

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 VII of VII

Page 1843 through Page 1999

9:00 a.m., Tuesday  
December 23, 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  
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  and  
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ALSO PRESENT:            The Defendant

## INDEX

	<u>PAGE</u>
Voir Dire Examination by Mr. Blonigen	44
Voir Dire Examination by Mr. Low	94
Opening Statement by Mr. Blonigen	184
Opening Statement by Mr. Low	214

INDEX TO WITNESSES

<u>FOR THE STATE:</u>	<u>PAGE</u>
<b>ZACK MILLER</b>	
Direct Examination by Mr. Itzen	257
Cross-Examination by Mr. Low	264
Redirect Examination by Mr. Itzen	280
<b>MARK DAIGLE</b>	
Direct Examination by Mr. Itzen	311
Cross-Examination by Mr. Low	315
<b>SEAN ELLIS</b>	
Direct Examination by Mr. Itzen	317
Cross-Examination by Mr. Low	337
Redirect Examination by Mr. Itzen	385
Recross-Examination by Mr. Low	388
<b>SONNY PILCHER</b>	
Direct Examination by Mr. Blonigen	405
Cross-Examination by Mr. Low	417
Redirect Examination by Mr. Blonigen	460
Recross-Examination by Mr. Low	467
<b>ASHLEE LOGAN</b>	
Direct Examination by Mr. Itzen	475
Cross-Examination by Mr. Low	496
Redirect Examination by Mr. Itzen	551
<b>AARON SHATTO</b>	
Direct Examination by Mr. Blonigen	579
Cross-Examination by Mr. Low	625
Redirect Examination by Mr. Blonigen	671
Recross-Examination by Mr. Low	673
<b>DR. JOHN CARVER</b>	
Direct Examination by Mr. Blonigen	676
Cross-Examination by Mr. Low	712
Redirect Examination by Mr. Blonigen	732
Recross-Examination by Mr. Low	736

**ERVIN ANDUJAR**

Direct Examination by Mr. Itzen	744
Cross-Examination by Mr. Low	774
Redirect Examination by Mr. Itzen	812

**WESTY GUILL**

Direct Examination by Mr. Itzen	816
Cross-Examination by Mr. Low	831
Redirect Examination by Mr. Itzen	844

**AMBER HUDSON**

Direct Examination by Mr. Itzen	882
Cross-Examination by Mr. Low	889
Redirect Examination by Mr. Itzen	890

**JOHNNY TAYLOR**

Direct Examination by Mr. Blonigen	892
------------------------------------	-----

FOR THE DEFENDANT:PAGE**DR. JUDY MELINEK**

Direct Examination by Mr. Low	915
Cross-Examination by Mr. Blonigen	937
Redirect Examination by Mr. Low	961
Recross-Examination by Mr. Blonigen	970

FOR THE STATE:PAGE**JOHNNY TAYLOR**

Direct Examination (Resumed) by Mr. Blonigen	979
Cross-Examination by Mr. Low	984
Redirect Examination by Mr. Blonigen	1000

**CRYSTAL MIZE**

Direct Examination by Mr. Itzen	1009
Cross-Examination by Mr. Low	1020
Redirect Examination by Mr. Itzen	1047
Recross-Examination by Mr. Low	1049

**ELIZABETH TATTON**

Direct Examination by Mr. Itzen	1051
Cross-Examination by Mr. Low	1056
Redirect Examination by Mr. Itzen	1065

**KARA STERNER**

Direct Examination by Mr. Itzen	1068
Cross-Examination by Mr. Low	1075

**CHRIS SYVERSON**

Direct Examination by Mr. Itzen	1080
Cross-Examination by Mr. Low	1089
Redirect Examination by Mr. Itzen	1096

**JENNIFER CORMIER**

Direct Examination by Mr. Itzen	1100
Cross-Examination by Mr. Low	1107

**MITCHELL BAKER**

Direct Examination by Mr. Blonigen	1109
Cross-Examination by Mr. Low	1149
Redirect Examination by Mr. Blonigen	1181
Recross-Examination by Mr. Low	1185

**DAVID HULSHIZER**

Direct Examination by Mr. Blonigen	1214
------------------------------------	------

**JENNIFER MALONE**

Direct Examination by Mr. Blonigen	1229
Cross-Examination by Mr. Low	1243
Redirect Examination by Mr. Blonigen	1249

