
8 appropriate time to hear that or maybe another  
9 time that you'd like. Do you have that, sir?

10 THE COURT: I do have it. It caught  
11 up with the file this morning, but I have not  
12 reviewed it. So I guess my thought would be why  
13 don't I make a note that first opportunity after  
14 I've had a chance to read through your motion,  
15 I'll give you a chance to be heard, if that's  
16 okay.

17 MR. LOW: Yes, sir. Thank you.

18 MR. BLONIGEN: Your Honor, you had  
19 indicated earlier you were going to address the  
20 advisement on testifying.

21 THE COURT: Yes. Has the decision  
22 been made yet as to whether the defendant would or  
23 would not testify and whether the Court should go  
24 ahead with the advisements required under Wyoming  
25 case law?

1                   MR. LOW:  Sir, I believe a decision  
2                   may have been made, but I'm under the impression  
3                   that I am at no obligation to reveal that at this  
4                   point.

5                   THE COURT:  I don't think you're  
6                   required to, but --

7                   MR. LOW:  Okay.

8                   THE COURT:  -- the Court does need a  
9                   heads up so we can make sure that there's a proper  
10                  advisement before he testifies or before the  
11                  Defense closes its case.

12                  MR. LOW:  I will give you that, sir.  
13                  Thank you.  I appreciate you asking.

14                  THE COURT:  Thank you.

15                  Are you prepared to go forward with  
16                  evidence at this time, then?

17                  MR. LOW:  I am, Your Honor.  I do  
18                  have some witnesses here.

19                  THE COURT:  Very good.  Let's have  
20                  the jury brought back in, and we will proceed with  
21                  the Defense's case.

22                  (The following proceedings were  
23                  held in open court, in the presence of the jury:)

24                  THE COURT:  You may be seated and  
25                  court will convene.  And we are in the Defense's

1 case. The Defense may call its first witness.

2 MR. LOW: Thank you, Your Honor. At  
3 this time we'd like to call to the stand Ria  
4 Engebretsen.

5 THE CLERK: Please raise your right  
6 hand. You do solemnly swear that the testimony  
7 you will give in the case before the Court will be  
8 the truth, the whole truth, and nothing but the  
9 truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you very much.

12 MR. NEWCOMB: Your Honor, where  
13 should --

14 THE COURT: Any preference? She  
15 could be moved to the witness stand, but I don't  
16 know if the ladies and gentlemen of the jury can  
17 see her or we could adjust the microphone or use  
18 the lapel microphone if we wanted to.

19 MR. LOW: Would it be all right with  
20 everyone if she sits down here? Can you all see  
21 her? Is that okay?

22 Lapel mic going to be all right, Your  
23 Honor?

24 THE COURT: Either that or if she's  
25 right there, we'll be able to hear.

1                   MR. LOW: We're going to ask you to  
2 speak up. But if they can't hear, they'll let us  
3 know, and we'll put a mic on you; okay?

4                   THE WITNESS: Okay.

5                   THE COURT: Please have her face the  
6 ladies and gentlemen of the jury. Thank you.

7                   THE WITNESS: I'm an easy crier, so  
8 don't pay any attention.

9                   RIA ENGBRETSSEN,

10 called for examination by the Defense, being first  
11 duly sworn, on her oath testified as follows:

12                   DIRECT EXAMINATION

13 BY MR. LOW:

14                   Q. Good morning.

15                   A. Morning.

16                   Q. Please introduce yourself to the ladies  
17 and gentlemen of the jury.

18                   A. I am Ria Engebretsen -- Maria  
19 Engebretsen.

20                   Q. Okay.

21                   A. Keeline, Wyoming.

22                   Q. You're from where?

23                   A. Keeline, Wyoming.

24                   Q. Where is that?

25                   A. God's country.



1 Q. All right. And where is that?

2 A. Keeline is between Lusk and Douglas.

3 Q. Okay. How long have you been out there,  
4 ma'am?

5 A. 40-some years.

6 Q. And if you would, your last name, it is  
7 an unusual name. What's the origin of your last  
8 name?

9 A. Norwegian.

10 Q. And were you born in this country?

11 A. I was born in Germany.

12 Q. Now, tell us what -- how did you find  
13 your way into the United States?

14 A. I married a GI.

15 Q. How did you meet him?

16 A. I was a nurse and he was wounded. And  
17 even though I was German, I took care of him and a  
18 lot of other people. I cry all the time. It  
19 makes me so mad. Don't pay any attention. But  
20 that's how I got to meet my first husband. That  
21 was my first husband.

22 Q. Now, I hear tell you may have met a man  
23 by the name -- well, let me ask you this. Where  
24 in Germany were you at at the time you met your  
25 husband?

1 A. Bad Nauheim.

2 Q. Say that one more time.

3 A. Bad Nauheim.

4 Q. Bad, space, Nauheim?

5 A. Yes.

6 Q. B-A-D, space, N-A-U-H-E-I-M?

7 A. Right.

8 Q. Now, did you meet anybody there that's

9 kind of famous as a result of being in Bad

10 Nauheim?

11 A. Yeah, I met Patton. I know exactly where

12 he died. Right just a few blocks from where I

13 lived. And -- say the name. It'll help me.

14 Q. MacArthur or Patton?

15 A. Patton. And I'm getting kind of

16 forgetful. But that general was from Tacoma. It

17 was first division. And I was his -- I left

18 nursing in -- just before the war was over.

19 And -- I didn't think I could ever forget his

20 name, it. Will come to me. This particular

21 general, I was at the headquarters for the GIs.

22 My hometown is a spa. It's full of bathhouses.

23 And the GIs naturally occupied them, and that's

24 where I worked.

25 Q. Thank you. Now, what do you all do out

1       there in the Lusk area?  What y'all doing out  
2       there?

3           A.     Well, I worked at a hospital for 25  
4       years.  I instigated -- I helped build a new  
5       hospital.  I worked in the old one.  And the State  
6       condemned them, so we had to build a new one.  And  
7       people naturally were against it, so we had to go  
8       out and convince them.  And I worked in that  
9       hospital 25 years.  I was a nurse, surgical nurse,  
10      I took x-ray, I did lab, and I took care of  
11      patients.

12          Q.     Do you have any kids out there?

13          A.     Pardon?

14          Q.     Do you have any children out there?

15          A.     I have three, two girls and a boy.

16          Q.     And what are their names?

17          A.     Monika, Heide Marie, and Thomas.

18          Q.     Thank you.

19          A.     Yeah.

20          Q.     Now, do you know this gentleman, pardon,  
21      sitting right over there?  Do you know him?

22          A.     Yeah.

23          Q.     And how do you know him?

24          A.     He came one time with his brother -- with  
25      his dad one year.  And I don't know if it was the

1 following year or two years later, he came by  
2 himself and stopped with his girlfriend. And he  
3 is, let me tell you --

4 Q. Hold on a second. Real quick. I  
5 appreciate -- who did you meet first, John or  
6 John's father and John's brother?

7 A. John's father and brother.

8 Q. Would you stand up, Mr. Knospler, please.  
9 You know those two gentlemen over there?

10 A. Yes. Yes.

11 Q. Who is the gentleman on the left?

12 A. Jacob.

13 Q. All right. And the gentleman on the  
14 right?

15 A. John.

16 Q. All right, then. And tell us the story  
17 about how you --

18 MR. LOW: Thank you, gentlemen. I  
19 appreciate it.

20 Q. (BY MR. LOW) Tell us the story about how  
21 you first met them.

22 A. Well, John comes out hunting, the father.  
23 And now he doesn't come so much about hunting, he  
24 comes -- he loves Wyoming and looks around, and he  
25 wants to buy a place there.

1           Q.     And how did John first start coming to  
2 your land? How did he meet you? What were the  
3 circumstances?

4           A.     He was coming to hunt.

5           Q.     He was what?

6           A.     He was coming to hunt.

7           Q.     Did you invite him out to your property?

8           A.     You didn't -- well, he came and asked if  
9 he could hunt. You know, you have to ask. And my  
10 husband, I think, was already dead by then. And  
11 but he -- John, I just adore him. He comes and he  
12 takes care of you, you know. Do you need coffee,  
13 do you need this, before he goes out to do  
14 whatever he wants to do.

15          Q.     Yes. Did you remember seeing an article  
16 in *Newsweek* or *Time* magazine about his son, Jacob  
17 Knospler?

18          A.     Yeah.

19          Q.     Tell us about that.

20          A.     Well, it was just an article, and I was  
21 real impressed. And I was -- felt terrible. And  
22 John brought Jacob out.

23          Q.     And did you ask your son Tom -- is it Tom  
24 Dunlap?

25          A.     Yeah.

1 Q. Did you ask him to see if he could find a  
2 way to contact Jacob?

3 A. Yeah.

4 Q. And invite him out to the property?

5 A. Yeah.

6 Q. Okay. And then the first one out came  
7 was John, Sr.?

8 A. John, Sr., yeah.

9 Q. All right, then. And you like them?

10 A. I love them. I think -- they're the  
11 greatest.

12 Q. What about John, Jr., over here? Tell us  
13 what you think -- well, before we get there, I'm  
14 sorry to interrupt. I'm guessing that you have  
15 had a little bit of life experience?

16 A. Pardon?

17 Q. I'm guessing you've had a little bit of  
18 life experience?

19 A. I should say so, yeah.

20 Q. And you probably got an opportunity to  
21 meet a really good number of people?

22 A. Lots of people, lots of people.

23 Q. And is it fair to say that over this kind  
24 of lifetime and the things that you've done,  
25 you've gotten to be a pretty good judge of

1 character?

2 A. I hope so, yes.

3 Q. Well, based on your life experience and  
4 the number of people you've met, what would you  
5 have to say about John and how you've gotten to  
6 know him, John, Jr.?

7 A. John, Jr.?

8 Q. Yes, ma'am.

9 A. He impressed me the minute he sat on the  
10 sofa, and he introduced himself before he sit  
11 down. And we had visits, talking about his  
12 service in Iraq. And after he got through eight  
13 years of Marines, he went to Africa and helped the  
14 poor people there. I was impressed. I love him.  
15 And he's a great, great guy. He's just -- there's  
16 nobody nicer than John.

17 Q. Did you at all find him creepy?

18 A. Pardon?

19 Q. Did you ever find him creepy?

20 A. John?

21 Q. Yes.

22 A. No.

23 Q. Well, what about his smile? Do you think  
24 he's got --

25 A. His smile is a sweet smile. Just as

1       sweet as he is.

2           Q.     Yeah.

3           A.     I don't know how anybody can say he's  
4       creepy.

5           Q.     Would you -- would you let him in your  
6       house and live with you as often as he has if you  
7       found him creepy, ma'am?

8           A.     If I found him creepy? I wouldn't leave  
9       him alone, no.

10          Q.     Okay. All right, then, you were aware  
11       that about a year ago, he was involved in a  
12       shooting out in Casper?

13          A.     Yes. He -- they stayed at my house. And  
14       he came up and -- I kind of maybe should have  
15       warned him about that place. But I never thought,  
16       you know. But can you imagine laying in a car  
17       asleep and some guy comes and wakes you up from  
18       there --

19                   MR. BLONIGEN: Well, Your Honor, I'm  
20       going to object to this. That would require  
21       hearsay unless she was there.

22                   THE COURT: Hold up. Yeah. I'll  
23       sustain, and we can go to the next question. I  
24       don't think there's a question pending.

25          A.     Do I have to quit?



1 Q. (BY MR. LOW) No, you don't have to quit.  
2 The judge has asked me to do my job, okay, and  
3 I'll do it. So may I ask you this. Was he a  
4 guest at your house and your ranch last year when  
5 he was out here?

6 A. Yeah.

7 Q. Okay. And why did he go into town? Was  
8 he going there to pick somebody up?

9 A. Well, he came to Casper --

10 MR. BLONIGEN: Well, Your Honor,  
11 again, I think he's leading, and she --

12 A. He --

13 MR. BLONIGEN: If I might, Judge.

14 THE COURT: Hold up if you would.

15 MR. BLONIGEN: He should lay some  
16 foundation how she knows this and then not suggest  
17 the answer to her. I think perhaps he told her,  
18 but I don't know that, and we need some  
19 foundation.

20 THE COURT: The last question was  
21 leading, so I'll sustain.

22 Q. (BY MR. LOW) Sure. Let me see if I can  
23 try it this way. Do you have any idea, ma'am, why  
24 he went to town?

25 A. Why he what?

1 Q. Why John went to town last year.

2 A. Well, he came to Casper I suppose to look  
3 around and see Casper. He liked Wyoming, you  
4 know, and got into the wrong place.

5 Q. Uh-huh. Did you get an opportunity to  
6 meet anybody that was one of John's friends last  
7 year?

8 A. Girlfriend I met.

9 Q. And how was it that you met her?

10 A. He brought her, and she stayed at my  
11 daughter's while he stayed there.

12 Q. And do you know how -- well, thank you.  
13 I appreciate it.

14 MR. LOW: That's all the question we  
15 have at this time.

16 THE WITNESS: Well, you don't want  
17 to tell me what I felt like when he got hurt,  
18 before he got hurt?

19 MR. LOW: You know what, we'll see  
20 if the prosecutor wants to ask you that question,  
21 okay? But thank you very much.

22 THE WITNESS: Thank you.

23 CROSS-EXAMINATION

24 BY MR. BLONIGEN:

25 Q. I have just a couple questions, ma'am.

1       When this happened last year, did you know a big  
2       storm was coming in?

3           A.     No.

4           Q.     Okay.  You weren't aware there was a big  
5       storm coming in?

6           A.     No.  I'm wheelchair bound, so I don't,  
7       you know, hear a lot of news.

8           Q.     And do you know if his girlfriend was  
9       flying into Casper or Laramie?

10          A.     No.  That I don't know.  She was at my  
11       house --

12          Q.     I see.

13          A.     -- before they came to Casper.

14          Q.     Okay.  How long had John, Jr., been at  
15       the ranch when he left that day?  Had he been  
16       there for a long time or just a few days?

17          A.     Just a day, wasn't it, John?

18          Q.     Okay.  Do you know if there had been any  
19       hunting or something done up to that time?

20          A.     Pardon?

21          Q.     Had he or his father gone hunting before  
22       he went to Casper?

23          A.     No.

24          Q.     Okay.

25                       MR. BLONIGEN:  Thank you.  That's

1 all the questions I have.

2 THE COURT: Anything on redirect --

3 THE WITNESS: But they could have  
4 gone hunting, and I wouldn't know, you know.

5 THE COURT: -- Mr. Low?

6 REDIRECT EXAMINATION

7 BY MR. LOW:

8 Q. Ma'am, do you know when John, Jr., is out  
9 on your land, does he take a gun with him when he  
10 walks out there?

11 A. Pardon?

12 Q. When John, Jr., is on your land, does he  
13 take a gun when he goes out there?

14 A. I didn't see him take a gun, no.

15 Q. Do you know whether he walks the land or  
16 whether he hunts?

17 A. Pardon?

18 Q. Do you know whether or not he walks the  
19 land or if --

20 A. I think he went with his dad just to, you  
21 know, because his dad wants to buy a place  
22 someplace when he can find it.

23 Q. All right, then. Was there anything else  
24 you wanted to say? You mentioned there was  
25 something else you wanted to say before I sat

1 down.

2 MR. BLONIGEN: Well, Your Honor,  
3 that's not an appropriate question. It would have  
4 to be directed to a particular area covered in  
5 cross.

6 THE COURT: I'll sustain.

7 Q. (BY MR. LOW) We'll do it this way, then.  
8 You said you wanted to tell the ladies and  
9 gentlemen of the jury how you felt. Go ahead and  
10 tell them how you felt.

11 A. Well, I felt --

12 MR. BLONIGEN: Your Honor --

13 THE COURT: Hold up if you would.  
14 Same ruling. I'll sustain.

15 A. -- that when --

16 MR. LOW: I'm sorry.

17 THE COURT: Hold up if you would,  
18 ma'am.

19 MR. LOW: The judge is asking you to  
20 wait a second. One second.

21 Go ahead, Your Honor.

22 THE COURT: I'll sustain the  
23 objection, so.

24 MR. LOW: That means you can't  
25 answer, so that's all I have.

1                   Sorry. Thank you.

2                   THE WITNESS: Well, he's a good guy,  
3 period.

4                   THE COURT: Anything on recross,  
5 Mr. Blonigen?

6                   MR. BLONIGEN: No, Your Honor.

7                   THE COURT: Okay. Thank you very  
8 much. You can be excused. And go ahead and take  
9 your time.

10                  MR. LOW: Thank you, Your Honor.

11                  THE COURT: Please come forward if  
12 you would and be sworn by the clerk to my left.  
13 And after you're sworn, you'll sit to the other  
14 side if you would.

15                  THE CLERK: You do solemnly swear  
16 that the testimony you will give in the case  
17 before the Court will be the truth, the whole  
18 truth, and nothing but the truth, so help you God?

19                  THE WITNESS: I do.

20                  THE CLERK: Please be seated, out  
21 and around.

22                  THE COURT: I would ask counsel to  
23 get the podium sort of back into the usual portion  
24 of the courtroom.

25                  MR. LOW: Oh, yes. Thank you.

1 THE COURT: Thank you. Thanks for  
2 doing that.

3 You may proceed whenever you're ready.

4 MR. LOW: Thank you, Your Honor.

5 JOHN DAILY,

6 called for examination by the Defense, being first  
7 duly sworn, on his oath testified as follows:

8 DIRECT EXAMINATION

9 BY MR. LOW:

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. Please introduce yourself to the ladies  
13 and gentlemen of the jury.

14 A. My name is John Daily, D-A-I-L-Y. I live  
15 in Jackson, Wyoming.

16 Q. How long you lived there, sir?

17 A. Well, since -- permanently since 1972.

18 Q. And, sir, currently what do you do for a  
19 living?

20 A. I do forensic analysis primarily of  
21 traffic crashes but anything else that involves  
22 motion or forces.

23 Q. Well, give us an idea of either your  
24 education, your training, or your experience that  
25 has contributed to your ability to do that job.

1           A.     Well, I spent 25 years with the Sheriff's  
2 Office in Jackson and got quite a bit of training  
3 both in crash investigation reconstruction as well  
4 as forensic science. I worked as a detective for,  
5 oh, somewhere between seven and nine years. I've  
6 kind of lost count. I've been retired for 12, so  
7 I don't remember exactly.

8           I have a bachelor's in mechanical  
9 engineering from Purdue. I have a master's in  
10 mechanical engineering from the University of  
11 Wyoming. I've been teaching traffic crash  
12 reconstruction and applied physics for the  
13 University of North Florida Institute of Police  
14 Technology and Management since 1982, so this is  
15 my 32nd year with them.

16           I've published three textbooks in the  
17 field of crash reconstruction and applied physics,  
18 first one being in 1988. And then the second one  
19 is called *Fundamentals of Applied Physics for*  
20 *Traffic Accident Investigators*. I think that one  
21 came out in 1997. I collaborated with Nathan  
22 Shigemura, who was -- who at the time was with the  
23 Illinois State Police. And he also has a  
24 bachelor's in electrical engineering, and we've  
25 taught together for years.



1           And then the third text is *Fundamentals of*  
2 *Traffic Crash Reconstruction*, and it kind of  
3 combines applied physics with physics applied to  
4 either traffic crashes and some of the examples  
5 are other things that are in motion and have  
6 forces applied to them. That came out in 2006.

7           Mr. Shigemura was a co-author with me as  
8 was my son Jeremy, who is a -- let's see -- he's  
9 an associate professor of mechanical engineering  
10 at the University of Tulsa.

11          Q.    Sir, what kind of courses, college  
12 courses, did you have to take that allowed you to  
13 prepare and work in the field as an accident  
14 reconstructionist?

15          A.    Well, anything having to do with  
16 dynamics, thermodynamics, energy conversion.  
17 Basically the whole curricula can be applied to  
18 the field. When you take an engineering degree,  
19 essentially you can work in many different fields  
20 that involve forces, motion, heat transfer, or  
21 whatever.

22          Q.    Do you have to take a lot of math  
23 classes?

24          A.    Yes, you do.

25          Q.    So all the way up through calculus?

1           A.     Beyond calculus.  Differential equations,  
2     partial differential equations, Fourier series and  
3     boundary value analysis, things like that.

4           Q.     What about science courses such as  
5     physics?

6           A.     Oh, yeah.  You start with that, and  
7     that's a fundamental course in any engineering  
8     curriculum is fundamental physics.

9           Q.     And that word you said, elastic  
10    collisions, is that a scientific word for saying  
11    the way things, objects move through space once  
12    they have collided with other objects?

13          A.     Well, sort of.  An elastic collision  
14    means that there's bounce to it.  For example,  
15    this table top is pretty hard here.  If I took a  
16    golf ball and dropped it on the table, it would  
17    bounce back up off the table.  That defines  
18    elasticity to some extent.  Now if I took a soft  
19    lump of clay and did the same thing, it would just  
20    go splat, and so it would have no bounce.  That  
21    would be an inelastic collision.  Some people call  
22    them plastic collisions, meaning there's  
23    deformation.

24          Q.     Is it also within your training,  
25    experience, and education to understand how

1 objects move through other objects?

2 A. Yes.

3 Q. Okay. About approximately how many  
4 reconstructions have you done?

5 A. You mean any kind of reconstruction?

6 Q. Yes, sir.

7 A. Quite a few. I really don't know because  
8 I didn't keep track of all the ones I did when I  
9 was with the Sheriff's Office. I suppose there's  
10 been -- since I started doing this privately in  
11 1985, there's probably been 900 cases or so, I'm  
12 thinking.

13 Q. And are all of those automobile accidents  
14 or give the jury a description of the kind of  
15 things that you were asked to do.

16 A. Not always. I mean, people wreck more  
17 often than not, so most of my cases involve  
18 traffic crashes. I've worked fatal ski crashes at  
19 the Jackson Hole ski area, again, forces and  
20 motion. I investigated shooting homicides when I  
21 was on the job with the Sheriff's Office, both  
22 suicides and homicides. So, you know, that sort  
23 of experience as well.

24 Q. Do you have any titles or I think they  
25 call them accreditations, national bodies that

1 recognize you and the work that you do as having  
2 met or surpassed a certain standard?