**KEVIN NORCROSS**

Direct Examination by Mr. Blonigen	1251
Cross-Examination by Mr. Low	1306
Redirect Examination by Mr. Blonigen	1340
Recross-Examination by Mr. Low	1346

**KATIE PRECIADO**

Direct Examination by Mr. Blonigen	1350
Cross-Examination by Mr. Low	1359
Redirect Examination by Mr. Blonigen	1370
Recross-Examination by Mr. Low	1372
Re-redirect Examination by Mr. Blonigen	1373

**JESUS HERMOSILLO**

Direct Examination by Mr. Blonigen	1374
Cross-Examination by Mr. Low	1388
Redirect Examination by Mr. Blonigen	1395
Recross-Examination by Mr. Low	1396

**AMANDA HERRON**

Direct Examination by Mr. Blonigen	1398
Cross-Examination by Mr. Low	1400

**JAMES MICHAEL MOORE**

Direct Examination by Mr. Itzen	1402
Cross-Examination by Mr. Low	1409
Redirect Examination by Mr. Itzen	1427
Recross-Examination by Mr. Low	1429

**LEAH INNOCCHI**

Direct Examination by Mr. Blonigen	1431
Cross-Examination by Mr. Low	1451
Redirect Examination by Mr. Blonigen	1452

**JENNIFER BRAMMEIER**

Direct Examination by Mr. Blonigen	1454
Cross-Examination by Mr. Low	1476
Redirect Examination by Mr. Blonigen	1476

**STEVEN NORRIS**

Direct Examination by Mr. Blonigen	1484
Direct Examination (Resumed) by Mr. Blonigen	1535
Cross-Examination by Mr. Low	1566
Redirect Examination by Mr. Blonigen	1635
Recross-Examination by Mr. Low	1644

**DR. JOHN CARVER**

Direct Examination by Mr. Blonigen	1650
Cross-Examination by Mr. Low	1653

State Rests	1655
-------------	------

Defense Motion by Mr. Newcomb	1656
Response by Mr. Blonigen	1657
Rebuttal by Mr. Newcomb	1659
The Court	1659

<u>FOR THE DEFENDANT:</u>	<u>PAGE</u>
---------------------------	-------------

**RIA ENGBRETSSEN**

Direct Examination by Mr. Low	1664
Cross-Examination by Mr. Blonigen	1674
Redirect Examination by Mr. Low	1676

**JOHN DAILY**

Direct Examination by Mr. Low	1679
Cross-Examination by Mr. Blonigen	1764
Redirect Examination by Mr. Low	1796
Recross-Examination by Mr. Blonigen	1802

**KEVIN ELKIN**

Direct Examination by Mr. Low	1809
Cross-Examination by Mr. Itzen	1816

**SCOTT LEHMAN**

Direct Examination by Mr. Low	1821
Cross-Examination by Mr. Itzen	1879
Redirect Examination by Mr. Low	1886

**SEAN ELLIS**

Direct Examination by Mr. Low	1890
Cross-Examination by Mr. Blonigen	1894
Defense Rests	1897

## REBUTTAL EVIDENCE

FOR THE STATE:PAGE**SEAN ELLIS**

Direct Examination by Mr. Blonigen	1898
Cross-Examination by Mr. Low	1901
Redirect Examination by Mr. Blonigen	1902

**BRAD HALTER**

Direct Examination by Mr. Itzen	1904
Cross-Examination by Mr. Low	1909
Redirect Examination by Mr. Itzen	1910

Jury Instruction Conference	1913
-----------------------------	------

Closing Argument by Mr. Blonigen	1926
Closing Argument by Mr. Low	1953
Rebuttal Argument by Mr. Blonigen	1983