3 A. Well, I'm not exactly sure what you're  
4 referring to there, but I have had several  
5 articles published in what we call peer-reviewed  
6 journals. And so that means that someone other  
7 than me looks at it and says, yeah, this makes  
8 sense and we'll publish this.

9 Q. And do you possess any licenses?

10 A. No, I don't.

11 Q. Okay. Have you ever been asked by  
12 Natrona County to ever do any reconstructions?

13 A. Yes.

14 Q. About how many times?

15 A. I can't remember, but it goes back a fair  
16 ways. I mean, I can remember doing cases over  
17 here when I was still on the job.

18 Q. Is it fair to say that you have a  
19 national reputation?

20 A. Well, I think it actually goes beyond  
21 that. I've taught in several foreign countries.  
22 I've taught in Brazil, I've taught in Jamaica, New  
23 Zealand, Canada, and most of the states in the  
24 United States.

25 Q. Well, what was it they were asking you to

1 teach other accident reconstructionists?

2 A. You mean what kinds of subjects?

3 Q. Yes, sir.

4 A. Oh, could be anything from momentum  
5 analysis to vehicles going airborne to energy  
6 methods and damage analysis, anything like that.  
7 I taught a commercial vehicle class in New  
8 Zealand.

9 Q. Have you ever had to figure out bullet  
10 trajectories in your past?

11 A. Yes, I have.

12 Q. About how many occasions?

13 A. I remember doing one privately. It was  
14 over in South Dakota. It involved using a three  
15 degree of freedom computer model to look at the  
16 trajectory bullets that were hitting houses.

17 Q. Have you ever been employed or asked to  
18 work on a case by Mr. Blonigen's office?

19 A. Yes.

20 Q. About how many times in the past?

21 A. You know, I can't remember. I'd say no  
22 more than ten over the years, but there's been a  
23 few. There's been some they've asked about, and  
24 I've referred them to other people here in Casper  
25 who I think were perfectly capable of doing the

1 job.

2 Q. And what is one of those names that you  
3 have referred Mr. Blonigen's office to?

4 A. Jason Sawdon. He's a trooper here in  
5 Casper. And he -- I believe he has a degree in  
6 mechanical engineering, and he's been a student of  
7 mine in several different classes. He's very  
8 bright and very capable.

9 Q. Sir, how did you end up in this case?

10 A. Well, I got a call, I think it was in  
11 February of this year, from another attorney from  
12 Mr. Blonigen's office.

13 Q. What's his name?

14 A. Josh Stenasas or Stensaas. I always  
15 butcher his last name because it's spelled  
16 differently. But he called me and asked me to  
17 take a look at this case.

18 Q. Was he the lawyer working the case at  
19 that time?

20 A. Yes, he was.

21 Q. All right. And tell us what he asked  
22 you.

23 A. Well, he wanted me to at first look at  
24 any motion that the vehicle had had in leaving the  
25 area of the incident and then wanted to expand

1 that into looking at the forces and so forth that  
2 would be involved in producing the evidence that  
3 we see in this case.

4 Q. All right.

5 MR. LOW: Your Honor, I'm about  
6 ready to ask this gentleman to tell us all the  
7 materials that he reviewed and consulted before he  
8 rendered his opinion. That will be a few minutes.  
9 I'll break when you like. It's 12 noon now.

10 THE COURT: Why don't we go ahead  
11 and break until 1:30. And looks like this would  
12 be a good portion.

13 Mr. Daily, if you'd be back at 1:30.

14 THE WITNESS: 1:30.

15 THE COURT: And ladies and gentlemen  
16 of the jury, you're excused, but keep in mind the  
17 rules. Thank you so much.

18 (At 12:00 p.m., a recess was  
19 taken until 1:34 p.m.)

20 (The following proceedings  
21 were held in open court, out of the presence of  
22 the jury:)

23 MR. NEWCOMB: Your Honor, may I be  
24 briefly heard before the jury comes in?

25 THE COURT: I guess we could stop

1       them if you really need to.

2                   MR. NEWCOMB:   Just take one minute.

3                   THE COURT:   Court will come to  
4 order.   Please be seated.

5                   MR. NEWCOMB:   And, Your Honor, I  
6 apologize.   In *Wilkerson v.* --

7                   THE COURT:   Hold up if you would.   I  
8 need to make sure we reconvene after the luncheon  
9 break in State of Wyoming versus Knospler, Civil  
10 Action 19548-B.   And the jury panel is not  
11 present.

12                   Mr. Newcomb.

13                   MR. NEWCOMB:   Yes, Your Honor.   In  
14 *Wilkerson v. State* in footnote one, the Wyoming  
15 Supreme Court noted that it had not yet -- has not  
16 yet determined whether the presentation of  
17 evidence by the Defense following a motion for  
18 judgment of acquittal waives Fifth and Fourteenth  
19 Amendment rights.   And for the record, we would  
20 argue -- we would object to that argument and just  
21 wanted to put it on the record.   And we're willing  
22 to put the Court at its pleasure.

23                   THE COURT:   I think that's probably  
24 an appellate issue alone.

25                   MR. NEWCOMB:   Yes, sir.



1                   THE COURT: But your concern and  
2 position is noted.

3                   Anything else before we have the jury  
4 brought in?

5                   MR. BLONIGEN: Not from the State,  
6 Your Honor.

7                   THE COURT: Mrs. Tuma.

8                   THE CLERK: Yes, sir.

9                   (The following proceedings were  
10 held in open court, in the presence of the jury:)

11                   THE COURT: Thank you very much.  
12 Court will reconvene. And let the record reflect  
13 that the jury panel has now joined us; and all  
14 parties, party representatives, and counsel are  
15 present. Mr. Daily needs to retake the stand, so.

16                   Thank you, Mr. Daily.

17                   Counsel may proceed when ready.

18                   MR. LOW: Thank you, Your Honor.  
19 Appreciate it.

20                   Q. (BY MR. LOW) Sir, can you tell the jury  
21 some of the specialized training you have had in  
22 ballistics and firearms use, please.

23                   A. Well, over my career, I've taken  
24 obviously the fundamental courses at the Wyoming  
25 Law Enforcement Academy. And then I've taken

1 instructor classes, been a firearms instructor for  
2 both handgun, shotgun, and rifle, both patrol  
3 rifle and long-distance rifle shooting. I was on  
4 our tactical team and was a long-range rifleman  
5 there. That assignment lasted for about 20 years.  
6 As we did that sort of thing, we -- we put  
7 together kind of a teaching team in Teton County  
8 and taught long-distance rifle shooting over at  
9 the Wyoming Law Enforcement Academy two or three  
10 different occasions, probably back in the '90s  
11 sometime.

12 One of the things we would do for our own  
13 training through the tactical team is we would get  
14 vehicles, and especially for the long-distance  
15 team, we would shoot various kinds of auto glass.  
16 We'd actually set up an old car. And there's two  
17 different types, there's the laminate safety glass  
18 that you see in the windshield, and there's the  
19 side glass, which is tempered glass.

20 Our goal was to see what kind of bullet  
21 deflections we got, not so much to see what kind  
22 of fracture pattern we had, but more to see how  
23 effective we would be at various ranges and so  
24 forth with actually being able to put rounds on  
25 target.

1           Q.     Thank you, sir.  And your employment  
2 history, I know you've already mentioned that you  
3 were employed with the sheriff's department out  
4 there in Teton County.  Any other significant  
5 employment?

6           A.     Well, like I say, I've been on the  
7 adjunct faculty at the University of North Florida  
8 for 32 years, and I've also had my own business  
9 for a long time.  It's called Jackson Hole  
10 Scientific Investigations.  And I started that  
11 back when I was still working for the Sheriff's  
12 Office.  And that's what I do now is  
13 reconstruction.  And teaching reconstruction can  
14 include traffic, of course, but any other thing  
15 that moves or needs a dynamic analysis, we can do.

16          Q.     Before you went to the sheriff's  
17 department, were you a chief engineer out at the  
18 Butler Creek Corporation?

19          A.     I was.

20          Q.     Have you been asked by either State of  
21 Wyoming or by the local law enforcement agencies  
22 to teach any of their police officers or highway  
23 patrolmen or sheriff's deputies how to do things?

24          A.     Yes, I have.

25          Q.     And what is that it they ask you to teach

1       them how to do?

2           A.     Well, I've taught, obviously, many  
3       classes having to do with traffic crash  
4       reconstruction. I've taught applied physics, as I  
5       recall, over at the academy. I haven't taught  
6       firearm -- I've taught the -- well, they're  
7       basically sniper schools at the academy. Also,  
8       we've had those locally, so, and then teaching  
9       firearms to our own agency.

10          Q.     Now, as a scientist, you may be asked to  
11       conduct an experiment. And in so doing, you will  
12       write up a journal, and that's normal; is that  
13       fair?

14          A.     Yeah. If you're going to do some  
15       studies, you usually write it up.

16          Q.     What is one of the honors that a  
17       scientist can get when they conduct an experiment  
18       and they write it up and then they submit it to  
19       the other scientists in the community? What is --  
20       what is it when that gets published? Is that  
21       something that's important?

22          A.     Well, I think so. It's a called a  
23       refereed or peer-reviewed publication. And it's  
24       something that if you do a study, then you want  
25       others to look at it and perhaps learn from it,

1 then you go ahead and submit it to a journal or  
2 somewhere. And other people who are like you look  
3 it over, check it for its merit, and then either  
4 say yes or no.

5 Q. Is it fair to say that when you actually  
6 take your experimentation, you put it in a book,  
7 and you say, I'm going to send it out to the other  
8 people in the same field, that's a pretty big  
9 deal, isn't it?

10 A. Well, textbooks are fairly important in  
11 the field, yes.

12 Q. I mean, because if you're wrong or your  
13 calculations are wrong or if your theory is wrong  
14 or if it's minor, they're not even going to bother  
15 with it, let alone publish it, are they?

16 A. Yeah, no, they're not.

17 Q. I mean, for a scientist, it's a pretty  
18 big deal to get published, isn't it?

19 A. I think so.

20 Q. How many publications have you had over  
21 the years, sir?

22 A. Well, the three textbooks. There's been  
23 several what I'd call refereed papers, and I don't  
24 remember how many there are. There's some out  
25 there. There's a lot of what we call white papers

1 as well. And those are things that you write, and  
2 usually you do a self-peer review, in that you  
3 send it out to some of your colleagues and say,  
4 Hey, does this make sense; and then you present it  
5 at a conference or some such thing as that. It's  
6 kind of one step below getting published in a  
7 journal, if that makes sense.

8 Q. So peer-reviewed papers and publications,  
9 you got the Daily Journal; is that what that says  
10 there?

11 A. Oh, that's me. No. That's just me.

12 Q. Oh, sorry. *Accident Reconstruction*  
13 *Journal*, I apologize. Then "The Society of  
14 Automotive Engineers"?

15 A. Yes.

16 Q. Then we have -- pardon me. There we go.  
17 "The Automotive Engineers Clean Snowmobile  
18 Challenge, Society of," the Automotive Engineers  
19 again. We've got this one here, the "Supplemental  
20 Over-Snow Vehicle Sound," "Snow Plane Sound Level  
21 Measurements," "A Method for Vehicle." Is that  
22 some of the publications?

23 A. Yeah. Those are my peer-reviewed  
24 publications.

25 Q. Then you have the list down here, the

1 white papers?

2 A. Yes.

3 Q. You got one, two, three, four, five, six,  
4 seven, eight, nine, ten, eleven, twelve, thirteen,  
5 fourteen, fifteen, sixteen, seventeen, eighteen,  
6 nineteen, twenty; and another twenty there; one,  
7 two, three, four, five, six, seven, eight, nine,  
8 ten, eleven, twelve there.

9 And awards, what are some of the awards  
10 you've received, sir?

11 A. Well, just several for doing my job the  
12 way it ought to be done, I guess. The first one  
13 there is I saved a guy's life.

14 Q. You actually received the Peace Officer  
15 of the Year award?

16 A. Yes. That was a long time ago. I was  
17 much younger then.

18 Q. Some of the certificates of appreciation,  
19 a leadership award, contributions and efforts,  
20 outstanding presenter at Florida and Florida,  
21 Who's Who in the World, certificate of  
22 appreciation, outstanding presenter, Florida  
23 again. Those some of the awards you've received?

24 A. Yes.

25 Q. Thank you. How important is your

1 integrity to you, sir?

2 A. Extremely.

3 Q. Say why.

4 A. Well, if I don't tell people what I think  
5 and the reason I think it, if I just try to cover  
6 something up, I'm going to lose my credibility.  
7 And I can't do that. Just -- that's not how I  
8 operate.

9 Q. You ever had occasion where working for  
10 one of the prosecuting attorneys and where they  
11 asked you to look at some facts that -- and after  
12 you went through your conclusion, you decided that  
13 their version of the facts didn't fit the  
14 evidence?

15 A. I've done that before, yes, in other  
16 cases.

17 Q. And did you tell them that up front?

18 A. Yes, I did.

19 Q. Is that what you did in this case as  
20 well?

21 MR. BLONIGEN: Your Honor, this is  
22 improper testimony. He's testifying to his own  
23 credibility.

24 THE COURT: I believe the last  
25 question would go to that, so I'll sustain.



1 Q. (BY MR. LOW) Well, did you tell anyone  
2 in this case what your opinions were, sir?

3 A. I did, by means of a report.

4 Q. And as a result, did anybody subpoena you  
5 to come testify in this trial?

6 A. Yes.

7 Q. Was it Mr. Blonigen?

8 A. No.

9 Q. Was it Mr. Stensaas?

10 A. No.

11 Q. Who was it?

12 A. I believe it was you.

13 Q. Well, let's get to the facts. Sir, tell  
14 us what it was you reviewed in preparation for  
15 rendering your conclusion in this case as to what  
16 happened as best you can tell. What did you  
17 review?

18 A. Well, I came over in February and met  
19 with Mr. Stensaas and Trooper Sawdon and Detective  
20 Ellis, and we sat down and started discussing the  
21 case. As I recall, then, there were any number of  
22 photos that were available on a CD, so looked at  
23 some of those.

24 And during our conversation, it came up  
25 that there was some evidence that those guys could

1 not quite reconcile with the current way they  
2 thought the case was being charged, if you will.  
3 And so part of it, for example, had to do with the  
4 dispersion of glass throughout the passenger  
5 compartment. And it was obviously tempered side  
6 glass. Particular injuries to Mr. Baldwin, his  
7 position. And the question arose, did he try to  
8 drive away at some point before this confrontation  
9 culminated in the shooting. And so basically,  
10 those kinds of things were issues that they wanted  
11 me to look at and address from the evidence that  
12 did exist.

13 Q. Any other issues that you can recall at  
14 this time?

15 A. Well, essentially, I think that pretty  
16 much covers it.

17 Q. All right. So what did you do to try and  
18 address their concerns that they could not  
19 reconcile the dispersion of glass through the car,  
20 the injuries to Mr. Baldwin, and the evidence that  
21 it appeared that maybe Mr. Knospler's car tried to  
22 drive away before the shooting? What did you do  
23 to try and address those issues?

24 A. Well, I looked at the evidence of the  
25 photographs that were taken at the scene of this

1 incident. And in some of those photographs, we  
2 could see tire tracks, and there was a close-up or  
3 two taken of the tire tracks. And I talked to  
4 Trooper Sawdon about this. He thought and I  
5 concurred that this Chevy Cobalt, which is a  
6 front-wheel drive car, actually spun the wheels as  
7 it was trying to leave, moved forward some, and  
8 then spun. There was a little pile of snow behind  
9 where the front tire would have been. And so that  
10 suggested that he tried to drive away but then was  
11 stopped because his wheels started spinning  
12 because it was snowy, and it was just a real yucky  
13 day.

14 Q. So Highway Patrol Officer Sawdon?

15 A. Yes.

16 Q. He concurred with your opinion that it  
17 appeared that the car tried to get away and then  
18 got stuck in the snow and spun?

19 A. Actually, I concurred with him. He saw  
20 it first.

21 Q. I'm going to show you what's been marked  
22 and received into evidence as A19. Is this one of  
23 the pictures you're referring to, sir?

24 A. I think so. May I look in my report?

25 Q. Absolutely, sir.

1           A.     Because I have some photos I specifically  
2 used in my report.

3           Q.     While you're looking in that report, is  
4 it true that your report, that's the one you  
5 actually write that contains all of your  
6 conclusions and what you base them on as 14 pages?

7           A.     Yes.

8           Q.     As opposed to a page and a half maybe  
9 some other experts wrote?

10          A.     Yeah. This one is 14 pages.

11          Q.     Thank you. And go ahead, sir. What did  
12 you want to refer to?

13          A.     Okay. Well, that's similar to some of  
14 the photographs that I used. It's not identical,  
15 but it tells the same story.

16          Q.     Can we start with page 2 of your report?  
17 And I'm going to show you what's been received  
18 into evidence as Exhibit 309. Is that the same  
19 one that you're looking at on your second page of  
20 your report, sir?

21          A.     Yes.

22          Q.     And please tell the folks what it is  
23 we're looking at and why that was interesting to  
24 you.

25          A.     Well, it shows that, first of all,

1       there's a bare spot where the car was because the  
2       car was parked evidently before it started  
3       snowing. And then we see Mr. Baldwin's foot.

4           Q.     All right. Now there's a screen over  
5       there to your right.

6           A.     Oh.

7           Q.     And I'm told that if you touch the  
8       screen, it makes shapes and colors that you can  
9       point these things out. And then to clear it, you  
10      hit the bottom left-hand corner. So see if that's  
11      going to work for you.

12          A.     So this is pretty high tech.

13          Q.     Yeah, I guess.

14          A.     Okay. Let's see if I can figure this  
15      out. Okay. Here's -- well, I don't think I'm  
16      very good at this. Well, there's the area where  
17      the car was parked, and there's not a lot of snow.

18          Q.     Hit the bottom left-hand corner. It  
19      should clear it.

20          A.     Well, I was just trying to put Mr.  
21      Baldwin's foot in there.

22          Q.     Okay.

23          A.     Then we can see tire tracks coming out of  
24      there.

25          Q.     Show us where those are, sir.

1           A.     Okay.  Here's the tire track -- well,  
2 something like this.  And I believe there's one  
3 that's coming out kind of like this.  And over  
4 here, this is -- this area over here has been  
5 stepped in a lot, so I can't really tell about  
6 that.  But as we look at where the car is trying  
7 to drive out from, and if you have the photo  
8 that's on my page 4 of 14, it shows that little  
9 buildup of snow that we were talking about.

10           Q.     Yes, sir.  One second, please.

11                     I'm showing what's been marked as A24.  
12 And there may be one other one that's better that  
13 you're referring to.  Hit the lower left-hand  
14 corner.

15           A.     Lower left, okay.  I don't know that  
16 that's the same one, but it's this area here.

17           Q.     Here.  I believe this is the one you want  
18 to look at.  This is A23.

19           A.     Okay.

20           Q.     It may actually go like this.  It's  
21 upside down?

22                     MR. BLONIGEN:  I think so.

23                     MR. LOW:  Thanks.

24           Q.     (BY MR. LOW)  You decide, sir.  That's  
25 correct?

1           A.     It needs to -- well, let's see.  It's  
2 this area right here that I'm interested in.

3           Q.     I can slide that up a little bit for you.  
4 That's the best I can do right there.  I'll focus  
5 on it.

6           A.     The one that I have is real similar  
7 except it shows a little more of this stuff here,  
8 and there's just a little buildup of snow, and  
9 then there's a tire print after that.  Just tells  
10 me that it's likely that at that point, that tire  
11 spun, built up a little snow behind it, just like  
12 if you got stuck and tried to get out.

13          Q.     Thank you.

14          A.     Kicked some snow out.

15          Q.     Here's A19.  And I don't know, is that  
16 any clearer for you?  Let me see if I can get a  
17 little closer.

18          A.     Well, that shows this also, I think.

19          Q.     I can come out of it, too, a little bit.  
20 Is this -- here?

21          A.     That area there, yes.

22          Q.     Okay.

23          A.     Would be here.

24          Q.     So go ahead.  I'm sorry.  Finish what you  
25 were saying about that and what it told you.

1           A.     Well, just that the tire likely spun and  
2 built up a little snow behind it.

3           Q.     All right.  And did you find any physical  
4 evidence to suggest that the tire did not spin?

5           A.     No, I didn't.

6           Q.     What about the fact that there's two, if  
7 you will, paths out of that black spot where the  
8 car was before it started snowing?  What does that  
9 tell you?

10          A.     Well, that just tells me that probably  
11 starting to make a turn because tires don't -- if  
12 you're making a turn and it's a slow-speed turn,  
13 tires don't track on top of one another.

14          Q.     Do those treads tell you that someone  
15 tried to pull forward, they started slipping and  
16 got stuck, then they had to back up, then they  
17 turned the wheel to the right, and then they went  
18 forward again, and that's what laid these separate  
19 tire tracks?

20          A.     That's a possibility.

21          Q.     Can you clear that again, sir.  And so  
22 can you make these two tire tracks with that car  
23 in the snow without backing up?  See the split  
24 there in the left?

25          A.     Yeah, no.  I see that.



1 Q. I'll put up 309 again. Can you make  
2 those two tire tracks in the snow if you pull  
3 forward, stay forward, now just rotate the wheel  
4 to the right, and then pull forward? Are you able  
5 to make that kind of exit out of that black spot?

6 A. No.

7 Q. What would you have to do?

8 A. Well, you'd have to back up in a case  
9 like that.

10 Q. Okay. All right. Anything else with  
11 regards to the first -- about the issue of driving  
12 away before shooting. You mentioned the snow and  
13 the tracks. Anything else with that issue?

14 A. Well, there was some other evidence in  
15 conjunction with what was gathered at the scene.

16 Q. What is that, sir?

17 A. Well, one of the things that was noted,  
18 as you see, there's a pickup sitting on the  
19 right-hand side of that photograph. I think it's  
20 a Ford.

21 Q. This one here, sir?

22 A. Yes, that pickup right there.

23 Q. Okay.

24 A. And there was a bullet strike on that  
25 Ford on the bed, on the side of the bed.

1 Q. Showing you Exhibit 325. Can you see it  
2 here, sir?

3 A. Well, let me look. Yeah, I think it's  
4 this area right here.

5 Q. Okay. And showing you 328. Are you able  
6 to see it there, sir? Well, you have to clear the  
7 circle.

8 A. Oh, yeah.

9 Q. All right. Are you able to see it there,  
10 sir?

11 A. Yes.

12 MR. LOW: That's, again, 328, Your  
13 Honor.

14 THE COURT: Thank you.

15 Q. (BY MR. LOW) I'll show you a couple  
16 more. 327.

17 A. Yes. It's this area right here.

18 Q. Why are this -- why is this bullet  
19 hole -- I'm sorry -- bullet dent getting measured?

20 A. Well, because we know that that pickup  
21 was parked next to the Chevy Cobalt, and there was  
22 an issue as to when the shot was fired and what  
23 was its trajectory. One of the issues, of course,  
24 is did it go through glass first or not. But that  
25 measurement, if we know how far away it is and how

1 high it is and its location front to back, then we  
2 can use that as a point in the trajectory, and we  
3 can use that to help determine the bullet path.

4 Q. Showing you 326.

5 A. Yes.

6 Q. And is this the measuring of the ground  
7 all the way up again?

8 A. Yes.

9 Q. And the bullet hole -- I'm sorry -- the  
10 bullet dent is located where?

11 A. It's a little hard to see here, but I  
12 think -- let's see.

13 Q. Yes, sir.

14 A. Right there.

15 Q. Okay. And when trying to place that from  
16 a picture that was taken shortly after -- we'll go  
17 back to 309. Sorry. Where on that truck should  
18 the dent be with regards to the -- this picture  
19 here at 309?

20 A. That's going to be back probably obscured  
21 by the fire department guy.

22 Q. Now, do we see anything in the -- in 309  
23 here in this area that's next to the fire person  
24 on the -- in the snow?

25 A. With that picture, I can't tell so much.

1 Q. Okay. Give me one second, please. You  
2 know what, I already have them out. Here's what  
3 I'm looking for. Here's 312. How's the  
4 resolution on your screen for that? Can you see  
5 that all right?

6 A. I can see that.

7 Q. What's off to our left here?

8 A. Off to the left, the pickup?

9 Q. Yes. And the dent is somewhere right  
10 over the tire; is that right?

11 A. It's in that general vicinity, yes.

12 Q. All right, then. Now, what do we have  
13 right through here?

14 A. Looks like we have some tracks.

15 Q. And, in fact, this picture has Mr.  
16 Baldwin's body in it; correct?

17 A. Yes.

18 Q. Near where the bullet dent is; right?

19 A. Yes.

20 Q. Now, over here we have fresh snow, is  
21 that fair, down in the bottom of 312?

22 A. Yes.

23 Q. We have a couple footprints right here?

24 A. Yes.

25 Q. Then we have a lot of them right over

1 here?

2 A. Yes. We have several up there.

3 Q. And we have some glass down there as  
4 well? You may not be able to see, but are you  
5 aware if they found some glass out there?

6 A. Yes, I am aware because it was mapped.

7 Q. Showing you 320 real quick. Does that  
8 appear to be the glass that was in the -- in those  
9 tire tracks there -- I'm sorry -- in those foot  
10 tracks there? It's not a very good picture, I  
11 understand, but is that something you may have  
12 been shown in one of the pictures?

13 A. It was something I was shown. Yeah, I do  
14 see some glass right down there.

15 Q. How much glass?

16 A. There's not a whole lot of glass there.  
17 I think there was a slightly bigger pile, at least  
18 that's what was mapped; but it wasn't very much.

19 Q. Did they tell you how much or did they  
20 show you how much?

21 A. I think they did but it wasn't very much.  
22 You know, just a little more than a handful.

23 Q. Yeah. See in this case, it's been said  
24 that there was two shovel fulls of glass. Is that  
25 what they told or showed you?

1           A.     Not to my recollection.

2           Q.     Could it be that there was two pictures  
3 of one shovel?

4           A.     I don't know.

5           Q.     That's a mixture of snow with some glass  
6 in it?

7           A.     Yes, it is.

8           Q.     You saw that one?

9           A.     Yeah, I did see that one.

10          Q.     Well, we asked Mr. -- Detective Ellis if  
11 he would bring that. I asked him if he would  
12 bring that today, and he agreed. He was very nice  
13 and he brought that for us.

14                   MR. LOW: May I have that, sir?

15                   MR. ELLIS: Are you going to cut it  
16 open?

17                   MR. LOW: I haven't decided yet.  
18 Would that be okay?

19                   MR. ELLIS: Yeah, just be careful.

20                   MR. LOW: May I approach, Your  
21 Honor?

22                   THE COURT: Yes.

23          Q.     (BY MR. LOW) I'm going to show you  
24 what on this bag has been marked as number 201.

25                   MR. LOW: That corresponds with some

1 of the evidence in the case file, so I guess I'll  
2 ask that this be marked as Defense Exhibit B1.

3 Thank you, sir.

4 Q. (BY MR. LOW) Were you given this bag or  
5 have you seen this before, sir?

6 A. Not that I recall.

7 Q. All right. Do you want to open that up  
8 and see how much glass is in there? Would that be  
9 important for you to know?

10 A. I wouldn't mind looking at it, but I  
11 don't want to get in trouble for opening it.

12 Q. Well, Judge is going to tell us what we  
13 should do and how we ought to do it.

14 MR. LOW: Judge, what do you say  
15 about that?

16 THE COURT: Any objection from the  
17 State?

18 MR. BLONIGEN: No, Your Honor. I  
19 think the witness has already testified it wasn't  
20 all the glass there.

21 MR. LOW: No, they didn't testify to  
22 that. Come on, man.

23 MR. BLONIGEN: Yes, they did.  
24 Couldn't find it all because of the snow.

25 Q. (BY MR. LOW) Go ahead.

1 THE COURT: Exclusive of what  
2 testimony may or may not have been in the past,  
3 I'll grant permission. And I think we have a  
4 scissor if that would help.

5 THE WITNESS: I don't have my Swiss  
6 Army knife with me, so thank you, Your Honor.

7 THE COURT: And just so we're clear,  
8 Exhibit B1 is received. No objection from the  
9 State?

10 MR. LOW: Thank you, Your Honor.

11 MR. BLONIGEN: No, sir. No  
12 objection.

13 THE WITNESS: There's another bag  
14 here.

15 Q. (BY MR. LOW) Are you able to open the  
16 bag and look inside of it?

17 A. Well, I can, but I don't want to scatter  
18 this stuff everywhere. There's --

19 Q. Is it on the outside of the bag right  
20 now?

21 A. There's some glass on the outside of the  
22 bag right here.

23 Q. Okay. Let's not lose it. Let's take a  
24 look at it real quick. We don't want to do that.  
25 Okay. Why don't you set it up here?



1           A.     Okay.  There's -- there's some little  
2 shards of glass on the outside of the paper bag,  
3 and then there's --

4           Q.     Here, let's pour it in here, and then  
5 I'll put it down in.  Okay.  Now can you look  
6 inside of the bag?

7           A.     Sure.

8           Q.     All right.  Go ahead.

9           A.     Well, it looks to be like about a -- I  
10 don't know if you're a cook, about a half a cup to  
11 three-quarters of a cup of glass.

12                   MR. LOW:  And, Your Honor, may I  
13 have permission to pass this around to the jury so  
14 they can look at it with their -- as much as  
15 they'd like or?

16                   THE COURT:  Yes, that would be fine.  
17 You may publish to the jury.

18                   MR. LOW:  Thank you, ma'am.

19           Q.     (BY MR. LOW)  Is that what you would call  
20 two shovel fulls of -- well, you know what?  
21 Everyone is entitled to their own opinion, so  
22 we'll let the jury look at it.

23                   THE COURT:  The law clerk has agreed  
24 to get a box maybe so we can sort of keep  
25 everything together once it's all finalized.

1 MR. LOW: Thank you, Your Honor.

2 THE COURT: So we'll have that when  
3 she gets back.

4 MR. LOW: Yes, sir. Appreciate it.  
5 We'll let that stay over there, if that's all  
6 right, and we'll give her this bag as well that  
7 goes in it.

8 THE COURT: That would be fine.

9 Q. (BY MR. LOW) All right, sir. Now,  
10 besides the bullet dent in the side of the truck,  
11 besides footprints in Number 312, and the glass in  
12 the snow, what did this evidence allow you to  
13 conclude, if anything?

14 A. Well, in conjunction with some really  
15 minor calculations and looking at the bullet  
16 strike, I can calculate the angle that that bullet  
17 hit within a fair degree of accuracy. And then  
18 since we know it came from the vicinity of the  
19 driver's front window of the Cobalt, then we can  
20 see how far the Cobalt had to move ahead in order  
21 for the bullet trajectory to cross that -- I think  
22 it was a six-foot distance between the Cobalt and  
23 the Ford pickup.

24 Q. Thank you. Do these footprints, sir,  
25 coupled with the initial position of the car, tell

1       you whether or not the car moved forward prior to  
2       the gunshot?

3           A.     Well, I believe it did, yes.

4           Q.     Based on what, sir?

5           A.     Well, footprints to some extent, but  
6       the -- just the idea that for the angle and  
7       everything else, that the bullet strike is on  
8       the -- on the Ford, and then the position of the  
9       body and the position of the broken glass tells me  
10      that that car had to move forward, in addition to  
11      the spin marks.

12          Q.     Had the car remained in the initial  
13      position here with the driver's door somewhere up  
14      here shooting straight across, it would not have  
15      impacted the truck where it did; is that correct,  
16      sir?

17          A.     That is correct.

18          Q.     And so combining the tire tracks, the  
19      break of traction, and the location of the bullet  
20      on the fender straight across from the driver's  
21      door, that is what allowed you to conclude the car  
22      must have moved forward?

23          A.     Yeah. Had to move forward to get to that  
24      position.

25          Q.     Was that evidence that indicated Mr.

1 Knospler was trying to leave the scene?

2 A. That's what it told me.

3 Q. Prior to the shooting?

4 A. Yes.

5 Q. Did the District Attorney's Office in any  
6 way or the police or any investigators in any way  
7 either suggest or provide evidence in any way that  
8 it could have been something other than that?

9 A. No one provided anything to me that was  
10 contrary to that.

11 Q. As far as you know sitting there today,  
12 that's still the facts as you were able to see  
13 them and figure out; is this accurate, sir?

14 A. That's accurate.

15 Q. All right. Now, that was with regards to  
16 the drive away before shooting issue. You said  
17 there was two more: dispersion of glass issue and  
18 the injuries of Mr. Baldwin issue. Which one did  
19 you try and reconcile next, sir?

20 A. Well, I kind of actually tried to  
21 reconcile them together because --

22 Q. All right.

23 A. -- they're all -- we can't just look at  
24 one little piece of evidence and say this is  
25 definitively that. We have to look at all of the

1 evidence and see what it tells us.

2 Q. Say why we can't just look at one piece  
3 and figure out how the whole thing happened.

4 A. Well, because evidence in any case is  
5 interrelated. How did something get to where it  
6 is and why did it get there. Well, was there some  
7 interaction that got it to where we see it. And  
8 what was that interaction, what's a likely  
9 scenario for that interaction. So that's why it's  
10 important that I have to look -- for example, if I  
11 looked at something and said, Well, this tells me  
12 something; but then I look at that and I say, If I  
13 see this, then I should see that, whatever "that"  
14 is, well, if I don't see that, then I have to go  
15 back and rethink my first scenario and say is it  
16 really telling me what I thought it told me.

17 Q. So kind of like if you're going to call  
18 somebody a duck, you're going to look and see if  
19 it's got a bill and some webbed feet and some  
20 wings?

21 A. Yeah, and is smaller than a goose.

22 Q. And if it don't have those things, maybe  
23 someone is just name calling, but they're not  
24 doing their homework?

25 A. That could be.

1 Q. Okay. Well then, tell us, then, what you  
2 looked at next?

3 A. Okay. We -- this was when I met with  
4 them in February. I wanted to see the actual  
5 Cobalt. I wanted to go out and see it. And it  
6 was in storage, and I think it was out by the  
7 airport, so we went out there.

8 Q. Showing you -- sorry.

9 MR. LOW: Mr. Blonigen, sir, these  
10 are all of the exhibits that were the pictures  
11 taken during the trajectory study. I can give you  
12 the title, and I can have them all marked as one.  
13 And I'm not sure I'm going to publish them all  
14 right now, but do you have any objection to that?

15 MR. BLONIGEN: Well, the only  
16 objection I have, Judge, is it's going to create  
17 massive confusion in the record, and it's just  
18 dumping pictures in without laying foundation for  
19 them. I mean, I don't have any question of the  
20 authenticity of the pictures, but I don't know how  
21 we're supposed to wade through a hundred exhibits  
22 at a time.

23 MR. LOW: I'll put a paper clip on  
24 them, and I'm going to trust the jury can find a  
25 way.

1 Q. (BY MR. LOW) So, sir, I'm going to show  
2 you these pictures, and I'm going to ask you if  
3 these are the ones you looked at in connection  
4 with trying to reach your conclusions.

5 MR. LOW: Your Honor, I'll mark this  
6 as Defense Exhibit C for identification. And it's  
7 a packet with a paper clip on it right now, which  
8 I'm going to keep on there; and I can count them  
9 up later for you in the interest of time, if  
10 that's all right, sir. May I show this to the  
11 witness?

12 THE COURT: Yes, certainly.

13 Q. (BY MR. LOW) Sir, go ahead and look at  
14 these pictures and see if these are some of the  
15 ones you were looking at and if it's the car you  
16 went to look at.

17 THE COURT: Before you go too much  
18 further, I see Exhibit C, photo of Racks,  
19 previously received.

20 MR. LOW: My apologies, then. May I  
21 please mark it as Exhibit F, as in Foxtrot, F1.  
22 Thank you.

23 THE COURT: F1?

24 MR. LOW: Yes, Your Honor, F1.  
25 Thank you, sir.

1 Q. (BY MR. LOW) Was that the Chevy Cobalt,  
2 sir, in those pictures you were talking about?

3 A. Yes.

4 Q. And I'll show you what has been received  
5 into evidence here, and this is A26. Does that  
6 look like the Chevy Cobalt you went to see as  
7 well?

8 A. Yes.

9 Q. All right. So you go out to look at the  
10 Chevy Cobalt. Tell us what you do out there.

11 A. Well, as I looked at the Cobalt, I  
12 noticed that there was a lot of tempered glass  
13 dispersed throughout the front passenger  
14 compartment. Might have been a little tiny bit of  
15 glass in the rear, but most of it was in the  
16 front; but it was well distributed across the car.  
17 And I knew that one of the scenarios that was  
18 being talked about was that the shot from the .45  
19 came through the glass. And I looked at this, and  
20 I understood that you're not going to get that  
21 kind of glass dispersion from a force that is  
22 going outside the car and specifically from a -- a  
23 bullet strike.

24 Tempered glass, when it's shot,  
25 essentially puts a hole in it. Some small, very



1 small amount of glass would be projected in the  
2 direction of the bullet. The entire pane  
3 fractures very, very quickly. The fracture  
4 velocity through tempered glass is in the  
5 thousands of meters per second. So the whole  
6 thing just crazes right away.

7           Depending on how much it's disturbed, it  
8 may stay there. If a window is curved on the  
9 inside like this -- and this corresponds to some  
10 of our own observations. When I say "our," the  
11 observations I made when we were doing our  
12 trajectory studies, sometimes the glass, some of  
13 it will fall out. And when it does that, it goes  
14 straight down. So if I saw glass from a shot, I  
15 would expect it to be all right by the driver's  
16 seat in that little space, and some of it would be  
17 down in the door and there might be a little bit  
18 on the outside. I would not expect to see it  
19 dispersed throughout the passenger compartment.

20           It goes back to something called Newton's  
21 Second Law, the Second Law of Motion. And that,  
22 commonly written, is force equals mass times  
23 acceleration. Well, force is a vector, meaning it  
24 has a direction. Acceleration is a vector. And  
25 since  $F$  equals  $MA$ ,  $M$  is a scalar. What that tells

1 us is that any acceleration has to be in the  
2 direction of the applied force. So the only way  
3 for glass to be dispersed throughout the passenger  
4 compartment is for a force to come from outside to  
5 the inside and disperse the glass in the direction  
6 of that force. Doesn't matter where the force  
7 came from, it just has to be a force that's going  
8 to cause that dispersion.

9 Now, a bullet going out is going to have  
10 an opposite direction of force to it, and so it's  
11 not going to be able to displace a lot of glass  
12 back towards itself. So then the question in my  
13 mind became how did the glass get over there.  
14 Well, something had to accelerate it.

15 Q. Can I interrupt you quickly. Here's a  
16 number 825 -- A25. And is that a picture of the  
17 glass found all the way in the passenger door  
18 pocket? Give it a second to focus up there.

19 A. Yes, sir. I remember seeing that photo.

20 Q. So if somebody is sitting inside of a  
21 car, the doors are shut, the window's rolled up,  
22 and they shoot at the opposite side or, if you  
23 will, the driver's window, is the glass going to  
24 shatter and pop out of the window and fly over  
25 someone's head and into the door pocket?

1 A. No.

2 Q. Is that what you'd call absurd?

3 A. Well, it's not very plausible. Let's  
4 just put it that way.

5 Q. Okay. What about did you find any glass  
6 on the dashboard?

7 A. Yes. There was some on the dashboard.

8 Q. And was it just an area or two or was it  
9 dispersed throughout the dashboard?

10 A. It was scattered all across the  
11 dashboard.

12 Q. Now, it's been suggested that, you know,  
13 that must have happened because someone was  
14 driving like Burt Reynolds or something and slid  
15 across the dash. Did you see any evidence that  
16 suggested to you that that glass somehow ended up  
17 in one corner of the dash and then dispersed all  
18 the way to the other side?

19 A. No. Because the glass is relatively  
20 uniformly distributed over the top of the dash.

21 Q. It's the uniformity of it all that shows  
22 you that it didn't slide?

23 A. Yeah. If it makes any sense, it's a  
24 uniform random distribution. In other words, it's  
25 scattered out like this. It's not just in one

1 spot.

2 Q. So if someone made that accusation,  
3 that's -- that's not based on science, is it?

4 A. It's not based on fundamental physics.

5 Q. Okay. Were you shown any evidence  
6 whatsoever by anybody that someone was driving  
7 that car in an erratic way such that glass would  
8 fly through the entire inside compartment of that  
9 car?

10 A. No.

11 Q. Were you aware of what the road  
12 conditions were that night?

13 A. Yes.

14 Q. If someone was driving so hard that  
15 somehow glass got dispersed inside the car, what  
16 would the likely result have been of that car?

17 A. Wrapped around a pole.

18 Q. All right. I interrupted you. So you  
19 were talking about the dispersion of the glass and  
20 what else you did. Please go ahead.

21 A. Okay. Well, after I looked at that, then  
22 I also had a copy of the coroner's report; and we  
23 also had some photos of injuries to Mr. Baldwin.

24 Q. Here we have 316. Is this one of them,  
25 sir?

1           A.     I saw that picture, yes.  It's not the  
2     one I used in my report, but it still tells the  
3     story.

4           Q.     And you'll note the size of Mr. Baldwin's  
5     hands.  Are those -- are those pretty good sized  
6     hands; is that fair to say?

7           A.     Appears to be, yes.

8           Q.     And those red markings both on the wrist,  
9     the side of the hand, and the knuckle, did you  
10    learn anything from seeing that that fit some of  
11    the evidence that you saw?

12          A.     Well, the coroner described those as  
13    dicing injuries.  And I know from my experience as  
14    a crash investigator and from working crashes and  
15    actually working as an EMT for a time that dicing  
16    injuries can happen when tempered glass is broken  
17    by a part of the body.

18          Q.     Is it quite common for you to do  
19    reconstructions where someone's head or other body  
20    part has come into contact with glass in the  
21    vehicle and you can see the remains of what that  
22    glass did to the -- did to the person and their  
23    body?

24          A.     I've seen that fairly often, yes.

25          Q.     And are these abrasions somewhat

1 consistent with what you've seen before?

2 A. They are consistent.

3 Q. All right. I'm sorry. I'm looking for  
4 another picture, and I'm not doing well, so let me  
5 move on. The coroner testified that this area on  
6 the knuckles itself was a blunt force injury.

7 MR. BLONIGEN: Well, Your Honor, he  
8 keeps referring to him as coroner. Dr. Carver is  
9 an accredited, board certified forensic  
10 pathologist not a coroner.

11 THE COURT: I think you can clarify.

12 MR. LOW: I can use forensic  
13 examiner. No disrespect to Dr. Carver, none  
14 whatsoever. I can change the title. Forgive me.

15 Q. (BY MR. LOW) Dr. Carver said that this  
16 area here on Mr. Baldwin's hand and his knuckles  
17 was from blunt force injury. Is that consistent  
18 with what you've seen, sir?

19 A. Yes, it is.

20 Q. And did you make any conclusions as a  
21 result of looking now at the right hand, right  
22 arm, and also the right shoulder of Mr. Baldwin?

23 A. Those are all glass injuries. And my  
24 understanding, you know, from tempered glass. And  
25 if you put that injury together with the

1 dispersion of the glass, it strongly suggests that  
2 Mr. Baldwin punched the glass out.

3 Q. What about the fact that glass was  
4 actually found further back from the knuckle and  
5 in the side of the hand halfway between the  
6 knuckles and the wrist, glass being embedded in  
7 this area, what did that tell you?

8 A. Well, that would be consistent with  
9 punching out the glass.

10 Q. And the injury to Mr. Baldwin's right  
11 shoulder and the cutting of his T-shirt, did that  
12 tell you anything, sir?

13 A. Well, that's consistent with him going  
14 inside the passenger compartment as he punched out  
15 the window and then interacting with glass that's  
16 probably still stuck in the -- in the door frame.

17 Q. Okay. Well, let's do -- let's see if we  
18 can try it this way, then. What evidence is there  
19 that you can find that contradicts -- the  
20 knuckles, the glass embedded, the injury to the  
21 wrist, forearm, and right shoulder, is there any  
22 evidence that contradicts that that -- those  
23 injuries were caused as a result of punching into  
24 a car window?