Verdict	1991
---------	------

INDEX TO EXHIBITS

<u>FOR THE STATE:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
100 - Known DNA Sample	1461	1462
101 - Baldwin's T-Shirt	605	607
102 - Photo: Contents of Wallet	581	582
103 - Photo: Baldwin Car	601	601
104 - Photo: Baldwin Car	601	601
105 - Photo: Baldwin-Upper Torso	583	584
106 - Photo: T-Shirt with Bullet Hole	583	584
107 - Photo: Baldwin-Palm	591	591
108 - Photo: Baldwin-Back of Hand	591	591
109 - Photo: Baldwin-Forearm/Wrist	591	591
110 - Photo: Baldwin-Forearm	591	591
111 - Photo: Baldwin-Hand and Wrist	596	597
112 - Photo: Baldwin-Arm	596	597
113 - Photo: Baldwin-Exit Hole	596	597
114 - Photo: Baldwin-Lower Torso	596	597
115 - Photo: Baldwin-Entry Wound	609	609
116 - Photo: Baldwin-Right Hand	620	620
117 - Photo: Baldwin-Upper Torso	620	620
118 - Photo: Baldwin-Exit Wound	620	620
119 - Autopsy Photo	620	620
120 - Photo: Baldwin-Upper Arm	620	620
121 - Photo: Baldwin-Right Hand	620	620
122 - Photo: Baldwin	620	620



124 - Photo: Baldwin and Body Bag	672	673
200 - Known DNA Sample	1461	1462
201 - Gray Jacket	1217	1217
202 - Gunshot Residue Kit	1233	1243
203 - Gunshot Residue Kit	1470	1470
204 - Firearm	1284	1285
205 - Clip from Firearm	1285	1286
206 - Spare Clips	1291	1291
207 - Video of Stop	900	900
208 - Photo: Knospler Car at Stop	1116	1117
209 - Photo: Knospler Car at Stop	1116	1117
210 - Photo: Knospler Car-Door Frame	1116	1117
211 - Photo: Knospler Car-Interior	1116	1117
212 - Photo: Knospler Car-Interior with Backpack	1123	1123
213 - Photo: Knospler Car-Backpack	1123	1123
214 - Photo: Knospler Car	1127	1128
215 - Photo: Knospler Car	1127	1128
216 - Photo: Knospler-Front	335	336
217 - Photo: Knospler-Head	1131	1133
218 - Photo: Knospler-Front	1131	1133
219 - Photo: Knospler-Back	1135	1135
220 - Photo: Knospler-Left Side	1135	1135
221 - Photo: Knospler-Right Side	1135	1135
222 - Photo: Knospler-Left Side	1138	1138
223 - Photo: Knospler-Left Hand	1138	1138

224 - Photo: Knospler-Pants	1136	1137
225 - Photo: Knospler-Right Palm	1140	1148
226 - Photo: Knospler-Right Hand	1140	1148
227 - Photo: Knospler-Left Palm	1138	1138
228 - Photo: Knospler-Left Hand	1138	1138
229 - Photo: Knospler-Back	1140	1141
230 - Photo: Knospler-Front	1140	1141
232 - Photo: Knospler	1131	1133
233 - Spent Cartridges	1287	1287
234 - Photo: Gun in Packaging	610	611
300 - CD: Officer Miller Video	262	263
301 - CD: Racks Video	320	320
302 - Racks Photo: East End	1342	1343
303 - Racks Photo: Front	1258	1259
304 - Racks Photo: West End	1257	1259
305 - Racks Photo: Front Door	1257	1259
306 - Racks Photo: Front Door	1258	1259
307 - Racks Photo: Parking Lot	1353	1353
308 - Racks Photo: Parking Lot	1353	1353
309 - Racks Photo: Scene without Body and Car	1254	1255
310 - Racks Photo: Parking Lot	1353	1353
311 - Racks Photo: Parking Lot	1258	1259
312 - Racks Photo: Parking Spot	1272	1272
313 - Racks Photo: Body at Scene	1253	1253

314	- Racks Photo: Body with Tarp Lifted	1269	1269
315	- Racks Photo: Body without Tarp	827	828
316	- Racks Photo: Hand	1269	1269
317	- Racks Photo: Forearm	1269	1269
318	- Racks Photo: Scene	1342	1343
319	- Racks Photo: Tire Tracks and Footprints	1357	1358
320	- Racks Photo: Glass	1266	1266
321	- Racks Photo: Glass and Footprints	1266	1266
322	- Racks Photo: Shovel with Glass	1266	1266
323	- Racks Photo: Shovel with Glass	1266	1266
324	- Racks Photo: Front of Truck	1381	1381
325	- Racks Photo: Dent in Truck	1381	1381
326	- Racks Photo: Dent in Truck with Measurement	1381	1381
327	- Racks Photo: Dent in Truck with Measurement	1381	1381
328	- Racks Photo: Dent in Truck with Measurement	1381	1381
329	- CD: 911 Call #1	490	492
330	- CD: 911 Call #2	887	888
331	- Daytime Racks Photo: Exterior	406	406
332	- Daytime Racks Photo: Exterior	406	406