25 A. Well, I can't find any.

1 Q. Has anybody given you any?

2 A. No.

3 Q. Did they tell you they gave you  
4 everything they had that was directly related to  
5 this evidence?

6 A. As far as I know, they did.

7 Q. Okay. When you informed them of your  
8 conclusion, did they give you any answers back as  
9 to why that might be wrong or may not be accurate?

10 A. No. We did some additional work, then,  
11 to look at the trajectory of the bullet through  
12 the body and try to reconcile that with the mark  
13 on the Ford.

14 Q. So now besides the three issues -- you  
15 got the dispersion of the glass and the driving  
16 away before the shooting. The third issue now is  
17 the injuries to Mr. Baldwin. Is there any other  
18 information on those three issues that you looked  
19 at?

20 A. Not on those issues.

21 Q. All right. So now, did you try and  
22 figure out where the car would have been at the  
23 time of the shooting, what likely was Mr.  
24 Baldwin's position at the time of the shooting,  
25 and where that happened in the parking lot?



1           A.     Yes, we looked at that.

2           Q.     Please tell us how -- what you did in  
3 order to learn about that.

4           A.     Okay. Do you have the drawings that were  
5 done by Trooper Sawdon?

6           Q.     I do. And if you just tell me what page  
7 you want to start on, I can put them --

8           A.     Well, it would be page 3 of 14 on my  
9 report, that particular drawing.

10          Q.     All right. Then I'll show you the  
11 drawing here, and let's zoom out a little bit.  
12 There you are, sir. Go ahead.

13          A.     Okay. What that shows is a trajectory  
14 that goes from the Chevy Cobalt to the side of the  
15 Ford pickup at an angle of 72 degrees. That was  
16 the -- what I calculated the angle of the bullet  
17 strike was on the side of the Ford.

18          Q.     How did you get to that calculation, sir?

19          A.     I measured the dimensions of the bullet  
20 strike. And you look at if the bullet goes  
21 straight in at 90 degrees, then it measures the  
22 same this way, you know, across it as it does up  
23 and down.

24                     So I measured this and found that there  
25 was a slight difference. In other words, the

1 width-to-length ratio was around a .95. Well, if  
2 you take the inverse sign of that, that comes out  
3 to about 72 degrees. And that's an accepted  
4 technique for looking at angle of bullet strikes.

5 Q. All right. If I can ask you about this  
6 picture right here, to explain it for us. I note  
7 that there's a windshield in the back and what  
8 appears to be a driver's side door mirror and a  
9 tire, and then another one in front of it, and  
10 then another windshield and driver's side door  
11 mirror. Can you tell us what this picture is  
12 showing us here?

13 A. Sure. It's showing that vehicle has  
14 moved ahead from where it originally was. The  
15 original position is where the dark spot on the  
16 parking lot was, and the new position is where it  
17 would have to be in order to line the bullet  
18 trajectory up.

19 Q. So you knew where -- you knew the gun was  
20 inside the car at the time of the shooting;  
21 correct?

22 A. Yes, that was my understanding.

23 Q. And you knew that the -- where the dent  
24 was in the truck because the truck was -- from the  
25 pictures, you could see where it was, and you

1 could see where the dent was; correct?

2 A. Yes.

3 Q. So you had a begin spot and an end spot?

4 A. We had -- we knew that the gun was  
5 inside. We had the end spot, then we had the  
6 trajectory through Mr. Baldwin's body.

7 Q. Now, the other question I have is were  
8 you -- did you use any calculations or devices of  
9 any kind to figure out where, if you will, on a  
10 map system, the truck and the car or at least the  
11 dark spot were located?

12 A. Well, yeah. That was mapped. And I  
13 think that -- that's on page 4 of 14. And it  
14 shows -- it's another view of that particular  
15 photo or that particular drawing that we have up  
16 there.

17 Q. Give me a second, please. Go ahead, sir.

18 A. And so what that really shows us, if it  
19 gets in focus, is that the car moved forward a  
20 little over seven feet from its parked position.

21 Q. Did somebody stand there with a handheld  
22 GPS that told them, what is it, an eight digit  
23 grid coordinate and tells you exactly what the  
24 position was?

25 A. That's how it was mapped. I mean, that's

1       how the original position was mapped. And then we  
2       could see how far forward it had to move in order  
3       for everything to line up.

4           Q.     All right. So now tell us what you do  
5       now that you have the starting spots of the cars,  
6       where they've moved to, we've got a dent, what do  
7       you do next?

8           A.     Now we have to reconcile the bullet path  
9       through Mr. Baldwin to intersect with the side of  
10      the truck and still be consistent with the  
11      dispersion of the glass and everything else that  
12      we see. In other words, all the evidence has to  
13      tie together.

14          Q.     All right.

15          A.     So that was the next step.

16          Q.     And tell us how you did that, sir.

17          A.     Well, I farmed it out, basically, to  
18      Detective Ellis and to Trooper Sawdon.

19          Q.     This gentleman right here?

20          A.     Yes.

21          Q.     Okay. And you mentioned the Highway  
22      Patrol Officer --

23          A.     Jason Sawdon, yes.

24          Q.     -- Sawdon earlier. Does he appear in any  
25      of the pictures?

1 A. I think he does.

2 Q. All right. Look at page 10 of your  
3 report.

4 A. Yes, he does.

5 Q. And is the reason why you -- when you say  
6 farmed it out to Highway Patrolman Sawdon is  
7 because he's actually out here in this area?

8 A. Oh, he's here in the area and he knows  
9 what to do --

10 Q. And --

11 A. -- after I discuss it with him.

12 Q. Oh, so you told him it would be a whole  
13 lot cheaper if you had them do it because it's  
14 pretty easy to do?

15 A. Way cheaper than if I had to come back  
16 over and do it.

17 Q. And Detective or Investigator Ellis, he  
18 was happy to help, wasn't he?

19 A. Yes, he was. Well, he was our exemplar  
20 also.

21 Q. Exemplar, what does that mean?

22 A. It means that he and Mr. Baldwin are  
23 approximately the same size, closer than anybody  
24 else that we had. I certainly couldn't do it.

25 Q. Do you know how tall Investigator Ellis

1 is?

2 A. I think he told me he's six-three.

3 Q. Is that right? Okay. And about how tall  
4 were you told that Mr. Baldwin was?

5 A. I was told somewhere between six-two and  
6 six-three.

7 Q. Okay. So there was some suggestion  
8 earlier -- and an inch difference, is that going  
9 to throw off these calculations?

10 A. Not really, not on something like this.

11 Q. Okay. If he was standing up straight and  
12 we had to figure it out, it might throw something  
13 off an inch or two; fair?

14 A. Maybe.

15 Q. But if we're bending over, that -- that  
16 height difference doesn't really factor in much,  
17 does it?

18 A. Well, not very much.

19 Q. Okay.

20 A. Again, this is a -- we're putting the  
21 evidence together and finding a scenario that all  
22 the evidence fits together.

23 Q. Now, when you started doing this  
24 experimentation, did you try and test every theory  
25 possible as to only one theory?

1           A.     I tested several different theories to  
2 see what one would most closely approximate what  
3 we see.

4           Q.     All right.  So what I'd like to do is I  
5 want to back up a little bit, and I want you to go  
6 to page 11.  And, in fact, you know what, you can  
7 do that, and I'm going to grab something out of F1  
8 real quick, if I may.

9           A.     Here's -- let me just give you this whole  
10 thing back.

11          Q.     Thanks.  May I have the clip as well so I  
12 can keep it together?  Thank you very much.

13                   So is it fair to say that the first thing  
14 you all do is you try and figure out where on  
15 Detective Ellis the bullet hole more than likely  
16 would correspond to from Mr. Baldwin's body; is  
17 that correct, sir?

18          A.     Yes.  I think that's what was done.  
19 Detective Ellis was marked with an entry and exit  
20 locations.

21                   MR. LOW:  One of the exhibits from  
22 F1, Your Honor.

23          Q.     (BY MR. LOW)  And does this show  
24 Detective Ellis and they've drawn what appears to  
25 be a circle, a dot, as the approximate location of

1 the entry wound?

2 A. Yes.

3 Q. All right. And then did they also try  
4 and do the same thing on the back?

5 MR. LOW: Again, Your Honor, F1.

6 A. Yes.

7 Q. (BY MR. LOW) Approximate location there.  
8 And then you had the wound path that Dr. Carver  
9 gave, and you have this device here. Explain  
10 what's going on here, if you would please, sir.

11 A. Well, they're trying to determine an  
12 angle. When he's standing upright, what's the  
13 angle through the body.

14 Q. And how -- did you know what the angle  
15 was before they started to do this?

16 A. No, I didn't.

17 Q. And the rod, what does it tell you, what  
18 is this mimicking?

19 A. It's just a reference. It's a straight  
20 rod.

21 Q. Because the coroner -- I'm sorry.  
22 Forgive me, sir. The medical examiner, Dr.  
23 Carver, said that it was for the most part a  
24 straight wound through the body?

25 A. That was my understanding of what he



1 said, yes.

2 Q. And you all lined this yellow rod up for  
3 the entry wound here on the T-shirt and from the  
4 exit wound you can see -- sorry, you can see  
5 Sawdon holding the hole right there and the rod  
6 running right through the circle. Can you see  
7 that? Let me zoom on it.

8 A. Yes, I can see that.

9 Q. And the circle is still drawn right  
10 there, too; right?

11 A. Yes.

12 Q. So once you get that angle, then what do  
13 you do?

14 A. Then we have to line up the exit wound,  
15 the entrance wound with the impact on the bed of  
16 the truck.

17 Q. All right. And what did you guys use to  
18 figure that out?

19 A. Well, what they did is they just set the  
20 Cobalt up so that it was six feet from the wall in  
21 the storage building. Then they marked the line,  
22 which you can see in some of the photographs, that  
23 was the same height as the bullet strike. That's  
24 one example of what they're doing now. I think  
25 what they're doing in this particular photograph

1 is just taking some measurements to show where the  
2 bullet strike height is in reference to the side  
3 of the Cobalt.

4 Q. What does that tell you right there?  
5 That's a close-up of the gauge on the stick. What  
6 does that tell you?

7 A. No. That's an angle --

8 Q. Okay.

9 A. -- going through there.

10 Q. All right, then.

11 A. And the same sort of thing there.

12 Q. And then what are they trying to do?

13 A. Okay.

14 Q. Got one more here for you.

15 A. I'm sorry, have what?

16 Q. I have one more for you.

17 A. Okay.

18 Q. Here's another one. And you can see --  
19 what's going on down here?

20 A. Okay. Looking at other angles to the  
21 lower parts of the door frame or window frame on  
22 the door.

23 Q. Okay. All right. What happens next?

24 A. Okay. Then there are several scenarios  
25 run. And what we have to account for -- and I

1 discussed this. I wasn't here when they were  
2 doing this, but what I discussed with them is,  
3 Look, we have to line everything up so that we  
4 have the entrance wound, the exit wound, and the  
5 bullet strike on the side of the vehicle all line  
6 up. And then we also need to account for the  
7 injuries that we see to Mr. Baldwin other than the  
8 obvious gunshot wound, you know. How did he get  
9 the marks on the hand, how did he get the  
10 scratching on the shoulder, and so on. So we've  
11 got to do that. And so --

12 Q. What are they doing here in F1?

13 A. F1?

14 Q. It's on the screen.

15 A. Okay. Is that a full size or -- because  
16 I've got one similar in my report.

17 Q. All right. So does it look like they're  
18 using the rod here, again, keeping consistent  
19 through the body and starting to bend Mr. --  
20 sorry, Detective -- Investigator Ellis forward?

21 A. Well, what we're -- I think what's being  
22 done there is it just shows that that trajectory,  
23 while it may be correct through the body, is not  
24 possible with the other evidence that we see.

25 Q. So if the gunshot is coming out of the

1 car window here, you can clearly see that that's  
2 not going to leave the trajectory through the body  
3 that the yellow rod shows us; is that right?

4 A. Well, yeah, yeah, that's basically  
5 correct.

6 Q. And then the next one here, here we have  
7 Detective Ellis with his hands on the car sill,  
8 again, if it comes out through the window?

9 A. The trajectory isn't correct.

10 Q. Again, the yellow rod showing us the path  
11 through the body; correct?

12 A. Yes.

13 Q. Doesn't fit, does it?

14 A. Doesn't fit.

15 Q. Maybe a little bit closer to the car  
16 here, tell us what we've got here.

17 A. That's essentially the same thing.

18 Q. The long rod now held by the highway  
19 patrol officer and a point on the wall, what is  
20 this showing us?

21 A. That's the height of the bullet mark on  
22 the side of the Ford.

23 Q. Over here is?

24 A. Yes.

25 Q. And then over here?

1           A.     That's midpoint, I think, in the window  
2 frame.

3           Q.     And if the bullet goes along that path,  
4 because we have a start spot and an end spot, we  
5 didn't see that wound path through the body; is  
6 that correct?

7           A.     No, we did not.

8           Q.     Doesn't make sense, does it?

9           A.     That particular scenario doesn't.

10          Q.     All right, then.  Maybe we've got someone  
11 on the outside of the car and they're leaning in  
12 the window now, but they're clear -- their arm has  
13 not gone through the window; correct?

14          A.     Right.

15          Q.     And does this make any sense?

16          A.     Well, no.  Because number one, the head  
17 is in the window, and that means that the window  
18 has to be gone in some way.  And so even though  
19 the trajectory may be close, the window has got to  
20 be gone.

21          Q.     All right.  And I'm going to just zero in  
22 on this so we can make sure we see something.  The  
23 yellow rod here, again, is the trajectory of the  
24 bullet through the body; correct?

25          A.     Yes.

1 Q. And the large rod is the trajectory of  
2 the car -- of the bullet from the car to the  
3 truck?

4 A. Not so much. It's just a reference, I  
5 think, in that particular case.

6 Q. Okay. Got it. And although the wound  
7 path is consistent with where the bullet ended up,  
8 why is -- can we rule this -- this scenario out,  
9 sir?

10 A. I think so. Number one, it doesn't have  
11 the injuries to the arm and shoulder, the right  
12 arm and shoulder and nor to the hand. I don't  
13 know how the -- I don't know how the window would  
14 have gotten broken unless it was previously  
15 punched out.

16 Q. Now, are you aware from some of the  
17 pictures that were shown that there were no cuts  
18 on the palm of Mr. Baldwin; correct?

19 A. Yes, that's correct.

20 Q. And you know, you saw the pictures, that  
21 there was plenty of glass even after it had been  
22 driven that was still on the windowsill of the  
23 car?

24 A. Yes.

25 Q. And this area here, if you're putting

1 weight on it, he's going to cut the palm of the  
2 hand; is that fair?

3 A. Probably would, at least to some extent.

4 Q. So this isn't consistent, again, with the  
5 medical data, is it?

6 A. No, it isn't.

7 Q. Now, let's look at this one. This one,  
8 the person is all the way inside the car?

9 A. Yes.

10 Q. And we can see the yellow wound path with  
11 the rod; correct?

12 A. Yes.

13 Q. And then we can see the black rod here?

14 A. Yes.

15 Q. It's not consistent, is it?

16 A. No, it isn't. The trajectory would have  
17 gone above the pickup bed in that case.

18 Q. This person is in too far?

19 A. Apparently so, yes.

20 Q. Well, there's been some claims that maybe  
21 they were standing on the outside of the car with  
22 their elbows or their forearms in the windowsill  
23 hanging out there. Did this fit the data?

24 A. Well, no, it doesn't. It doesn't get the  
25 injuries up on the shoulder or the arm. And the

1 hands are inside the window, so that means that  
2 the window has to have been broken, and what broke  
3 the window?

4 Q. Okay. The red line through here  
5 indicates what, sir?

6 A. I think that is a -- just a string line  
7 that attaches -- goes through the center of the  
8 window opening and then attaches to the wall to --  
9 I think for Investigator Ellis to line up with.

10 Q. So let's go to the next one, then. Here  
11 we are on the outside of the car a little further  
12 back with our hands on the windowsill. I'll zoom  
13 out. Does this fit the -- all the data that you  
14 had available to you?

15 A. Well, no, it doesn't because it doesn't  
16 explain the injuries to the hand or the arm or the  
17 dispersion of the glass. This --

18 Q. Let me ask -- go ahead.

19 A. I was going to say this would be a  
20 scenario where the shot came from inside, went  
21 through the glass, and then through Mr. Baldwin.  
22 And there's -- there's no force now to disperse  
23 the glass throughout the passenger compartment.

24 Q. Sir, it's been suggested that in this  
25 scenario, you could get the wound path, you could



1 get the dent in the truck; but that as soon as the  
2 person got shot, they collapsed and fell into the  
3 window. Does that fit with physics?

4 A. Well, no, because the center of mass of a  
5 person in this kind of configuration is going to  
6 be somewhere in this area here. Force of gravity  
7 operates straight down like that, and so there's  
8 no force to bring that person in. And plus, a  
9 person, especially one that's just been shot, is  
10 not a rigid body, so we can't use rigid body  
11 mechanics to describe how this thing is going to  
12 happen. He's not going to have any more support;  
13 he's going to go basically straight down.

14 Q. Both doctors testified that he could have  
15 moved for up to anywhere between 10 and 15 seconds  
16 after the shots found -- or the shot and the  
17 damage found in his body, which means he would  
18 have had control or to some degree control over  
19 his legs, his abdomen, and his shoulders.

20 Based on where Mr. Baldwin was found  
21 laying on the ground, did he drop right next to  
22 the car window?

23 A. No. He probably moved just a little bit.  
24 And from the nature of his injury, I would expect  
25 that he would be able to move a little bit.

1 Q. If I have my hands up on the windowsill  
2 as in this picture and my center of gravity is in  
3 the middle and I drop it, will it demonstrate  
4 where he should have dropped?

5 A. Yeah, if he dropped right there.

6 Q. Straight down?

7 A. That's the direction of gravity.

8 Q. Well, will he fall into the window, sir?

9 A. Not with enough force to disperse the  
10 glass. He probably wouldn't even touch the window  
11 even with his head.

12 Q. So some --

13 A. I saw no injury on his head.

14 Q. So if someone is going to suggest that he  
15 fell into the window, is that supported by  
16 science, math, logic, reason, or basically  
17 anything?

18 A. No, I couldn't see any support for it.

19 Q. Is that just somebody -- if I asked you  
20 to tell me if someone dropped like that into the  
21 window based on the evidence, what would you say  
22 to me?

23 A. Say probably not.

24 Q. Well, is it possible, then?

25 A. I don't see how personally.

1 Q. There's no science, math, physics,  
2 anything that would -- or even medical science  
3 that would clear that up for us?

4 A. Not that I can see.

5 Q. Okay. Showing you here, the last one  
6 here.

7 A. Here, let me do that.

8 Q. Does this scenario fit all of the facts  
9 revealed by all of the science?

10 A. As close as I could come, yes.

11 Q. And point out to us why.

12 A. Well, let me find --

13 Q. It's on page 10 of 14.

14 A. Yeah. And I'm trying to find my page 10.  
15 I've got things all over the place here. There we  
16 go. Okay. We're in to the point where we can  
17 interact here, and the arm has had to go past.  
18 The trajectory is parallel up to the mark on the  
19 truck. It accounts for the glass dispersion. It  
20 accounts for, like I say, the injuries to the  
21 upper arm and shoulder but also the injuries to  
22 the hand and so forth as we go through, if Mr.  
23 Baldwin punched out, went in, and then because we  
24 have some glass on the outside as well, which we  
25 just all looked at, I'm thinking the most likely

1        thing is when he was -- after he punched his way  
2        in, he's starting to pull out, and then the shot  
3        is fired from an indeterminate distance -- I  
4        believe that's what the medical examiner's report  
5        said -- and then I think he's going to recoil from  
6        being shot.

7            Q.     So let me see if we can get this  
8        straight.  If I have the plane of the door right  
9        here and I punch it in, I'm not going to go all  
10       the way through right away; is that correct?  I'm  
11       going punch it in, yes or no?

12           A.     Well, you can punch it in, and depending  
13       on your state of balance and so forth, I don't  
14       know what you're going to do next.  You could go  
15       in.  If you're out of balance and so forth, you  
16       could go in.  Or you could punch it and then you  
17       could stick your head in.  I don't know.  Either  
18       one of those would account for this sort of  
19       injury.

20           Q.     And with a hole big enough to get my fist  
21       through, is it consistent that some of the glass  
22       may crumble and fall down to the ground?

23           A.     Some of it will.

24           Q.     Is it consistent with some of the glass  
25       will explode inside the car?

1 A. Yes.

2 Q. Now, with that hole, can I now go inside?

3 A. Well, you'll probably knock some more  
4 glass out as you do.

5 Q. And we saw a lot of glass on the driver's  
6 side, did we not?

7 A. Yes, there is.

8 Q. On his lap?

9 A. Yes.

10 Q. On his seat?

11 A. Yes.

12 Q. On the floor on the passenger side?

13 A. Yes.

14 Q. On the dashboard?

15 A. Yes.

16 Q. And now we're inside here and then what  
17 happens?

18 A. Well, at some point, there's a shot  
19 fired. I don't know if Baldwin had started to  
20 withdraw or if the shot was fired before he  
21 started to withdraw. I don't know, and I can't  
22 say from this scenario.

23 Q. But if I, then, at some point either just  
24 before the shot or just after, I've got my chest  
25 on the -- on the windowsill, as you've seen

1 here --

2 A. Yes.

3 Q. -- and I start to come out of the window,  
4 will some of that glass come with me?

5 A. Probably will, yes.

6 Q. Maybe drop on the ground in the snow?

7 A. Yes, very well could.

8 Q. Do you see any facts that are  
9 inconsistent with this?

10 A. I don't.

11 Q. Do you see any facts that support any  
12 other theory other than this one?

13 A. Well, like I say, I don't.

14 Q. Can you tell us about a bullet going  
15 through glass and the glass that the bullet  
16 contacts, what it will do to that glass?

17 A. Right -- excuse me. Right in the  
18 vicinity of the bullet strike itself, it'll  
19 essentially powder the glass, make it really,  
20 really, really fine, as opposed to the glass  
21 shards that you expect to see away on tempered  
22 glass. So it'll be pretty fine glass, almost  
23 powder.

24 Q. You read --

25 A. A very small particle size.

1           Q.     You read the doctor -- Dr. Carver's  
2     wording about what he found at the entry of the  
3     bullet wound?

4           A.     Yes.

5           Q.     Is that the kind of glass we're talking  
6     about?

7           A.     Not from his description of it.

8           Q.     Was that glass bigger than the stuff you  
9     would expect to see if the bullet impacted that  
10    window and made that dust?

11          A.     It is.  Again, we're looking at a real  
12    small amount of dusted glass, if you will, with a  
13    bullet strike.  But the description did not, to  
14    me, describe powdered glass that would be powdered  
15    by a bullet strike.

16          Q.     If we want to look at the powdered glass,  
17    how could we make it so we could see what it would  
18    look like?

19          A.     I'm not sure -- oh, you mean an  
20    experiment?

21          Q.     Whatever you think.

22          A.     Well, we could shoot some glass or we  
23    could probably hit a piece of glass, tempered  
24    glass, with a hammer and an anvil and see how it  
25    powdered.  And that's kind of what I'd expect to

1 see.

2 Q. Okay. With the glass as described by the  
3 doctor that was found near the entrance wound of  
4 the -- of Mr. Baldwin, what are some ways that  
5 could have got there?

6 A. Well, he could have drug across as he  
7 came out of the car.

8 Q. Anything else?

9 A. Well, again, tempered glass, some of it  
10 will stay in the window frame; some of it won't.  
11 Perhaps some of it was knocked loose by the  
12 passage of the bullet before it got to him, but  
13 then he would have to be on the outside of the  
14 car.

15 Q. Any other way?

16 A. Nothing comes to mind immediately.

17 Q. What about if Mr. Baldwin punches that  
18 glass? Will it explode?

19 A. Will it break?

20 Q. Yes.

21 A. When you say explode, I'm not --

22 Q. Bad question. If Mr. Baldwin punches  
23 that glass and punches a hole through it, will it  
24 shatter?

25 A. Yes.



1 Q. Will there be glass fragments that will  
2 be in the air?

3 A. Yes.

4 Q. In fact, if you saw the pictures, you had  
5 those glass fragments consistent with the way Dr.  
6 Carver described it all over the inside of the  
7 driver's side door panel; correct?

8 A. Yes.

9 Q. Could those also have landed on Mr.  
10 Baldwin's T-shirt?

11 A. If he's going in with it. He's -- he's  
12 going -- the punch is going to accelerate a  
13 certain volume of glass across. If he follows  
14 that, and there's still some glass left in the  
15 door frame, then some of that can get on his  
16 T-shirt.

17 Q. Now, could people working on Mr. Baldwin  
18 have been touching that glass, get it on their  
19 hands, on the towels, and all the things they're  
20 doing, and could that have moved it into or around  
21 the wound?

22 A. Well, it could have, I think, because  
23 they're not concerned with the glass; they're  
24 concerned with him.

25 Q. I mean, it's -- it's very, very small.

1 They probably can't even see it.

2 A. Very well could be.

3 Q. And they're just trying to help.

4 A. That's what their job is.

5 Q. Right. Is there any evidence that you  
6 can look at or that you could ask for that would  
7 help you figure out which one it is, one way or  
8 the other?

9 A. Which one what is?

10 Q. I'm sorry. It's my fault. Is there any  
11 evidence that you could either get or that is  
12 available or was available to you that would allow  
13 you to figure out whether or not or how that glass  
14 got near the bullet wound or in the -- right next  
15 to the wound itself?

16 A. Not with specificity.

17 Q. You would have to guess; is that fair?

18 A. Well, there's a limited number of  
19 scenarios; but you'd have to decide which one is  
20 most likely.

21 Q. And do you have an opinion one way or the  
22 other as to which one is most likely?

23 A. Well, I think that Mr. Baldwin punched  
24 the window out, so I think it happened after the  
25 window was broken.

1 Q. With regards to the material on the  
2 T-shirt, is there anything that you're aware of  
3 that may have blocked the material making it to  
4 the T-shirt or may have displaced the material  
5 after it hit the T-shirt?

6 A. Okay. I'm missing that question with  
7 what -- what are you referring to?

8 Q. All right. I'm sorry. I'm not doing a  
9 good job. All right. So we've got a T-shirt.  
10 Mr. Baldwin is here, he punched a window out,  
11 there's a gunshot, might there be some material on  
12 the shirt that we can test and get the presence of  
13 such as lead or gas or some burned or unburned  
14 gunpowder?

15 A. You're talking around, you know, for GSR  
16 and that sort of thing?

17 Q. Yes, sir.

18 A. Yeah, there certainly would be.

19 Q. Any -- now, if we didn't find very much  
20 of it, any idea why that may have been?

21 A. Range of the shot. And one thing that I  
22 do know is that this had to be dried out, so it  
23 was wet for a long time. Now, I'm not an expert  
24 in that field, but I don't know if dampness will  
25 affect your ability to get good GSR evidence,

1 especially periphery.

2 Q. From the facts you saw, if the person who  
3 was held out to be an expert made us a list of the  
4 possible ways that there could have been a  
5 reduction to that material, and the number one up  
6 here was water, is that consistent with your  
7 training and experience when -- at crime scenes?

8 A. Yes.

9 MR. BLONIGEN: Well, Your Honor,  
10 there's been no foundation. He just said he  
11 wasn't an expert in the area.

12 THE COURT: Mr. Low?

13 MR. LOW: Well, I just asked him if  
14 it was consistent with his experience a lot at  
15 crime scenes, which he's had a lot of experience  
16 with.

17 THE COURT: I think there is  
18 sufficient foundation. I'll overrule.

19 Q. (BY MR. LOW) And with a lot of blood on  
20 that T-shirt, is that another reason that the  
21 expert said was consistent with the reduction of  
22 this material on the T-shirt, has that been your  
23 experience as well?

24 A. Yes.

25 Q. You were shown those rags that were used

1 to help try and stop the bleeding and rubbed the  
2 T-shirt. Would that be another source of the  
3 reason why there weren't more particles on the  
4 shirt?

5 A. That would be in conjunction with some of  
6 the others because of the transfer of the  
7 material. I mean, that's just basic mass  
8 transfer.

9 Q. Gloves as well?

10 A. Same thing.

11 Q. Paper bag it was stored in, the T-shirt?

12 A. Maybe, but not very much. If it were  
13 dried first and then put in the paper, probably  
14 not.

15 Q. The weather, wind and snow. If Mr.  
16 Baldwin punches the window out, now there's a hole  
17 in the window; and it's snowy, blizzard like  
18 conditions and wind blowing, could that stop or  
19 reduce any particles that are coming out as a  
20 result of the gunshot?

21 A. It would be a small reduction, if any.  
22 It depends on the direction.

23 Q. All right. All right. And we've got  
24 those.

25 Were there any facts that you were given,

1 shown, or even suggestions by anybody that there  
2 was more evidence or that the evidence that you  
3 were given was inconsistent with the conclusion  
4 you gave them?

5 A. No. I didn't see any inconsistencies.

6 Q. And as for Highway Patrol Officer Sawdon,  
7 did he agree with your conclusions as well?

8 MR. BLONIGEN: Well, Your Honor,  
9 that wouldn't be appropriate. That would call for  
10 hearsay. There's not been foundation it was part  
11 of his opinion.

12 THE COURT: Mr. Low?

13 MR. LOW: Your Honor, it goes to  
14 this expert and everything he considers when  
15 making his expert conclusion. He can consider  
16 treaties, he can consider documents, pictures, all  
17 the things he's come here; and we're entitled to  
18 know if somebody else had another opinion or  
19 another idea how it could happen and if he  
20 resolved it.

21 THE COURT: I can think of a couple  
22 exceptions, I think, that apply in an expert  
23 witness scenario, so I'll overrule. You may  
24 answer.

25 A. We basically agreed. We discussed it. I

1 always discuss things like that if I have other  
2 smart people I can talk to.

3 Q. (BY MR. LOW) With Investigator Ellis  
4 here, did you discuss it with him as well?

5 A. I did.

6 Q. Did he agree?

7 A. Well, since he's here, maybe you better  
8 ask him.

9 Q. All right. Well, do you recall if he  
10 disagreed and suggested an ulterior theory?

11 A. I'm sorry?

12 Q. Did he suggest an ulterior theory that --

13 A. No.

14 Q. What about Josh Stensaas, the guy who  
15 hired you and asked for your opinion? Did he --

16 MR. BLONIGEN: Judge, this is  
17 inappropriate. This is not a basis for his  
18 opinion. This is just other people's opinion.

19 THE COURT: I think as to the legal  
20 counsel side of things, I'll sustain.

21 MR. LOW: Yes, Your Honor. I'll try  
22 it better this way, then.

23 Q. (BY MR. LOW) Did you suggest any  
24 additional testing?

25 A. I did.

1 Q. Please tell the jury what you suggested  
2 else should be done.

3 A. I suggested that perhaps there should be  
4 some shooting tests. I suggested that once  
5 everything in the car -- in the Cobalt was  
6 documented, then it get cleaned up, a new window  
7 put in it, and the window then shot out from the  
8 inside. And I also suggested getting a pig  
9 carcass and dressing it in a T-shirt and putting  
10 it outside the window at relatively close range  
11 just to see what we would see.

12 Q. And were you allowed to do that  
13 experiment so that you could find more truth?

14 A. No.

15 Q. Why not?

16 A. I don't know.

17 Q. Well, is it fair to say or is it true  
18 that I told you that I went to Ed's Auto Salvage  
19 out in town just down the street on Spider --

20 A. Poison Spider.

21 Q. Sorry?

22 A. Poison Spider.

23 Q. Poison Spider Road, and they have a 2007  
24 Chevy Cobalt out there?

25 MR. BLONIGEN: Your Honor, is



1 counsel going to be a witness in this case?

2 MR. LOW: Sure, I'll testify.

3 MR. BLONIGEN: You know you can't.

4 THE COURT: The question as  
5 propounded would, I think, be inappropriate and  
6 leading and have a couple other foundational  
7 problems, so I'll sustain.

8 Q. (BY MR. LOW) Sir, is there currently in  
9 our possession, is there a door that you can use  
10 to take a shot at?

11 A. There is.

12 Q. From a Chevy Cobalt?

13 A. Yes.

14 Q. The same exact door that was in the  
15 shooting, meaning the -- you could put one -- the  
16 door we have onto the car that was in the  
17 shooting?

18 A. Yes.

19 Q. Be an exact fit?

20 A. Yes.

21 Q. Is there anything you'd like to ask the  
22 judge at this point?

23 A. Well, if we want to really address the  
24 issue, I have a .45, I also have some exemplar  
25 ammunition, and we could go to the range and shoot

1 the window.

2 Q. And that might show us exactly how the  
3 window falls and show that it doesn't blow inside,  
4 and it also would allow us to see some other  
5 things that would allow you to even get a better  
6 opinion than you already have?

7 A. I don't know if it would be better, but  
8 it'll certainly be consistent.

9 Q. Can we take the jury with us?

10 A. We'd have to.

11 MR. BLONIGEN: Your Honor, this is  
12 cheap theatrics. There's been no motion for a  
13 jury view or anything else in this case.

14 THE COURT: I agree. Hold up.  
15 Yeah, I think we'll discontinue this line of  
16 questioning. If there were to be other  
17 examinations or tests done, those should have been  
18 done in advance of trial. And to try to say there  
19 should be a jury view of some testing without some  
20 authority for it, especially being sprung here at  
21 the last minute would not be correct, so I'll  
22 sustain the objection at this juncture.

23 Q. (BY MR. LOW) At any rate, you tried to  
24 do more testing, and they wouldn't let you -- no,  
25 I'm sorry. Let me be fair. You tried to do more

1 testing, and they did not approve you to do that  
2 and they didn't say they'd pay you to do it; is  
3 that fair?

4 A. Basically. Kind of. What I said is I'd  
5 like to see you guys, meaning Investigator Ellis,  
6 Jason Sawdon, and so forth, set this up and do it  
7 because they don't need me to do that. They can  
8 document it just fine. But for some reason, it  
9 wasn't done. I don't know what that was, but it  
10 was discussed.

11 Q. Lastly, sir, the totality of all the  
12 evidence as they fit together, interrelate  
13 together, tells you what?

14 A. Well, it tells me that Mr. Baldwin  
15 punched out the window -- well, first of all, it  
16 tells me that the Cobalt did move forward from its  
17 position; more likely than not, it spun out; that  
18 Mr. Baldwin punched out the window and in so  
19 doing, got far enough into the passenger  
20 compartment to injure his upper arm and shoulder  
21 and then was shot and ended up on the ground.  
22 That accounts for the evidence that I see.

23 Q. Thank you.

24 MR. LOW: Your Honor, that's all we  
25 have at this time. Appreciate it.

1 THE COURT: Thank you. The witness  
2 has requested that we take a break, and we're  
3 fairly close to midafternoon, so let's go ahead  
4 and take our 15-minute break at this juncture.

5 Ladies and gentlemen of the jury, keep in  
6 mind the rules and admonitions, and court will  
7 stand in recess.

8 (At 3:09 p.m., a recess was  
9 taken until 3:26 p.m.)

10 THE COURT: Court will reconvene.  
11 Please be seated.

12 And so the record is clear, we do have  
13 present defendant, Defense counsel, counsel for  
14 the State, and the 13 members of the jury panel.

15 Mr. Daily, if you'd retake the witness  
16 chair, please.

17 THE WITNESS: Thank you.

18 THE COURT: Cross-examination,  
19 Mr. Blonigen.

20 MR. BLONIGEN: Thank you, sir.

21 CROSS-EXAMINATION

22 BY MR. BLONIGEN:

23 Q. Mr. Daily, I'd like to begin with talking  
24 about the trajectory which was a major part of  
25 your investigation, was it not?

1 A. Yes.

2 Q. And that takes point A, from the muzzle,  
3 to point B, the ending point, which is the impact  
4 on the Ford truck?

5 A. Actually, no. It takes four points.

6 Q. Okay. We'll talk about the points in  
7 between. But it starts at the muzzle, ends at the  
8 truck?

9 A. Okay.

10 Q. Let's start at the starting point.  
11 Nobody described how the -- how or where the gun  
12 was being held in the car, did they?

13 A. No.

14 Q. When we look at the photographs, these  
15 are part of F1, we can see that the rod was placed  
16 in the driver's seat area near the driver's seat  
17 window; correct?

18 A. I'm not seeing much on that. Would you  
19 look at that screen and see if it's --

20 Q. Oh.

21 MR. LOW: Focus or zoom.

22 Q. (BY MR. BLONIGEN) It looks like it's  
23 been -- there, that's better. I didn't realize  
24 somebody had hit the focus.

25 So the starting point is in the driver's

1 seat area; correct?

2 A. Well, I think what the scenario was here  
3 is there were several different spots that were  
4 examined.

5 Q. Okay. But you don't start with any  
6 actual knowledge of where the gun was from a  
7 witness statement or anything like that, do you?

8 A. You mean other than inside the car?

9 Q. And pointed out the driver's side window,  
10 obviously; right?

11 A. Yes.

12 Q. Now, so we go to that starting point.  
13 Witness statements have to be considered, don't  
14 they, when you're determining a trajectory?

15 A. Not as much as physical evidence.

16 Q. Okay. But they should be considered? I  
17 mean, certainly Spitz and Fisher *Medicolegal*  
18 *Investigation of Deaths* said for pathology and  
19 trajectory that we should consider witness  
20 statements?

21 A. In some cases, yes.

22 Q. Now, in this particular case, there are  
23 two witnesses who saw the car leave?

24 A. Okay.

25 Q. They both say the car left after Baldwin

1 fell?

2 A. Okay.

3 Q. Did you consider that in your review?

4 A. No. I just considered the physical  
5 evidence.

6 Q. I see. Now, when we then go to the  
7 starting point then, the muzzle of the gun, we  
8 also know that Dr. Carver saw powdered glass in  
9 the wound -- or in the skin around the wound. Do  
10 you --

11 MR. LOW: Objection, that misstates  
12 Dr. Carver's testimony. He did not say powdered  
13 glass.

14 MR. BLONIGEN: Excuse me. He said  
15 pulverized. Is that a better word?

16 MR. LOW: Objection, that misstates  
17 his testimony. He did not say pulverized. He  
18 used refractive fragments. I've got the report.  
19 We can check, Your Honor.

20 MR. BLONIGEN: I do have the report,  
21 but Dr. Carver explained further on his testimony,  
22 Judge.

23 THE COURT: Okay. We'll leave it  
24 for the ladies and gentlemen of the jury.  
25 Obviously, there's a dispute over that precise

1 term or portion of testimony attributed to the  
2 other witness, so I'll allow the question with  
3 that caveat.

4 Q. (BY MR. BLONIGEN) And pulverized or  
5 powdered glass is exactly the kind of glass you're  
6 talking about you'd expect to see if it was  
7 carried by the bullet into the area of the wound;  
8 correct?

9 A. Not exactly. Powdered means very, very  
10 fine. Pulverized is smaller than the shards, if  
11 you will, that exist from the rest of the glass in  
12 my mind.

13 Q. In your mind. But you don't know exactly  
14 what Dr. Carver meant, do you?

15 A. No. I read it the way I understand it.

16 Q. And if he could only see those on a  
17 microscopic level, they would indeed be very  
18 small, wouldn't they?

19 A. If they could only be seen with a  
20 microscope?

21 Q. Yes.

22 A. They would be small, yes.

23 Q. Okay. Now, and when we resuscitate  
24 people, we don't do chest compressions around  
25 their neck, do we?



1 A. I don't --

2 Q. Can you --

3 A. -- and I've done it before.

4 Q. And -- yes, sir. And so you don't work  
5 on the neck, do you, or this area up here? You're  
6 down in the center of the chest?

7 A. Yes.

8 Q. Now, on the shirt, in reviewing Mr.  
9 Norris's report, you saw that he observed the  
10 shirt, again, both with the naked eye and with --  
11 with the microscope as well; is that correct?

12 A. Yes.

13 Q. He did not report any glass around the  
14 entry hole, did he?

15 A. Not that I recall, no.

16 Q. Now, when we go at the starting point,  
17 also, we have gunshot residue tests in this case;  
18 isn't that right?

19 A. Yes.

20 Q. And they found gunshot residue around the  
21 perimeter of the window; isn't that true?

22 A. Yes.

23 Q. Also, when we look at this scenario, we  
24 don't know if the gun -- well, we have an angle on  
25 how the gun was held; but we don't know if it's

1 held like this or this at exactly what height or  
2 place; correct?

3 A. I'm not quite sure. You mean up and  
4 down?

5 Q. Yes.

6 A. Or whether he's shooting like this or  
7 like this?

8 Q. Or whether you're here near the window or  
9 back here near the center of the chest. We can't  
10 tell those things, can we?

11 A. Not for sure.

12 Q. Now, also, when we go, then, to the glass  
13 itself, glass fragments in the bullet wound would  
14 be some indicator if glass was fired through,  
15 would it not?

16 A. Well, not that glass was fired. I think  
17 you wanted to ask me something else.

18 Q. No, that the bullet was fired through the  
19 glass, it's consistent with that?

20 A. It could be, yes.

21 Q. Okay. Now, actually, once that -- we  
22 also know from the studies that if a bullet goes  
23 through tempered glass, it could affect the  
24 trajectory of the bullet?

25 A. I know that from my own experiments.

1 Q. Right. It can affect it rather  
2 significantly, can't it?

3 A. Tempered glass in a near normal -- which  
4 means ninety degrees mathematically, our  
5 experience was is it didn't deflect very much.  
6 What did deflect and sometimes significantly so  
7 was the laminated safety glass in a very steeply  
8 angled windshield.

9 Q. Okay.

10 A. So that was what --

11 Q. And again --

12 A. --our experience was.

13 Q. Spitz and Fisher says that a 38 -- a  
14 study of 38 shots fired in tempered glass showed  
15 severe deviation. You would disagree with that?

16 A. That depends on what his tests -- what  
17 angle he had the glass at. I'd have to read the  
18 study.

19 Q. Okay. And it would also affect this. We  
20 don't know the angle at which the bullet struck --  
21 if it struck the glass, what angle it struck it  
22 at, do we?

23 A. We do know that it's going to be near  
24 normal. That's the only way it can get out.

25 Q. Now, then it passes out of the car, the

1 bullet passes out of the car, and it impacts Mr.  
2 Baldwin; correct?

3 A. Well, after it gets out -- well, it  
4 impacts Mr. Baldwin at some point. I don't know  
5 where. If Mr. Baldwin's body was in the car, on  
6 the way out, I don't know for sure.

7 Q. Okay. But it encounters and it enters  
8 the body; correct?

9 A. Yes, it does.

10 Q. Fractures a rib on entry?

11 A. Yes.

12 Q. Literature also says that striking bone  
13 should also be considered in determining a  
14 trajectory?

15 A. Yes, that's true. And I did think about  
16 that. And I also looked at the bullet, which is a  
17 full metal jacket round nose with a -- that's  
18 relatively short for its diameter. Those tend to  
19 be pretty stable in going through things like  
20 that.

21 Q. Okay. Then it goes through the body?

22 A. Yes.

23 Q. It exits the body?

24 A. Yes.

25 Q. It strikes the vehicle?

1 A. You mean the Ford?

2 Q. The Ford truck.

3 A. Yes.

4 Q. When it strikes the Ford truck, it's a  
5 spent force pretty much, isn't it? It's pretty  
6 much --

7 A. Well, it's not enough to penetrate the  
8 sheet metal. It leaves a pretty good ding in it.

9 Q. Yes. That would tell you it had lost  
10 energy since it entered the body?

11 A. Yes.

12 Q. Now, then we go to the wound itself.  
13 When you discuss this matter, you had a meeting in  
14 February, you said, with Mr. Ellis and others?