333 - Daytime Racks Photo: Parking Lot	406	406
334 - Daytime Racks Photo: Exit	406	406
335 - Daytime Racks Photo: West View of Parking Lot	406	406
336 - Daytime Racks Photo: East View of Parking Lot	406	406
337 - Racks Photo: Bar Area	1011	1011
338 - Racks Photo: Pool Table Area	482	483
341 - Racks Photo: Pool Table Area	761	761
343 - Racks Photo: Bar Area	745	746
344 - Racks Photo: Front Bar Area	750	751
345 - Racks Photo: Body with Tarp	1342	1343
346 - Racks Photo: Footprints and Glass	1780	1781
400 - Gunshot Residue Kit: Headliner	1238	1243
401 - Gunshot Residue Kit: Weather Stripping	1238	1243
402 - Gunshot Residue Kit: Window Frame	1238	1243
403 - Pill Bottle	1302	1303
404 - Rolling Papers	1303	1303
405 - Photo: Knospler Car	492	493
406 - Photo: Knospler Car Passenger Side	1274	1275
407 - Photo: Knospler Car Driver Side	1274	1275
408 - Photo: Knospler Car Back Seat	1277	1278

409	- Photo: Knospler Car Interior with Glass	1277	1278
410	- Photo: Knospler Car Driver Seat with Glass	1277	1278
411	- Photo: Knospler Car Interior Door	1277	1278
412	- Photo: Knospler Car Interior Front Seats	1277	1278
413	- Photo: Knospler Car Gun in Backpack	1281	1282
414	- Photo: Knospler Car Gun in Backpack	1281	1282
415	- Photo: Gun as Found	1281	1282
416	- Photo: Gun	1288	1288
417	- Photo: Gun Close-up	1288	1288
418	- Photo: Gun Barrel Close-up	1288	1288
419	- Photo: Clips in Place in Backpack	1290	1290
420	- Photo: Extra Clips	1290	1290
421	- Photo: Knospler Car Front Seat without Backpack	1292	1293
422	- Photo: Knospler Car Console	1292	1293
423	- Photo: Knospler Car	1295	1295
424	- Photo: Knospler Car Glass in Driver Door Window	1295	1295
425	- Photo: Knospler Car Window Frame with Marker	1295	1295
426	- Photo: Knospler Car Collection of GSR	1298	1299
427	- Photo: Knospler Car Collection of GSR	1298	1299

428 - Photo: Knospler Car Collection of GSR	1298	1299
429 - Photo: Knospler Car Collection of GSR	1298	1299
430 - Photo: Knospler Car Collection of GSR	1298	1299
431 - Photo: Rolling Papers	1304	1304
432 - Photo: Knospler Car Driver Side Door	1305	1305
433 - Photo: Knospler Car Inside Driver Door	1305	1305
434 - Photo: Knospler Car Interior	1385	1385
435 - Photo: Knospler Car Areas of Swabs	1385	1385
436 - Photo: Areas with Lumalight	1385	1385
437 - Photo: Knospler Car Swabbing	1385	1385
438 - Photo: Knospler Car Pill Bottle	1304	1304
439 - Racks Photo: Parking Space with Footprints	1261	1261
440 - Photo: Reenactment	1777	1778
441 - Photo: Reenactment	1777	1778
442 - Photo: Reenactment	1777	1778
443 - Photo: Reenactment	1777	1778
444 - Photo: Reenactment	1777	1778
445 - Photo: Reenactment	1777	1778
446 - Photo: Reenactment	1777	1778
447 - Photo: Reenactment	1777	1778

448 - Photo: Knospler Car with Measurement	1777	1778
449 - Photo: Finger with Measurement	1777	1778
502 - Photo: Firearm	1490	1490
503 - Photo: Firearm	1490	1490
504 - Photo: Front of T-Shirt	1500	1500
505 - Photo: Back of T-Shirt	1500	1500
506 - Photo: T-Shirt Entry Hole	1500	1500
507 - Photo: T-Shirt Entry Hole	1500	1500
508 - Photo: Contact Test Firing	1549	1549
509 - Fabric: 6" Test Firing	1549	1549
510 - Photo: 6" Test Fire	1549	1549
511 - Fabric: 6" Test Pattern	1549	1549
512 - Photo: 18" Test Firing	1549	1549
513 - Fabric: 18" Test Fire	1549	1549
514 - Photo: 24" Test Firing	1549	1549
515 - Fabric: 24" Test Fire	1549	1549
517 - Photo: Back of Jacket	1435	1436
518 - Photo: Jacket with Markers	1437	1438
519 - Photo: Jacket with Markers	1437	1438
520 - Photo: Location of LI4	1444	1445
521 - Photo: Location of LI5 and LI6	1444	1445
522 - Photo: Jacket with Markers	1439	1440
523 - Photo: Close-up of LI9	1446	1453