15 A. Yes. I think it was February. Let me  
16 look real quick. And we probably had some phone  
17 conversations in there, too, that --

18 Q. Uh-huh.

19 A. -- that I didn't mention. February 6th  
20 is when I met with them physically.

21 Q. Okay. And at that meeting, you pointed  
22 to multiple autopsy photos showing various things  
23 to Mr. Ellis and stated without a doubt this was a  
24 contact wound?

25 A. It looked like it at the time.

1 Q. Okay. You told him it was a contact  
2 wound; it turned out not to be?

3 A. Yeah, that's right.

4 Q. Now, also, when you looked at the wound  
5 itself, you showed him various things in the  
6 autopsy photos that convinced you it was a contact  
7 wound?

8 A. There were some things that I thought  
9 indicated that, yes.

10 Q. And then we -- when we go to the body  
11 then and we do this dramatization or this -- it's  
12 not directly a recreation in that every fact in it  
13 is absolutely known to be true, is it, and exactly  
14 the same as the scene?

15 A. Well, nothing is exact, no.

16 Q. For instance, we know that we couldn't  
17 measure the car in place. It had left; right?

18 A. Yeah, the car was gone.

19 Q. The truck, the bullet dent wasn't noticed  
20 until it left the scene as well?

21 A. I don't remember when it was noticed.

22 Q. Okay. Well, we'll refer to the other  
23 testimony for that. Did you realize the pictures  
24 and the measurements taken were taken at a place  
25 different than the crime scene?

1 A. Yes, I did know that.

2 Q. Okay. And then we set this thing up, and  
3 we're going to try some different scenarios;  
4 correct?

5 A. Yes.

6 Q. First, let's talk about who you used for  
7 Mr. Baldwin. You used as a stand-in or a  
8 reference Mr. Ellis?

9 A. Yes.

10 Q. Mr. Ellis is six-foot-three?

11 A. Yes.

12 Q. Not six-foot-two?

13 A. Right.

14 Q. Mr. Ellis is a lot thinner than Mr.  
15 Baldwin, about 25 pounds?

16 A. Okay.

17 Q. It would be fair to say in those pictures  
18 that Mr. Ellis fills up quite a bit of that window  
19 in that little car, doesn't he?

20 A. Yeah, some, yeah.

21 Q. Did you have anybody measure Mr. Ellis?

22 A. No.

23 Q. Did you have anybody weigh Mr. Ellis?

24 A. No.

25 Q. Now, you talked about an inch not making

1 a difference; but the length of the legs matter,  
2 don't they, because that's how far we're going to  
3 come up off the ground, isn't it?

4 A. Yes, to an extent.

5 Q. Okay. Did you determine whether Mr.  
6 Ellis's legs were longer than Mr. Baldwin's?

7 A. No, I did not.

8 Q. Were you aware that the pants he wears in  
9 those photos are a 38 inseam?

10 A. A 30 --

11 Q. 8.

12 A. No.

13 Q. Were you aware that Mr. Baldwin's inseam  
14 was 32?

15 A. No.

16 Q. Okay. You could be almost the same  
17 height, but you can have a lot different body  
18 types, can't you?

19 A. Sure.

20 Q. So the six inches' difference in that  
21 inseam wasn't taken into account when we look at  
22 this?

23 A. Oh, was that a question?

24 Q. Yes.

25 A. Oh, I'm sorry. No, it wasn't.



1 Q. I'm going to hand you some pictures.  
2 Same thing you looked at before. But since  
3 there's a stack of about a hundred pictures there,  
4 I'm going to just narrow this down a little bit.

5 A. Okay.

6 Q. But if you could look at 440 through 449  
7 and tell me if these aren't some of the same  
8 pictures we saw over there in F1 that counsel  
9 showed you.

10 A. I think they're similar. There's a  
11 couple, I think, that are a bit different; but I  
12 think they were all taken at the same time.

13 Q. Okay. Can I gather those up from you,  
14 sir?

15 A. Sure.

16 Q. I'll go through them.

17 A. You know, I probably put them out of  
18 order.

19 Q. That's fine. I can do it.

20 A. I didn't mean to do that.

21 MR. BLONIGEN: Your Honor, move for  
22 the introduction of 440 through 449.

23 THE COURT: Any objection?

24 MR. LOW: No, Your Honor.

25 THE COURT: Exhibits 440 through 449

1 inclusive are received.

2 Q. (BY MR. BLONIGEN) So we're going to  
3 place an entry wound based upon the coroner -- or  
4 excuse me, now you got me doing it -- having the  
5 pathologist measurement from the top of the head?

6 A. Yes.

7 Q. And from midline; correct?

8 A. Yes.

9 Q. And that's what we do here. And using  
10 the same type of measurement, this is what you put  
11 on Mr. Ellis on the white T-shirt; correct?

12 A. Actually, I didn't.

13 Q. You didn't, but that's what was put on  
14 Mr. Ellis's T-shirt?

15 A. Yes.

16 Q. Now, when we consider the window itself,  
17 we took some measurements of that as well;  
18 correct?

19 A. Yes, there were some measurements taken.

20 Q. So this is the overall measurement of the  
21 driver's side window about at its widest point;  
22 correct?

23 A. Pretty close, yes.

24 Q. And we can see from the tape that that  
25 was just about 30 inches?

1 A. Let me look here. Yeah, 30 inches.

2 Q. Okay.

3 A. Looks pretty good.

4 Q. We then went through a number of  
5 scenarios, as I think you've referred to some of  
6 these before; but I'd like to, first, looking at  
7 443, slightly bent with -- we know the hands  
8 weren't inside the car, though; correct?

9 A. You mean in the scenario that --

10 Q. Right.

11 A. Well, here they aren't; they're just kind  
12 of on the edge there.

13 Q. And that's because Mr. Andujar, on  
14 October 4th, had given a statement that at the  
15 time Mr. Baldwin was shot, he was leaning over the  
16 driver's side door with his hands on the  
17 windowsill; correct?

18 A. I think so.

19 Q. And so that's the one thing you want to  
20 look at if the guy says that's what he saw; right?

21 A. Yes.

22 Q. And in this instance, without reference  
23 to anything else, but the trajectory is fairly  
24 close, isn't it?

25 A. It looks fairly close, yes.

1 Q. Now, where Mr. Ellis is standing in these  
2 various photographs, where his feet are --

3 A. Yes.

4 Q. -- there was really nothing at the scene  
5 that told us exactly where Mr. Baldwin was  
6 standing, was there?

7 A. Not exactly, no.

8 Q. It was kind of a mishmashed mess over  
9 there on the driver's side of footprints, wasn't  
10 it?

11 A. I think so.

12 Q. I'm going to hand you 346. In fact, we  
13 can see Mr. Baldwin's shoe there?

14 A. Yes.

15 Q. And that's kind of what it looked like, a  
16 lot of footprints all over the place?

17 A. Yes.

18 Q. Okay. Because we had emergency people  
19 and people trying to help and things like that?

20 A. Did you want to put it on the --

21 Q. I will. I'm just --

22 MR. BLONIGEN: Move for the  
23 introduction of 346, Your Honor.

24 THE COURT: Any objection?

25 MR. LOW: No, sir.

1 THE COURT: Exhibit 346 is received.

2 Q. (BY MR. BLONIGEN) So we can see that  
3 here there's been a lot of people tromped through  
4 this area, haven't there?

5 A. Yes, there have been.

6 Q. Okay. And we can see glass in here as  
7 well, can't we?

8 A. Yes.

9 Q. Okay. There's some glass here?

10 A. Well, maybe. Maybe you can see it on  
11 that, but I'm having a hard time with that.

12 Q. We can tell the glass because it's kind  
13 of that blue-green color in the snow, can't we?

14 A. It is, yes.

15 Q. Okay. And then we have some more here  
16 and some more here; is that correct?

17 A. Yes.

18 Q. We also know that Mr. Baldwin's body was  
19 moved from where it fell?

20 A. Yeah. My understanding is that he got  
21 moved a little bit to -- for them to work on him.

22 Q. Okay. And for -- so and from that pile  
23 of glass, we can see that he's actually a little  
24 ways away from that, where that pile of glass is,  
25 can't we?

1 A. Yes. And I think that was mapped.

2 Q. And, in fact, when you looked at all the  
3 photographs, there was also some photographs that  
4 showed some footprints going from the passenger  
5 side of this vehicle around the front of the  
6 vehicle; is that correct?

7 A. Would you say the first part of that  
8 again?

9 Q. Okay. There were footprints from the --  
10 what would be the passenger side of the vehicle  
11 heading around the front of the vehicle?

12 A. I think there were, yes.

13 Q. Okay. And I think 348 shows that if I  
14 can -- mind if I show him that?

15 MR. LOW: I don't. Thank you, sir.

16 Q. (BY MR. BLONIGEN) Do you know if 348  
17 shows that?

18 A. I don't.

19 Q. Because you can't place it in context?

20 A. I can't place it in the context with the  
21 rest of the photos.

22 Q. But your recollection was there was some  
23 evidence to that, that suggested that?

24 A. That is my recollection, yes.

25 Q. Then we have a little more bent over but

1 going into the window; correct?

2 A. Yes.

3 Q. Did the angle at least on this come close  
4 or do you think it's not close?

5 A. Could you show me the actual picture  
6 itself? It's hard for me to see it on this  
7 screen.

8 Q. Too much glare?

9 A. A little bit too much.

10 Q. Okay. We'll show it to you --

11 A. Okay.

12 Q. -- and then we'll publish it again.

13 A. I know which photo this is. Yeah, I  
14 think the -- I think the angle is pretty close  
15 here --

16 Q. Uh-huh.

17 A. -- on this one.

18 Q. And then we had some others which I think  
19 you've referred to. This is the one that -- that  
20 just doesn't match what happened at all, does it,  
21 that angle is?

22 A. It does not.

23 Q. And again, we have another photo, the one  
24 where he had his hands on the windowsill. And we  
25 get something of a line from the string or rod

1 drawn there. That's a string actually, isn't it?

2 A. That's a what now?

3 Q. A string, is it?

4 A. String, yes, yes.

5 Q. And, again, we have this one where he's  
6 clear out on his toes, and he's leaning all the  
7 way against the car; right?

8 A. Yes.

9 Q. But we didn't find any -- any damage to  
10 the abdomen, did we?

11 A. No. I -- this was just one of the  
12 scenarios that was run.

13 Q. Okay.

14 A. It doesn't match any of the other  
15 evidence.

16 Q. Again, we don't -- we don't know where  
17 his feet would have been when we do these things,  
18 do we?

19 A. Not completely.

20 Q. Okay. And then finally, I think this is  
21 the one, hands on the windowsill and a little more  
22 of a crouch. Again, the angle is consistent, at  
23 least as far as the trajectory angle of those?

24 A. Yes.

25 Q. Now, when -- when you say that you



1 believe that Mr. Baldwin came in and caused all  
2 these injuries punching through the window, he  
3 would be fully into the passenger cab; correct?

4 A. At least that arm would be, sure.

5 Q. Yeah. And on that arm, there were cuts?

6 A. Yes, there were.

7 Q. There were -- there was blood on the  
8 surface of his skin?

9 A. Yes.

10 Q. There was no blood found in the car,  
11 there was no blood found on the car seat?

12 A. Those were dicing injuries that don't  
13 bleed a whole lot.

14 Q. Well, DNA doesn't take a whole lot, does  
15 it?

16 A. No.

17 Q. Now, further, if the person is in the  
18 driver's seat, one would expect that the arm or  
19 part of the body to have contact with him as well?

20 A. Perhaps, depending on his orientation at  
21 the time.

22 Q. Tell me, Mr. Daily, would you call  
23 something where somebody punches a hole in your  
24 window and goes after you an altercation?

25 A. I would think so.

1           Q.     Okay.  But the defendant said there was  
2 no altercation that night.  Were you aware of  
3 that?

4                   MR. LOW:  Objection, that misstates  
5 his testimony.  He said inside the bar.  Facts not  
6 in evidence --

7                   MR. BLONIGEN:  He did not, Judge.

8                   MR. LOW:  -- misleading the jury on  
9 purpose.

10                   THE COURT:  Hold up if we would.  I  
11 think I remember both of you being correct during  
12 certain portions of testimony; but I'm going to go  
13 ahead and sustain the objection at this point, and  
14 we'll go to the next question.

15           Q.     (BY MR. BLONIGEN)  Okay.  If he said  
16 there was no altercation that night, this sounds  
17 like an altercation, doesn't it?

18           A.     This is an altercation or it sure seems  
19 that way to me.

20           Q.     Uh-huh.  Now, no injuries on the  
21 defendant from the glass breaking that you're  
22 aware of?

23           A.     Not that I'm aware of.

24           Q.     We also talked a little bit about how Mr.  
25 Baldwin is kind of a beefier guy than Mr. Ellis;

1 right?

2 A. That's my understanding, yes.

3 Q. Now, at the scene when the car is first  
4 stopped, there is a substantial piece of glass at  
5 the top of the window frame?

6 A. There's some.

7 Q. And there's glass along the bottom;  
8 correct?

9 A. There's some, yes.

10 Q. The total -- the -- the -- the window is  
11 much narrower at the top than the 30 inches we  
12 talked about, isn't it?

13 A. Yes.

14 Q. Now, we talked a little bit about a tire,  
15 and I'm going to refer to some exhibits already in  
16 evidence by both parties I think. First, let's  
17 orient ourselves. This is the parking spot we're  
18 talking about?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. It appeared to remain clear?

23 A. You mean clear of snow or --

24 Q. Clear of snow, yes, relatively clear of  
25 snow?

1 A. Yes.

2 Q. It -- there's pavement there, so when the  
3 wheel starts rolling, it's rolling on pavement;  
4 correct?

5 A. Yes, that's right.

6 Q. And we look at the picture coming out of  
7 that parking spot, and we see these two tire  
8 tracks that kind of "V" there; is that correct?

9 A. Yes.

10 Q. Those are the ones we're talking about?

11 A. Yes.

12 Q. You found, you said, evidence of a loss  
13 of traction on that tire; is that correct?

14 A. On the front -- front drive tire, yes.

15 Q. Okay. This is front-wheel drive car?

16 A. Yes.

17 Q. There -- we don't have any evidence if  
18 the other tire also lost traction, do we?

19 A. You mean on the other side?

20 Q. Yes.

21 A. If it's an open differential, it'll spin  
22 on the side that has the least traction.

23 Q. And you say it lost traction. In fact,  
24 you told Mr. Ellis that mark could be made by a  
25 guy whose tire slips driving away from the scene,

1 a simple acceleration mark?

2 A. Yeah. I think that's -- well, I think  
3 he's spinning on the snow. He's trying to  
4 accelerate and he's spinning on the snow and  
5 building up the snow behind the tire.

6 Q. There's clearly a rolling tire going into  
7 this small patch of snow, isn't there?

8 A. Yes.

9 Q. There's clearly a rolling tire within a  
10 very short distance from this area?

11 A. Yes, right after.

12 Q. Going past it, yeah.

13 A. Yes.

14 Q. So we don't see the car swaying or doing  
15 anything like this, do we?

16 A. No.

17 Q. So this is a very momentary, very short  
18 duration type of spin?

19 A. I think so.

20 Q. And did you know the car had also been  
21 backed into the same parking spot?

22 A. At what point?

23 Q. Earlier in the evening?

24 A. Well, it had to be early enough so that  
25 it didn't get a lot of snow underneath it.

1 Q. And so we also would see this -- when we  
2 talk about seven feet or just over seven feet,  
3 we're first -- we'd be talking about extremely low  
4 speeds; correct?

5 A. You mean for the movement?

6 Q. Yes.

7 A. We'd be talking about starting from a  
8 stop.

9 Q. Right. So the car isn't going very fast?

10 A. At the end of the seven feet?

11 Q. Yes.

12 A. Probably not. I can tell you how fast,  
13 but.

14 Q. And also, at that time, the defendant  
15 could easily stop the car?

16 A. Yes, he could.

17 Q. And the acceleration mark he left there,  
18 if he started it up again, would be much the same?

19 A. So in other words, if he started,  
20 stopped, and then tried to start a little harder?

21 Q. Uh-huh.

22 A. Yeah, that's possible.

23 Q. Okay. So he could have been in the  
24 process of driving away, stopped and shot?

25 A. You mean without any altercation?

1 Q. Well, let's leave the alt -- just from  
2 the angle you were able to put together looking  
3 for the car movement and back to the truck.

4 A. So in other words, if we're just looking  
5 at the mark on the truck and the movement of the  
6 car forward, yeah, I suppose that's possible.

7 Q. Now, you did know that witnesses said the  
8 tires spun out as he left the parking lot?

9 A. I was aware of that.

10 Q. That would account for that mark,  
11 wouldn't it?

12 A. You mean the one that we've referenced  
13 before?

14 Q. Yes.

15 A. Yes, it would.

16 Q. Now, are there any studies that you refer  
17 to that says how much energy it takes for a human  
18 fist to punch out a tempered glass window?

19 A. No, I haven't done that. I just looked  
20 on the Internet and found videos of people  
21 punching out windows.

22 Q. Okay. And there are -- there are people,  
23 and there's people that on the Internet that hit  
24 them with tire irons and can't break them?

25 A. Well, some, yes.

1 Q. And in this situation, also, this is a  
2 slick surface?

3 A. You mean that we're standing on?

4 Q. That Mr. Baldwin is standing on.

5 A. Yes, it is.

6 Q. And he's highly intoxicated?

7 A. That's my understanding.

8 Q. And it would take a good deal of force  
9 behind that punch to punch out a window, wouldn't  
10 it?

11 A. Well, it's going to have to take a punch  
12 that's going fast enough to go through.

13 Q. Also, it's going to have to be a punch  
14 that doesn't shatter the glass the first time but  
15 carries it all the way out on the first punch?

16 A. I'm not sure --

17 MR. LOW: Objection -- sorry.

18 Withdrawn.

19 A. -- that I understand that statement or  
20 question.

21 Q. (BY MR. BLONIGEN) Do you have, in your  
22 scenario, Mr. Baldwin hitting the window more than  
23 once?

24 A. No, I don't.

25 Q. And once the window is shattered, it



1 loses quite a bit of that strength, doesn't it?

2 A. Loses it all.

3 Q. Lots of things can cause it to fall;  
4 correct? The glass to fall?

5 A. The glass to fall, yes, and it'll fall  
6 straight down.

7 Q. Okay. And now we talked a little bit  
8 about test firing into pigs and shirts and things  
9 like that. How wet was Mr. Baldwin's shirt when  
10 he left the bar?

11 A. That, I don't know.

12 Q. He's only outside a short period of time.  
13 How wet --

14 A. It wouldn't be very wet.

15 Q. Okay. And if he's shot right away, it  
16 wouldn't be very wet then either, would it?

17 A. No, it wouldn't.

18 Q. So how do we experiment with how wet the  
19 shirt is when we do our testing?

20 A. Oh, that's actually quite easy to do.

21 Q. In this particular instance, though, you  
22 have extensive experience as an accident  
23 reconstructionist; but you're not a pathologist,  
24 are you?

25 A. I'm not a pathologist, no.

1 Q. And nor are you an expert in range of  
2 fire?

3 A. In what kind of fire?

4 Q. Range of fire.

5 A. You mean distance?

6 Q. Yes.

7 A. I haven't had to do it, but I know  
8 something about it.

9 Q. Well, yeah, and of course you know about  
10 the mechanics of a gun, don't you?

11 A. Yes.

12 Q. Now, some of the reports when you came  
13 down for this February meeting and even when this  
14 recreation is done, the lab reports weren't all  
15 available to you, were they?

16 A. Not at that point. I think I got some of  
17 them later from the crime lab.

18 Q. Okay.

19 A. And I don't remember -- I think they were  
20 sent to me electronically. I didn't bring  
21 everything I have because a lot of it is on my  
22 computer.

23 MR. BLONIGEN: Can I have a moment,  
24 Your Honor?

25 THE COURT: Yes, you may.

1 Q. (BY MR. BLONIGEN) Now, Mr. Daily, one  
2 thing you have a lot of experience at is impaired  
3 drivers and fatalities?

4 A. Well, yes.

5 Q. Okay. In fact, a lot of -- we saw a lot  
6 of your experience, your articles and things are  
7 exactly on some of these issues; right?

8 A. Yes.

9 Q. Persons at a .208, highly impaired?

10 A. You say 208?

11 Q. .208.

12 A. Yeah.

13 Q. Highly impaired?

14 A. Yes.

15 Q. Poor balance?

16 A. More likely than not.

17 Q. Poor motor skills?

18 A. Probably.

19 Q. Impaired perception?

20 A. Yes, that too.

21 Q. Poor critical thinking?

22 A. Maybe nonexistent.

23 Q. Nonexistent critical thinking? Okay.

24 And if we're running a .17 to a .24, we're going  
25 to have the same problems; correct?

1           A.     I think so, unless you're dealing with  
2 just an absolutely old alcoholic. The highest I  
3 ever arrested was a .46.

4           Q.     Okay. But when we're talking around a  
5 .20, we're pretty high, aren't we?

6           A.     We're pretty drunk.

7           Q.     Yeah. And like we said, impaired  
8 position, impaired reaction. Are you safe to  
9 handle a firearm when you're a .20?

10          A.     I'm not.

11          Q.     Do you know anybody that is?

12          A.     No, I don't.

13          Q.     Just like operating a car?

14          A.     Just like operating a car.

15                   MR. BLONIGEN: I believe that's all  
16 the questions I have for right now, Judge.

17                   THE COURT: Thank you very much,  
18 Counsel.

19                   Redirect examination, Mr. Low?

20                   MR. LOW: Thank you.

21                   REDIRECT EXAMINATION

22                   BY MR. LOW:

23           Q.     So you said you reviewed some videos in  
24 connection with determining whether someone could  
25 punch some glass out?

1           A.     Yes.

2                     MR. LOW:   Your Honor, can you turn  
3 my station on, please?

4                     THE COURT:   Certainly.

5                     MR. BLONIGEN:   Well, Your Honor --

6                     MR. LOW:   Can I play this video?

7           Q.     (BY MR. LOW)   Is this one of the videos  
8 you watched?

9                     THE COURT:   Hold up if you would.

10                    MR. BLONIGEN:   We've never been  
11 provided a copy of these, Judge.   These are photos  
12 or other exhibits they're using in front of the  
13 jury.   They should have provided a copy to us.