524 - Photo: Back of Jacket with Markers	1446	1447
525 - Photo: Deputy Taylor's Shirt with Markers	1448	1449
526 - Photo: Deputy Taylor's Shirt with Markers	1448	1449
527 - Photo: Close-up of Shirt	1448	1449
528 - Photo: Close-up of Shirt	1448	1449
528 - Griess Test - Contact	1545	1546
529 - Griess Test - 6"	1545	1546
530 - Griess Test - 18"	1545	1546
531 - Griess Test - 24"	1545	1546
533 - Griess Test	1543	1543

FOR THE DEFENSE:

A - Diagram	365	366
B - Racks Photo: Parking Lot	369	370
C - Racks Photo: Parking Lot Front Doors	370	370
D - Photo: Body Bag and Seal	649	650
E - Photo: Body Bag	649	650
F - Photo: Body Bag	649	650
G - Photo: Body Bag and Seal	649	650
H - Photo: Body Bag and Seal	649	650
I - Photo: Body Bag and Seal	649	650
J - Photo: Placard	650	651
K - Photo: Baldwin Vehicle Trunk	661	662



L - Photo:	Baldwin Vehicle Interior	661	662
M - Photo:	Baldwin Vehicle Interior	661	662
N - Photo:	Baldwin Vehicle Interior	661	662
O - Photo:	Baldwin Vehicle Interior	661	662
P - Photo:	Baldwin Vehicle Interior	661	662
Q - Photo:	Baldwin-Forearm and Hand	722	722
R - Photo:	Baldwin-Hand and Forearm	722	722
S - Photo:	Baldwin-Hand	725	725
T - Photo:	Baldwin-Arm	730	730
U - Photo:	Reenactment	913	914
V - Photo:	Baldwin-Exit Wound	913	914
W - Photo:	Baldwin-Entry Wound	913	914
X - Photo:	Baldwin-Exit Wound	913	914
Y - Photo:	Baldwin-Entry Wound	913	914
Z - Photo:	Baldwin	913	914
AA - Photo:	Knospler Car Interior	1162	1309
BB - Photo:	Knospler Car Interior	1162	1309
CC - Photo:	Knospler Car Interior	1162	1309
DD - Photo:	Knospler Car Back Seat	1162	1309
EE - Photo:	Knospler Car Back Seat	1162	1309
FF - Photo:	Knospler Car Interior Front	1162	1309
GG - Photo:	Knospler Car Interior Rear	1162	1309
HH - Photo:	Knospler-Feet	1172	1173
II - Photo:	Knospler-Shoe	1172	1173

JJ - Photo	1172	1173
KK - Photo: Knospler-Shoe Close-up with Glass	1172	1173
LL - Photo: Money	1172	1173
MM - Photo: ID Cards, Credit Cards, Cash, Lip Balm	1172	1173
NN - Photo: Glass on Table	1172	1173
OO - Photo: Glass on Table	1172	1173
PP - Photo: Glass on Table	1172	1173
QQ - Photo: Glass on Table	1172	1173
RR - Racks Photo: Outside	1309	1309
SS - Racks Photo: Outside	1309	1309
TT - Racks Photo: Outside	1309	1309
UU - Racks Photo: Outside	1309	1309
VV - Racks Photo: Outside	1309	1309
WW - Racks Photo: Outside	1309	1309
XX - Racks Photo: Outside	1309	1309
YY - Racks Photo: Tire Tracks	1309	1309
ZZ - Racks Photo: Outside	1309	1309
A1 - Racks Photo: Outside	1309	1310
A2 - Racks Photo: Outside	1309	1310
A3 - Racks Photo: Outside	1309	1310
A4 - Racks Photo: Outside	1309	1310
A5 - Racks Photo: Outside	1309	1310
A6 - Racks Photo: Outside	1309	1310
A7 - Racks Photo: Outside	1309	1310