14                    MR. LOW:   Sort of like what Mr.  
15 Norris did to us earlier today when we weren't  
16 provided a whole opinion and the basis for that?

17                    THE COURT:   Hold up if you would.  
18 Well, you can't play something that hasn't been  
19 received before the jury, so there's no admission  
20 of an identified exhibit, so.

21                    MR. LOW:   I would like to mark this,  
22 then, as Defense Exhibit G1 for identification.

23           Q.     (BY MR. LOW)   Sir, can you look on the  
24 screen?

25                    THE COURT:   And what is it?

1 MR. LOW: It is a -- I believe it's  
2 a three-second video clip that this expert  
3 considered while making his conclusions and  
4 referred to.

5 THE COURT: Okay. Thank you. I  
6 just wanted to have it identified. There still  
7 needs to be foundation, but go ahead.

8 Q. (BY MR. LOW) Is this a video you  
9 consulted?

10 A. I'd have to see it to remember. A lot of  
11 these start off the same way.

12 Q. All right. Let me play it, then. Here  
13 we go.

14 (Demonstrative Exhibit G1 is  
15 played in open court.)

16 MR. BLONIGEN: Wait a second, Judge.  
17 There's been no foundation for how this video was  
18 done, whether the person has martial arts  
19 training, none of that stuff. He's just going to  
20 play it?

21 MR. LOW: Your Honor, all he has to  
22 do is did he consider it and rely upon it in  
23 forming his expert conclusion.

24 THE COURT: Objection overruled.  
25 You may answer.

1           A.     I saw that and several other videos that  
2 were similar.

3           Q.     (BY MR. LOW)   Let's play it again, one  
4 more time.

5                                 (Demonstrative Exhibit G1 is  
6 played in open court.)

7           Q.     (BY MR. LOW)   All right.   Did you  
8 consider or look at another video?

9           A.     I did.

10                                MR. LOW:   Your Honor, I would have  
11 this marked as -- I'm going to stop it and redo  
12 it -- G2 for identification, Your Honor.

13                                (Demonstrative Exhibit G2 is  
14 played in open court.)

15           Q.     (BY MR. LOW)   Does that, sir, fit with  
16 the evidence, the facts, the science, and the  
17 physics you found in this particular case?

18           A.     It just shows me it's quite possible for  
19 somebody to punch out the side glass of a car.

20           Q.     Sir, have you ever heard the term "liquid  
21 courage"?

22           A.     Excuse me for laughing.   Yes, I have.

23           Q.     What's your understanding of how that's  
24 commonly used?

25           A.     Well, it's the more drunk you get, the

1 more likely you are to do something stupid.

2 Q. Maybe like punch something you ought not  
3 to be punching?

4 A. That would be one scenario.

5 Q. You ever have someone in the back of your  
6 car who was pretty liquored up and decided to take  
7 it out on your car?

8 A. Yeah.

9 Q. Tell us a story about that.

10 MR. BLONIGEN: Well, Your Honor,  
11 this is beyond the scope of cross.

12 THE COURT: Mr. Low, your response?

13 MR. LOW: Yes, sir. This goes to  
14 whether a human being while under the influence of  
15 alcohol will do something stupid, like knock out  
16 glass and punch dents into the car door. Mr.  
17 Blonigen opened the door on this when he asked him  
18 about Mr. Baldwin's alcohol content and whether or  
19 not he was too drunk to do anything. I think this  
20 goes directly to that point.

21 THE COURT: There were several  
22 questions relative to impairment at a given drug  
23 alcohol rate, so I'll overrule, and you may  
24 answer.

25 A. Yes. I arrested a drunk driver over on



1 the Targhee Road, had to bring him to jail in  
2 Jackson, which is a really long drive.  
3 Fortunately for me, it was really cold because  
4 once -- I couldn't get this guy strapped into the  
5 backseat. I had him handcuffed. Well, he went  
6 ballistic in the backseat, kicked out both windows  
7 on both sides. And then when he got the windows  
8 out, he started kicking the doors and bulged both  
9 doors out. And I just -- I had a nice coat on,  
10 and I turned the heat down and basically froze him  
11 out until I got to the jail. It calmed him down  
12 quite a bit.

13 So, I mean, I know that people can do  
14 that. This was kicking, but it was certainly an  
15 incident where this guy's best judgment was not on  
16 display.

17 Q. (BY MR. LOW) You ever hear the term  
18 "angry drunk"?

19 A. Used to see it all the time.

20 Q. Quite common, isn't it?

21 A. It is.

22 Q. Folks when they're sober can be nice and  
23 docile and friendly, boy, they get liquored up and  
24 they start doing things that are pretty ugly and  
25 pretty angry. Is that your experience, sir?

1           A.     It is.

2                     MR. LOW:    Thank you, Your Honor.

3     Nothing further.

4                     THE COURT:   Anything on recross?

5                             RE CROSS-EXAMINATION

6     BY MR. BLONIGEN:

7           Q.     There's other examples on the Internet,  
8     too, that's not the only one, is it?

9           A.     No.    There's -- there's other examples.  
10    There's plenty of examples of people trying and  
11    not succeeding.

12          Q.     Breaking their hand?

13          A.     Yes.

14          Q.     In fact, this fella, what does he have on  
15    his hand?

16          A.     He had a glove.

17          Q.     Okay.   Do you know if he had anything  
18    else in it?   Did it have --

19          A.     No, I don't know.

20          Q.     It looked -- because it looks padded,  
21    doesn't it, or padding or perhaps some extra  
22    leather and stuff in there?

23          A.     It may have padding, yeah.   I mean, if I  
24    were going to punch out a window, I'd certainly  
25    put a glove on.   I wouldn't do it like this.

1 Q. Be afraid of breaking your hand?

2 A. Well, at least cutting it up.

3 Q. Cutting it up pretty badly?

4 A. Yeah, I would -- well, I don't know how  
5 badly, but I think I'd cut it up a little bit.

6 Q. And did you look at the x-rays in this  
7 case?

8 A. No, I did not.

9 Q. Okay. You just said that there's a  
10 danger if you're punching out a window you could  
11 break your hand?

12 A. Yeah, there is.

13 Q. But you didn't look at the x-rays?

14 A. No, I didn't, because --

15 Q. Did you determine if there was any  
16 fracture to the hand?

17 A. No, I did not.

18 Q. Now, as far as you know, Mr. Baldwin had  
19 no -- these fellas here, there was a clip in front  
20 of it, you know, something about being the biggest  
21 bad ass or something like that.

22 A. There's a lot of those floating around.

23 Q. Yeah. Do you know if that person had any  
24 martial arts training?

25 A. I have no idea.

1 Q. Do you know how many times he attempted  
2 it before it worked?

3 A. No, I don't.

4 Q. When he made the punch, he really loaded  
5 up on that punch, didn't he?

6 A. Looked like he did.

7 Q. Yeah.

8 A. I would have if I were that drunk and  
9 trying to do it.

10 Q. You'd really have to load up a punch to  
11 punch through there?

12 A. Pretty much.

13 Q. Yeah. People who actually saw this in  
14 the parking lot never saw that, did they?

15 A. I don't know. I don't know if anybody  
16 did see it.

17 MR. BLONIGEN: That's all the  
18 questions I have, Your Honor.

19 THE COURT: Thank you very much.  
20 Thank you, Mr. Daily.

21 THE WITNESS: Your Honor.

22 MR. LOW: Your Honor, if I may, I  
23 heard something that I'd like to talk to you  
24 about, if I may, before this witness is excused.  
25 So may I have a sidebar, Your Honor?

1 THE COURT: You may.

2 THE WITNESS: Does that mean I  
3 leave? I mean, back there or --

4 (The following proceedings were  
5 held at the bench between the Court and counsel,  
6 out of the hearing of the jury:)

7 THE COURT: Do you wish to be on the  
8 record?

9 MR. LOW: Yes, I think I'll need to  
10 be, Your Honor.

11 THE COURT: Go ahead, Mr. Low.

12 MR. LOW: Yes, sir. Mr. Blonigen  
13 just asked this witness if he knew how many  
14 attempts the people on the video made, and he did  
15 that to suggest that they could have attempted it  
16 a lot before they're actually able to succeed  
17 doing it. Therefore, my opinion is he opened the  
18 door for me to ask this witness if he is aware if  
19 Mr. Baldwin has made such attempts. And now, like  
20 I tried to tell you in the beginning, those car  
21 burglaries, 18 of them, are now very relevant to  
22 that point. And I want to be able to ask him if  
23 this is something he considered and whether those  
24 attempts could have gained Mr. Baldwin knowledge  
25 on how to better punch that window out.

1           And he -- I told you at the beginning, if  
2     you remember, Mr. Blonigen was going to make it an  
3     issue as to whether he punched that window out.  
4     And I tried to warn you that it was going to  
5     happen, and now we just heard it. And so as a  
6     result, I feel that we should be allowed to ask  
7     this expert, who is entitled to be rehabilitated.  
8     Submit.

9           MR. BLONIGEN: Well, Your Honor,  
10    he's had direct, he's had redirect. None of those  
11    burglaries involve punching out a window. So the  
12    prejudicial impact has nothing to do with the  
13    issue before the Court.

14           MR. LOW: How do you know none of  
15    them had anything to do with that?

16           MR. BLONIGEN: Well, do you have any  
17    evidence they did?

18           MR. LOW: I have police reports, and  
19    I'd like to show them to my expert. I tried to  
20    tell you guys.

21           MR. BLONIGEN: Judge, he finished  
22    his examination.

23           THE COURT: This is the topic of  
24    videos, it was a topic that was raised on  
25    redirect, and I think the cross-examination

1 questions were fine. And I don't see it as  
2 opening the door to a whole new bunch of inquiry,  
3 either additional direct examination and  
4 additional cross-examination, nor a change in any  
5 of the rulings relative to the 404(b). But the  
6 request is noted. Thank you.

7 (The following proceedings were  
8 held in open court, in the presence of the jury:)

9 THE COURT: Mr. Daily, you may now  
10 be excused. You are free from any subpoena or  
11 process in the case.

12 MR. LOW: Your Honor, at this time,  
13 I would like to enter into evidence what's been  
14 previously marked as Defense Exhibit F, as in  
15 Foxtrot, 1 for identification.

16 THE COURT: Any objection to Exhibit  
17 F1?

18 MR. BLONIGEN: No, sir.

19 MR. LOW: Your Honor, I'd also like  
20 to move into evidence --

21 THE COURT: Hold up if you will.  
22 I'll receive F1 formally for the record. Thank  
23 you. Go ahead, Counsel.

24 MR. LOW: May I also enter into  
25 evidence what's been previously marked as Defense

1 Exhibit G1 and G2 for identification.

2 MR. BLONIGEN: Your Honor, I would  
3 object to that. He was using those simply for  
4 demonstrative purposes. I didn't see that they  
5 were offered as substantive evidence.

6 MR. LOW: He relied upon them for  
7 his opinion. And there was a contention, Your  
8 Honor, if you remember, that a human being could  
9 punch through a window, therefore they're  
10 relevant. I seek to have them admitted, please.

11 THE COURT: I'll take your request  
12 under advisement.

13 MR. LOW: Yes, sir.

14 THE COURT: And let me take a look  
15 at my notes as to the testimonies that would have  
16 gone to those two exhibits. The request for them  
17 to be received is noted.

18 Defense may call its next witness.

19 MR. LOW: At the time, we'd like to  
20 call Kevin Elkin to the stand.

21 THE COURT: We had a little bit of  
22 glass from that one exhibit, so.

23 MR. LOW: Come on up, Kevin. You're  
24 going to come right over here and talk to this  
25 lady; okay?



1 THE CLERK: Please raise your right  
2 hand. You do solemnly swear that the testimony  
3 you will give in the case before the Court will be  
4 the truth, the whole truth, and nothing but the  
5 truth, so help you God?

6 THE WITNESS: Yes.

7 THE CLERK: Right through here, and  
8 you'll sit in that chair.

9 MR. LOW: Come over here, Kevin.  
10 You're going to come over here, around here, find  
11 your way to the chair; okay?

12 THE WITNESS: All right.

13 THE COURT: We do ask you to speak  
14 into the microphone. It is adjustable, so you can  
15 move it a little bit if you need to; okay? Thank  
16 you.

17 THE WITNESS: All right. No  
18 problem.

19 KEVIN ELKIN,  
20 called for examination by the Defense, being first  
21 duly sworn, on his oath testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LOW:

24 Q. Well, introduce yourself to the ladies  
25 and gentlemen of the jury.

1 A. My name is Kevin Elkin.

2 Q. And tell them where you're from.

3 A. I am from Green River, Wyoming.

4 Q. Where did you grow up, Kevin?

5 A. I grew up in Green River.

6 Q. All right.

7 A. Around that area and grew up and went to  
8 school there. I moved there back in 7th grade.  
9 Back when I was in 7th grade, I moved into Green  
10 River.

11 Q. All right. And did you graduate high  
12 school out there?

13 A. Yes, I did.

14 Q. All right. What year was that?

15 A. I graduated in '08.

16 Q. And what are you doing now?

17 A. I'm just a local DJ.

18 Q. All right. Thank you.

19 MR. LOW: Your Honor, I forgot  
20 something that I need to tell you, and I want to  
21 make sure I do it right. Can I have a really  
22 quick sidebar?

23 THE COURT: Yes, you may.

24 MR. LOW: I apologize. This will  
25 take a second.

1 THE COURT: Do you wish to be on the  
2 record?

3 MR. LOW: I don't think so, but you  
4 decide.

5 (A bench conference was held off  
6 the record.)

7 THE COURT: Go ahead, Counsel.

8 Q. (BY MR. LOW) Mr. Elkin, sir, is it your  
9 understanding that we asked you to come here today  
10 to tell the ladies and gentlemen of the jury what  
11 you remember about James Baldwin?

12 A. Yes.

13 Q. All right. Did you grow up with James  
14 Baldwin?

15 A. Yes, I did.

16 Q. And just tell the jury a little bit about  
17 that.

18 A. I grew up going to school with James  
19 Baldwin, and I hanged out with him and Tim Dow  
20 back in -- back in school and stuff. Everything  
21 went good. We hanged out and stuff like that.  
22 And then one -- and we hanged out and everything  
23 like that. I knew him from school and stuff like  
24 that.

25 Q. Okay. Take your time. And were you guys

1 friends?

2 A. Off and on, yes.

3 Q. When you first started getting to know  
4 Mr. Baldwin, did you start out as friends?

5 A. Yes, I did.

6 Q. Did that change sometime later?

7 A. Yes, it did.

8 Q. What happened?

9 A. I was in Rock Springs at the time. I was  
10 at -- I was at a party one night down in Rock  
11 Springs at a party. I don't remember exactly what  
12 the house was. There were two -- there were two  
13 women that I was partying with that knew Tim Dow  
14 and all them, all their little group. And they  
15 wanted to go home because the girls got assaulted.

16 So I was, like, No problem. Where are you  
17 guys going? You know, no problem.

18 And they're, like, Well, I need go over to  
19 Tim Dow's house, which yes, I did know Tim Dow at  
20 the time because I went to school with him, and I  
21 used to hang out with him and I hanged out with  
22 the group.

23 So I was, like, No problem. I can give  
24 you a ride over to Green River to Tim's house.

25 Gave them a ride. And these girls got

1 assaulted at this party or whatever happened, I'm  
2 not exactly sure of what happened; but they were  
3 texting Tim Dow and their little group of friends.  
4 And I was in the car with these two girls and Mike  
5 May, Mikey May. I was in this car -- my car with  
6 Mikey May and these two girls.

7 So these girls got assaulted and were  
8 texting Tim Dow and their little group. Well, I  
9 showed up at Tim's house. Tim, somebody else, and  
10 their whole group came after me. And -- at my car  
11 and assaulted me and Mikey May at the same time  
12 because they thought we were assaulted -- we  
13 assaulted these girls, which we didn't. I was  
14 actually protecting them. And I tried to explain  
15 this to them, and they got all types of mad at me  
16 and Mikey and assaulted me and everything like  
17 that.

18 Q. All right. Now, when you say "they,"  
19 these guys, can you -- are you able to  
20 specifically name who these guys are?

21 A. Tim Dow, Mike -- I forget what his last  
22 name is.

23 Q. Keeley?

24 A. Mike Keeley, yes. And the client,  
25 your --

1 Q. James Baldwin?

2 A. Yeah, James Baldwin. Sorry.

3 Q. Okay. John Knospler wasn't there, was  
4 he?

5 A. No.

6 Q. Okay. All right. And you told us about  
7 some things that they did when you used the word  
8 *assault*. Can you describe what you mean by  
9 assault? What happened?

10 A. They forcefully tried to get into my car.  
11 I locked the doors, and I sped off and everything  
12 like that.

13 Q. Before you sped off, did anything happen  
14 to you? Did anybody get inside the car or did  
15 they lay their hands on you in any way?

16 A. Yes. Tim Dow came to my driver's side  
17 door. And the other two guys, your client -- I am  
18 so sorry.

19 Q. That's okay. Take your time.

20 A. James Baldwin came into my passenger side  
21 door and came through the passenger door, punched  
22 me in the mouth at that night. He punched me in  
23 the mouth that night and assaulted me that way,  
24 which -- because they thought I assaulted these  
25 two girls that night, which I did not do. And he

1 thought I did because they did get assaulted at  
2 this party that I was at.

3 Q. Did you do anything to try and tell James  
4 Baldwin this or the others before you got --

5 A. Yes. I tried to explain to James Baldwin  
6 and Tim Dow that no, this was not me, I was  
7 actually trying to protect them at this party,  
8 trying to give them a ride home to Tim Dow's  
9 house. And they did not want to hear it. They  
10 had this mindset of something bad happened, and  
11 they thought it was me.

12 Q. Do you remember about how old you were at  
13 that time?

14 A. I was around 15 at the time.

15 Q. And can you drive in this state, I don't  
16 know, can you drive in this state at 15?

17 A. I was -- I was -- I had my driver permit  
18 at the time, yes.

19 Q. Okay. All right, then. About how many  
20 years did you know James Baldwin?

21 A. All together, I've known him for off and  
22 on five years.

23 Q. And are you able to tell the ladies and  
24 gentlemen of the jury in your opinion his  
25 reputation for either violent behavior or

1       aggressiveness?

2           A.     I believe -- in my opinion, it is a very  
3       violent person. Unpredictable, I would have to  
4       say.

5           Q.     Okay. Anything else on that issue?

6           A.     Not sure. Pretty much that. That's all  
7       I could truly say at this time.

8                   MR. LOW: Thank you. Nothing  
9       further.

10                   THE COURT: Thank you, Counsel.  
11       Cross-examination, Mr. Itzen.

12                   MR. ITZEN: Yes, sir.

13                               CROSS-EXAMINATION

14       BY MR. ITZEN:

15           Q.     Good afternoon, sir.

16           A.     Good afternoon.

17           Q.     Now, the incident with the girls, that  
18       occurred in February of '09; correct?

19           A.     Yes, sir.

20           Q.     About five years ago?

21           A.     Yep.

22           Q.     Now, your birthday is April of 1990;  
23       correct?

24           A.     Yes.

25           Q.     So you --



1           A.     So I was a little bit older than that  
2 actually. I'm sorry.

3           Q.     You would have been about 19?

4           A.     Yeah. I was about 19 at the time  
5 actually. I'm sorry.

6           Q.     No problem. And the girls that we're  
7 talking about that were at the party in Rock  
8 Springs --

9           A.     Yes.

10          Q.     -- that was April Lovato; correct?

11          A.     Yes, I believe that was the name. I'm  
12 not exactly sure of what the girls's name were.  
13 At the time, I was just trying to help out them  
14 because they were crying at this party.

15          Q.     And she was 13?

16          A.     Yep.

17          Q.     And Maddyson Wagstaff?

18          A.     I believe so. I'm not exactly sure. I  
19 mean, Mikey May knew them more than I did.

20          Q.     And she was 14; correct?

21          A.     Okay. Yeah, I'm not exactly sure.

22          Q.     Now, it was a party where you guys were  
23 drinking?

24          A.     Yes.

25          Q.     And you'd gotten there earlier in the

1 evening; correct?

2 A. What?

3 Q. You had gotten there earlier in the  
4 evening?

5 A. Yes, I did.

6 Q. And this occurs about 11 o'clock at  
7 night; correct?

8 A. Correct, roughly.

9 Q. So after you were drinking, there was a  
10 report that Ms. Lovato got raped; correct?

11 A. I do not know that for, say, my own of  
12 what I know.

13 Q. And she wanted to leave the party;  
14 correct?

15 A. I know that she wanted to leave the party  
16 and go to Tim Dow's house, so I decided to help  
17 her.

18 Q. And, in fact, you drove her to Mr. Dow's  
19 house; correct?

20 A. Yes.

21 Q. And Mr. May got punched there; correct?

22 A. Correct.

23 Q. By Mr. Dow?

24 A. Yes.

25 Q. And you left; correct?

1           A.     Yes.  I left after there was an assault  
2 started at me.

3           Q.     And you never gave a witness statement to  
4 the police officer that arrived; correct?

5           A.     I don't remember.  I believe I did, but  
6 I'm not sure.

7           Q.     And Ms. Lovato, her older brother was  
8 also there; correct?  Michael Lovato?

9           A.     I'm -- I don't believe -- I don't  
10 remember, to tell you the truth.

11          Q.     It's been a long time ago?

12          A.     Correct.  Yes.

13          Q.     And you were drinking back then?

14          A.     Yes.

15          Q.     Sometimes it's hard to remember things a  
16 long time ago when you've been drinking; right?

17          A.     Yes.

18          Q.     And you thought that there were some  
19 mistakes made.  They thought you were the one that  
20 assaulted the girls; correct?

21          A.     Exactly.

22          Q.     And they were coming to protect those  
23 girls; correct?

24          A.     Correct, which I was trying to help them.

25          Q.     Now, after Mr. May got punched, that's

1 when you leave; correct?

2 A. Correct.

3 MR. ITZEN: If I can have a moment,  
4 Judge.

5 THE COURT: Yes.

6 Q. (BY MR. ITZEN) Just a couple questions,  
7 Mr. Elkin.

8 A. Okay.

9 Q. Did you contact the police the next day  
10 and talk to them?

11 A. Later on that night, I believe I did.

12 Q. You did? And do you recall, was that  
13 Officer Halter?

14 A. I don't recall what the officer's name  
15 was, but probably. I don't recall.

16 MR. ITZEN: All right. That's all I  
17 have. Thank you.

18 THE COURT: Thank you.

19 Anything on redirect?

20 MR. LOW: No, Your Honor.

21 THE COURT: Okay. Thank you very  
22 much, Mr. Elkin. You can step down, and you're  
23 excused from any subpoena in the case; okay?

24 THE WITNESS: Thank you.

25 THE COURT: The Defense may call its

1 next witness.

2 MR. LOW: At this time, we'd like to  
3 call to the stand Scott Lehman.

4 THE COURT: Please come forward, if  
5 you would. The Clerk of Court to my left will  
6 give you the oath, and then you'll sit to the  
7 other side once sworn.

8 THE CLERK: Please raise your right  
9 hand. You do solemnly swear that the testimony  
10 you will give in the case before the Court will be  
11 the truth, the whole truth, and nothing but the  
12 truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated.  
15 Around there.

16 THE COURT: We do ask you to speak  
17 into the microphone. And it is adjustable, so you  
18 can move it a little bit if you need to.

19 THE WITNESS: Yes, sir.

20 SCOTT LEHMAN,  
21 called for examination by the Defense, being first  
22 duly sworn, on his oath testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LOW:

25 Q. Afternoon.

1 A. Good afternoon.

2 Q. Thank you. Please introduce yourself.

3 A. Hello. My name is Scott Lehman. I  
4 served with John, First Recon Battalion, during  
5 the time of 2002 to 2004.

6 Q. Where are you currently living now, sir?

7 A. I'm currently in Chicago. After the  
8 Marine Corps, I pursued my undergraduate degree at  
9 USC, worked in finance for a couple years, then  
10 went back to Wharton to get my masters in  
11 business. And now I'm living in Chicago working  
12 at CitiGroup as an investment banker.

13 Q. You went to USC?

14 A. Southern Cal, go Trojans.

15 Q. And Wharton?

16 A. Yes, sir.

17 Q. You got to be pretty smart to get into  
18 those schools?

19 A. Or work really hard.

20 Q. Well, someone might accuse you of not  
21 really being a Marine, but you understand that  
22 doesn't make sense; right?

23 A. I do understand that.

24 Q. What is it you're doing on a daily basis  
25 now?

1           A.     So we advise companies on large mergers  
2     and acquisitions.  And so I specifically work  
3     within the bank industry, cover commercial banks.  
4     And so we focus on banking M & A, if you will,  
5     advising on the structuring of those transactions.

6           Q.     When did you first join the Marine Corps?

7           A.     June 20th, 2000.

8           Q.     Why did you join up?

9           A.     I'd always been interested in doing  
10    something different than going the traditional  
11    route to college.  In the Marine Corps -- I met in  
12    high school, my freshman year, my swim coach was a  
13    former First Recon Marine.  And just talking to  
14    him and learning about the tradition of the Marine  
15    Corps had me really interested in it.  And I knew  
16    that I didn't think I was ready at the time to  
17    pursue a college education.  It was something that  
18    I wanted to do, but I didn't know if I was ready  
19    at that time.  So I wanted to serve my country,  
20    and I wanted to be a U.S. Marine.

21          Q.     Well, why not join the Navy, then?

22          A.     Because -- because the Marines -- it's  
23    the best branch of service.  No, I think that I  
24    wasn't looking for any kind of accommodations or  
25    an easy path.  I was looking for the intangibles

1 that the Marine Corps offered. The integrity,  
2 honor, discipline, the camaraderie that they  
3 talked about. Working to accomplish excellence,  
4 you know, with a team. All of that was extremely  
5 exciting to me, so that's why I pursued the Marine  
6 Corps. It really wasn't a question.

7 Q. And you went to boot camp, graduated.  
8 When do you first meet John Knospler?

9 A. So I met Johnny -- so this -- so my first  
10 deployment, I had -- let's see. I joined, I went  
11 into a comm company, was selected for recon, did  
12 recon training, then joined my first team. We  
13 deployed right after 9-11. And then I came back  
14 from that team, and that's when I joined up with  
15 John's team. And it was Charlie Company, Second  
16 Platoon, and then we started working up for  
17 deployment to Iraq in 2003.

18 Q. Now, if I'm in the Marine Corps, do they  
19 give me a job that's assigned to me that has a  
20 corresponding number?

21 A. 0321.

22 Q. Yeah, it's called an MOS?

23 A. Yes.

24 Q. MOS stands for?

25 A. Reconnaissance Marine.



1 Q. MOS stands for military occupational  
2 specialty?

3 A. I believe that's right. It's been ten  
4 years for me.

5 Q. That's all right. But you can't sign up  
6 when you go to boot camp for recon; is that  
7 correct?

8 A. I could not, no. I had to go through a  
9 different route. And my swim coach, the former  
10 force guy, told me to -- to go into communications  
11 because, you know, a field radio operator is  
12 always needed on a reconnaissance team; that  
13 that's kind of a weapon for a recon platoon is  
14 being able to use the phone.

15 Q. What I mean is that the best you can do  
16 in boot camp, if you will, or when you sign up  
17 with a recruiter is to sign up to be a grunt or  
18 infantryman; correct?

19 A. That's right.

20 Q. Then once you're an infantryman, they  
21 watch how you conduct yourself and they watch how  
22 you interact with other people; correct?

23 A. That's correct.

24 Q. And they see whether you're a hothead or  
25 you're slow or if you just don't have the skill

1 set. And what they're looking to see is if you've  
2 got certain Marines out of the infantry that  
3 somehow are just better than the average Marine;  
4 is that fair?

5 A. Yes.

6 Q. But that's not even good enough. They  
7 select you to just try out; correct?

8 A. That's right.

9 Q. And out of the people that try out, about  
10 how many will make it?

11 A. In our class, I can speak specifically to  
12 it, we had 70 to 80 try out -- and this was after  
13 passing the initial screening to become a Recon  
14 Marine where you qualify -- we graduated 16.

15 Q. 16 out of 70 or 80?

16 A. That's correct.

17 Q. Now, what are some of the things from  
18 your experience that Recon is looking for? Is  
19 it -- well, you just tell us. What are the things  
20 they're looking for? What are they screening you  
21 for?

22 A. So I think it's not -- it's definitely  
23 physical ability. It's ability to handle both  
24 mental stress and physical stress. It's the  
25 ability to have extremely good judgment, to be

1       able to make the right decisions at a moment's  
2       notice. It's the ability to work within a team  
3       and miles away from operating base for long  
4       periods of time and work well together. It's the  
5       ability to focus and focus on being excellent at  
6       the task and really being mindful of everybody on  
7       the team. We're all so proud of, with each Recon  
8       team I was in, was that everybody pursued  
9       excellence in any job that they did. So it's all  
10      of that, an amalgam of that.

11       Q.     Have you ever had a situation where  
12      you're really physically tired from running,  
13      lifting, swimming; and as a result, your mind  
14      starts to break down, meaning that it gets harder  
15      and harder to think straight?

16       A.     Oh, yeah. All the time.

17       Q.     And is that the kind of conditions that  
18      the Marine Corps puts you under so they can  
19      observe you to see how you react?

20       A.     Constantly.

21       Q.     And when they get you physically  
22      exhausted like that, is sleep deprivation one of  
23      the things they use?

24       A.     That's correct.

25       Q.     Why do they use, as far as you know,

1 sleep deprivation, food deprivation, water  
2 deprivation, weather deprivation such as extreme  
3 cold or extreme heat and physical exhaustion, and  
4 then they begin to watch how you behave? Why is  
5 that?

6 A. Because I think that when you're put in  
7 that position, that's the position you're put in  
8 when you're overseas. And when you're put in that  
9 position and you have to deal with ambiguity and  
10 uncertainty all the time, they want to make sure  
11 that you're ready and that you can operate calmly  
12 with resolve.

13 Q. And when they have you in these  
14 conditions and physically exhausted, what kind of  
15 things do they start having you do to see how well  
16 you feel?

17 A. You have to think. You have to conduct  
18 tasks to operate as a team. You have to actually  
19 do potential missions, whether it be a call for  
20 fire mission or an evacuation mission or another  
21 type of reconnaissance mission or route  
22 reconnaissance or whatnot, all while you're under  
23 that extreme fatigue.

24 Q. And while you're under the extreme  
25 fatigue and having to operate mentally, do you

1 have a weapon with you?

2 A. Yes.

3 Q. And are they watching to see how you  
4 handle that weapon and how you use it around the  
5 people around you?

6 A. That's right, yes.

7 Q. What is the first thing the Marine Corps  
8 teaches you before they ever give you a weapon?

9 A. How to take care of it.

10 Q. Say more about that.

11 A. I mean, so I think they take -- they  
12 teach you how to make sure that you're mindful of  
13 the target, and that you -- that you assess the  
14 danger before you make -- you conduct any action.

15 Q. Why do they teach you that?

16 A. Goes back to judgment. Goes back to the  
17 we operate under split seconds. We have a  
18 decision to make, and we have to make -- exercise  
19 the best judgment possible. And we're trained to  
20 do that. And so that -- they pound that into us  
21 early on to make sure that we're making the right  
22 judgment. And if we're going to be Recon Marines,  
23 that we're always making that right judgment.

24 Q. Did John have the same training that you  
25 did in Recon?

1 A. Yes, he did.

2 Q. How do you know?

3 A. Because I was in a Recon platoon with  
4 John.

5 Q. Did you train with John?

6 A. I did.

7 Q. About how much do you think you trained  
8 with John?

9 A. For over a year with John.

10 Q. And did you ever deploy with John  
11 overseas?

12 A. I did.

13 Q. And did that deployment result in combat  
14 experience?

15 A. It did.

16 Q. Would you be willing to tell the ladies  
17 and gentlemen of the jury your experience with  
18 regards to John and his reputation for judgment,  
19 peacefulness, and for assessing situations and  
20 levels of threat?

21 A. Yeah. I think I'd like to start off with  
22 a story that continues to haunt me to a certain  
23 degree. And it's something that I've always --

24 MR. ITZEN: Well, Judge, I'm going  
25 to object at this point. It's nonresponsive.

1                   THE COURT: Yeah, I don't think a  
2 story would be responsive to this question. And  
3 so I think maybe it would call for a "yes" or "no"  
4 response initially, so I'll sustain.

5           Q.     (BY MR. LOW) Sir, did you have an  
6 opportunity to observe how John behaved in combat?

7           A.     Not on a particular mission, but in  
8 transit between missions, yes.

9           Q.     And what did you observe during that  
10 period of time?

11          A.     John was just always known as having --  
12 as always being calm under pressure. He was  
13 somebody that didn't seek the spotlight but just  
14 got the job done. He was somebody that did all of  
15 the necessary work to help the team. I can speak  
16 to it -- can I speak to a particular situation  
17 actually?

18          Q.     Go ahead.

19          A.     So in between, once we arrived and we  
20 were operating out of a London -- I'm sorry, out  
21 of a UK base south of Basra in Iraq. And we just  
22 got there, and we were doing convoys to pick up  
23 supplies. I was in the back. So we were driving  
24 through these villages to pick up these supplies,  
25 and I was in the back of this Hummer with John.

1           Threat level wasn't high, but we were  
2 still watching our rear, security. And we crossed  
3 this -- I remember going over this dirt bridge,  
4 and then we took a right down this road. And we  
5 went down the road about a hundred meters, and we  
6 saw these kids come out in the road -- what looked  
7 to be kids. And one of them had a gun in the air  
8 or what appeared to be a -- it could have been a  
9 toy. It appeared to be a gun.

10           Now, the rules of engagement were,  
11 especially at that time, that was "OIF I," were  
12 that if you're engaged with a threat or you think  
13 that there's an enemy that's going to attack or  
14 shows their weapon, woman, child, adult, you're  
15 allowed to engage, because women, children, and  
16 adults were shooting at us. They were shooting at  
17 us during the invasion, they were shooting at us  
18 after, so I was nervous.

19           The kid came out, the young boy came out  
20 waving the gun. We both -- I remember bearing  
21 down and locking in. And I remember John saying,  
22 "Easy, easy, easy" beside me. "Easy." And this  
23 is a matter of, like, five or six seconds. And  
24 then we noticed the kids put the gun down and they  
25 ran back behind the house and it was over. And



1 actually really didn't think all that much about  
2 it until later. But what I realize what that  
3 shows about John -- and it's just who he was, it  
4 was his reputation in the team, was he showed an  
5 enormous amount of professionalism, of judgment,  
6 of control, and of tact while operating as a Recon  
7 Marine.

8 Q. In some of the worst conditions?

9 A. In some of the worst conditions.

10 Q. Would you share with the jury your level  
11 of trust in John and his judgments and decisions  
12 with regards to you in your life?

13 A. Well, I mean, I think given that  
14 experience, he said "easy, easy," I stopped. I  
15 was -- I was at ease. So I would have given my  
16 life for him. I mean, he's somebody that I would  
17 honestly lay down for, no question about it.

18 Q. You trust him that much?

19 A. That's right.

20 Q. Thank you, sir.

21 MR. BLONIGEN: Your Honor --

22 THE COURT: Thank you, Counsel.

23 MR. BLONIGEN: -- may we approach?

24 There's a legal issue that's arisen given the last  
25 statements about character.

1 THE COURT: Yes, you may.

2 (The following proceedings were  
3 held at the bench between the Court and counsel,  
4 out of the hearing of the jury:)

5 MR. BLONIGEN: Judge, under Wyoming  
6 law, even if something --

7 THE COURT: Go ahead.

8 MR. BLONIGEN: Under Wyoming law,  
9 Judge, once they open the issue of character,  
10 you're allowed to inquire into other convictions  
11 and arrests, even if they have no knowledge of  
12 them or if they do have knowledge of the details  
13 of them. Counsel asked a very specific question,  
14 what was his reputation for peacefulness. That  
15 was the word used, and it's conduct, Judge.

16 We have multiple Wyoming cases that  
17 support this, including *McDowell versus State*,  
18 which just came out this year; *Taul versus State*,  
19 T-A-U-L. In *Taul*, Judge, they specifically uphold  
20 the fact that once a person testifies to conduct  
21 generally, he can be impeached on specific  
22 incidents of bad conduct. The fact that you rule  
23 it out under 404(b) is not relevant in the  
24 situation. In *Trujillo versus State*, there was  
25 404(b) evidence that hadn't been noticed, and the

1 prosecutor inquired into that after character was  
2 opened. And the Court held, in fact, that's  
3 right, it's no longer under 404(b).

4 But given your ruling on this and in the  
5 assault, he was in the Marine Corps at the time.  
6 He also committed this assault and was -- I note  
7 that, Your Honor, there is a conviction on this.  
8 I think it was noted in the other decision letter  
9 there was not, but we have a conviction. The  
10 inquiry into this matter has now been opened, but  
11 given the Court's previous ruling, we didn't think  
12 we should address it without first approaching the  
13 Court.

14 MR. LOW: Keep in mind, Your  
15 Honor --

16 THE COURT: Is that the only  
17 specific incident that you want to make inquiry  
18 about?

19 MR. BLONIGEN: Also, Your Honor, he  
20 talked about his conduct as a Marine. He was  
21 demoted for bad conduct in the Marines, including  
22 a DUI. He was busted down from sergeant to  
23 corporal. He has presented this defendant, his  
24 character being that as the model Marine. And we  
25 would also inquire into his difficulties with

1 that, his difficulties with his performance  
2 reports, which were at times quite poor. But we  
3 think these have been opened, Your Honor, by the  
4 inquiry here. Given the Court's previous ruling,  
5 we weren't going to just throw them out there. We  
6 wanted to approach the Court.

7 MR. LOW: All these things are after  
8 this gentleman knew him and served with him. So  
9 all of his information came during the time they  
10 spent together, and all of this is after that.

11 MR. BLONIGEN: Well, that would  
12 presume that he has to be aware of these things  
13 for character, Your Honor. He does not under the  
14 case law.

15 MR. LOW: He can't, it hasn't  
16 happened yet. It's impossible.

17 MR. BLONIGEN: No, he doesn't have  
18 to have knowledge of it.

19 MR. LOW: But they haven't yet --  
20 you're going to ask him about something that  
21 happened in the future. That's ridiculous.  
22 That's why I was specific.

23 MR. BLONIGEN: Well, 2002 is when  
24 the assault was, Judge, when he cracked the guy in  
25 the head with the beer bottle. He was in the

1 Marine Corps, and that fits the time frame the  
2 witness talked about. And as far as the other  
3 things, Judge, the fact that they're not within  
4 the time frame he knew him is not the point.

5 The *Taul* case says while impeachment on  
6 relevant conduct goes to the opinion expressed,  
7 not, one, whether the person knows about it or not  
8 or whether it's contemporaneous with, but whether  
9 it goes to the character trait referenced.

10 THE COURT: How do you spell *Taul*?

11 MR. BLONIGEN: T-A-U-L, Judge.

12 And it is at 862 P.2d 649, specifically  
13 it looks like paragraphs 5 through 10.

14 *McDowell* is another very good case that's  
15 just from this year. I'll get that cite in a  
16 moment. But *Trujillo*, which I cited, 880 P.2d  
17 575; *DeWitt versus State*, 917 P.2d 1144.

18 THE COURT: Here's what I'm going to  
19 do.

20 MR. BLONIGEN: And last one is  
21 *McDowell*, 318 P.3d 352. There are other cases as  
22 well, Your Honor, but those are the primary ones.

23 THE COURT: I think I understand the  
24 situation that's presented. And if it's not going  
25 to be an impossible situation for Mr. Lehman, I'd

1 propose we bring him back first thing in the  
2 morning, and it will give me a chance to take a  
3 look at this. Any feel as to whether he could  
4 stay over?

5 MR. LOW: He's available.

6 THE COURT: Okay. We'll do that.

7 MR. BLONIGEN: Okay, Judge.

8 THE COURT: And here's my pretty  
9 strong feeling. I thought through all of this  
10 404(b), through all of this character evidence  
11 presentations, that there's going to be an  
12 argument about opening the door. And I quite  
13 honestly gave some thought to it; but I couldn't  
14 come up with, in my mind, how I was going to  
15 address that. So now we have a specific  
16 situation, and I think I should -- I think it's  
17 important enough that I should take a look at it.  
18 We'll take it up at 9:00 in the morning sharp.

19 MR. BLONIGEN: Okay, Judge. You  
20 know, I don't -- where are we at in our case, I  
21 mean, tomorrow is the last day the jury can work.  
22 I think we gotta get some better idea where we're  
23 going here.

24 MR. LOW: Sure. That's a good  
25 question. I'm done.

1 MR. BLONIGEN: You're done?

2 MR. LOW: I was going to call  
3 another witness, but he's not here yet. So, I  
4 mean, the only thing I can do is ask for a recess  
5 until tomorrow morning; and I might put one more  
6 on. He's coming in tonight because he got his  
7 flight canceled. But if I finish right now, I  
8 don't have another witness to call.

9 MR. BLONIGEN: But is the defendant  
10 going to testify is my question because --

11 MR. LOW: Haven't decided yet. I  
12 can give you an idea how long it would take. It  
13 ain't going to take that long. Your cross might;  
14 but, you know, how much do I really have to ask  
15 him about? So it would go fast.

16 THE COURT: How about we do this.  
17 How about we do an informal jury conference right  
18 now. For Defense counsel -- I think both Mr.  
19 Blonigen and Mr. Itzen are familiar, what we  
20 usually do is, off the record, just review all of  
21 the proposed instructions. And then tomorrow or  
22 whenever we get to the end of the case, we can  
23 have a formal conference. And hopefully by then,  
24 I'll have a packet ready, and we can have any  
25 objections, declined instructions, and handle it

1       that way.

2                   MR. NEWCOMB: I could not hear.

3                   MR. LOW: I got it. I'll tell you.

4       Can I ask one last question? Are you going to  
5       have a rebuttal case; and, if so, can you tell me  
6       how many so I can prepare?

7                   MR. BLONIGEN: The only rebuttal --  
8       well, I had two rebuttals briefly is Mr. Ellis to  
9       accomplish some of the things I was asking, his  
10      would be very brief, and then the police officer  
11      from Green River who investigated this case.

12                   MR. LOW: Understood.

13                   (The following proceedings were  
14      held in open court, in the presence of the jury:)

15                   THE COURT: After conference at the  
16      bench, Mr. Lehman, we're going to allow you to be  
17      excused for the day. You're free to go. But  
18      we're going to ask you to be back here at nine  
19      o'clock tomorrow morning. I know that's probably  
20      a little bit of an inconvenience, but your  
21      patience will be appreciated. So you're free to  
22      go. We'll recall you first thing tomorrow  
23      morning.

24                   Ladies and gentlemen, one of the things  
25      that we talked about was whether we're on



1 schedule. It appears that we're at least close.  
2 I hate to make any promises, but we hope that the  
3 case can go to the jury tomorrow. I'm going to  
4 meet with the attorneys directly concerning jury  
5 instructions in the case. We still have some  
6 evidence to go, so I'll ask that you be back at  
7 nine o'clock tomorrow morning. We can start again  
8 at nine o'clock tomorrow morning.

9 As we break, please keep in mind the  
10 rules and admonitions. And thank you so much for  
11 another very long day of service. You are excused  
12 and free to go.

13 And counsel, you can meet with Ms. Koski,  
14 and she'll take you back to chambers for a jury  
15 instruction matter.

16 MR. LOW: Yes, Your Honor.

17 (The trial proceedings  
18 recessed at 4:49 p.m., December 22, 2014.)  
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C E R T I F I C A T E

I, JONI L. CHANEY, Official Court Reporter within and for the Seventh Judicial District Court of Wyoming, do hereby certify that I reported by machine shorthand the proceedings contained herein and that the foregoing 1841 pages constitute a full, true, and correct transcript.

Dated this 8th day of June, 2015, at Casper, Wyoming.

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JONI L. CHANEY, RPR  
Official Court Reporter