A8 - Racks Photo:	Outside	1309	1310
A9 - Racks Photo:	Parking Lot	1309	1310
A10 - Racks Photo:	Parking Lot	1309	1310
A11 - Racks Photo:	Parking Lot	1309	1310
A12 - Racks Photo:	Parking Lot	1309	1310
A13 - Racks Photo:	Parking Lot and Front Doors	1309	1310
A14 - Racks Photo:	Shovel with Glass	1309	1310
A15 - Racks Photo:	Baldwin at Scene	1309	1310
A16 - Racks Photo:	Baldwin at Scene	1309	1310
A17 - Racks Photo:	Baldwin at Scene	1309	1310
A18 - Racks Photo:	Tire Tracks with Measurement	1309	1310
A19 - Racks Photo:	Tire Tracks with Measurement	1309	1310
A20 - Racks Photo:	Tire Tracks with Measurement	1309	1310
A21 - Racks Photo:	Parking Space and Footprints	1309	1310
A22 - Racks Photo:	Tire Tracks	1309	1310
A23 - Racks Photo:	Tire Tracks	1309	1310
A24 - Racks Photo:	Tire Tracks	1309	1310
A25 - Photo:	Knospler Car Interior	1310	1310
A26 - Photo:	Knospler Car	1310	1310
A27 - Photo:	Knospler Car Driver Door	1310	1310
A28 - Photo:	Knospler Car Interior Front	1310	1310

A29	- Photo: Knospler Car Console	1310	1310
A30	- Photo: Knospler Car Console	1310	1310
A31	- Photo: Knospler Car Passenger Seat	1310	1310
A32	- Photo: Knospler Car Passenger Side	1310	1310
A33	- Photo: Backpack with Laptop	1310	1310
A34	- Photo: Knospler Car Floor	1310	1310
A35	- Photo: Knospler Car Console	1310	1310
A36	- Photo: Knospler Car Console	1310	1310
A37	- Photo: Knospler Car - Towel	1310	1310
A38	- Photo: Knospler Car Interior	1310	1310
A39	- Photo: Knospler Car Console, Part of Backpack	1310	1310
A40	- Photo: Knospler Car Emergency Brake, Console	1310	1310
A41	- Photo: Knospler Car Driver Seat with Glass	1310	1310
A42	- Photo: Knospler Car Driver Seat with Glass	1310	1310
A43	- Photo: Knospler Car Driver Seat with Glass	1310	1310
A44	- Photo: Knospler Car Driver Seat with Glass	1310	1310
A45	- Photo: Knospler Car Interior	1310	1310
A46	- Photo: Knospler Car Glass in Door	1310	1310
A47	- Photo: Knospler Car Glass in Door	1310	1310
A48	- Photo: Knospler Car Interior	1310	1310

B1 - Glass in Bag	1711	1712
F1 - Photos: Reenactment	1719	1807
LB2 - Photo: Knospler Car Glass with Hair	1310	1310
LB3 - Photo: Knospler Car Glass with Hair	1310	1310
LB4 - Photo: Knospler Car Glass with Hair	1310	1310
LB5 - Photo: Knospler Car Glass with Hair	1310	1310
LB6 - Photo: Knospler Car Glass with Hair	1310	1310

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

2 (The following proceedings were  
3 held in open court, out of the presence of the  
4 jury:)

5 THE COURT: Good morning. Thank you  
6 very much. Please be seated and court will come  
7 to order.

8 We convene in the State of Wyoming versus  
9 John Henry Knospler, Jr., in Criminal Action  
10 19548-B.

11 The jury is not present; but we do have  
12 the defendant, defense counsel, counsel for the  
13 State.

14 I had three matters pending that I wanted  
15 to take up quickly. As I think everybody knows, I  
16 hate to have the jury waiting for undue periods of  
17 time.

18 But, first of all, we had Defendant's  
19 Motion to Strike Testimony, Motion to Reconsider,  
20 and Renewal of Motion to Exclude Any Expert  
21 Testimony that Mr. Baldwin "Fell into Mr.  
22 Knospler's Car" After Being Shot. That was filed  
23 yesterday. I did have a chance to look at the  
24 motion and the request, and I note that there's a  
25 good summary of the positions that I think have

1 already been addressed relative to matters  
2 concerning Ms. Mize's testimony, Mr. Syverson's  
3 testimony, and the Court's previous rulings; and  
4 I'll deny the motions and requests. I don't see  
5 that I can do any better than what I previously  
6 attempted to do in addressing those matters at the  
7 outset and during the trial itself.

8           Second, we have Defendant's Exhibits G1  
9 and G2, the video clips of individuals breaking  
10 car windows. When I allowed those to be presented  
11 in the presence of the jury, I felt they were  
12 materials relied upon by the expert. They were a  
13 demonstrative aid as I see it, and so I think the  
14 use of the exhibits in connection with Mr. Daily's  
15 testimony was appropriate. But I do not see that  
16 that provides sufficient foundation for an actual  
17 receipt of Exhibits G1 and G2 into evidence. So I  
18 would decline receipt of those exhibits. I would  
19 ask that Defense counsel make sure we do have  
20 copies of G1 and G2 for the record so that that  
21 can be preserved.

22           The third matter was the request of the  
23 State of Wyoming for relief from the order or  
24 orders in limine concerning defendant's military  
25 discipline and questions relative to military

1 service and the incident of August 10, 2002, in  
2 Oceanside, California.

3 Any additional argument or position from  
4 either side relative to those requests, Mr.  
5 Blonigen?

6 MR. BLONIGEN: Just a couple points.  
7 I did read Mr. Newcomb's response, Judge. He  
8 claims it's remote. It's not remote to the time  
9 which the witness knew him. The 2002 period of  
10 time is within the same period of time or very  
11 close to when they were in the Marines together.  
12 Moreover, the case law establishes the witness  
13 need not be aware of the particular incident  
14 referred to. Secondly -- and the question was  
15 directly asked, Judge, what's his reputation for  
16 peacefulness. But, you know, Your Honor,  
17 that's -- remember in *Taul*, they ask about a  
18 shoplifting conviction that the witness knew  
19 nothing about.

20 The second thing, Judge, is the second  
21 issue is the military stuff. He was talking about  
22 his character as a Marine, Judge. This man has  
23 been demoted, he had an alcohol problem. To  
24 simply allow them to go forward and present to  
25 this jury that he was an untouched Marine is



1 really not within the facts.

2 THE COURT: Thank you very much.

3 From the Defense, Mr. Newcomb?

4 MR. NEWCOMB: Yes, Your Honor. The  
5 2002 incident in San Diego is too remote, and it  
6 is prejudicial. It is arguably within the Court's  
7 discretion to admit it. The DUI and the  
8 subsequent military discipline for that has no --  
9 is simply not relevant conduct as to Mr.  
10 Knospler's -- the testimony regarding his  
11 peacefulness. That he's a Marine, he's a Marine,  
12 and the testimony went to his peacefulness. And  
13 the DUI and the subsequent problems with that  
14 simply has no relevance to DUI any less than Mr.  
15 Baldwin's 18 convictions would have relevance to  
16 aggression. There's simply no basis.

17 THE COURT: Thank you very much.

18 I think, first of all, under Rule 405 on  
19 cross-examination, inquiry is allowable into  
20 relevant, specific instances of conduct. And it's  
21 a little bit challenging, as I see it, given the  
22 tremendous amount of case law we have on 404 and  
23 to some extent Rule 405 and how to deal with this  
24 particular situation. I don't think it is totally  
25 clear-cut because it still requires that they be

1 relevant and specific instances of conduct. Also,  
2 I have questions as to how you deal with the  
3 situation when you go through this 404(b)  
4 analysis, the three preliminary factors, the  
5 additional four or five factors, and then the  
6 additional three factors, and you try to analyze  
7 all that; and then you have a witness come in  
8 that, as argued by the State, may open the door to  
9 a different review. And it's very challenging as  
10 I see it, and I wish that the case law would make  
11 some black letter law that helps us out and makes  
12 things easier rather than more complicated.

13 But with those comments, the bottom line  
14 is I think I'm going to go with my sort of gut  
15 feeling on this. It does appear that much of  
16 Mr. Lehman's testimony relative to the character  
17 of Mr. Knospler was testimony related to military  
18 service, military training, military events; and  
19 he used that for a basis for his opinions relative  
20 to Mr. Knospler's judgment, assessing a situation,  
21 and decision-making ability. I think that given  
22 the testimony as I see it, inquiry should be  
23 allowed into specific instances that would relate  
24 to the military, the military discipline, and the  
25 matters of concern to his military service which

1 was foundational to those opinions.

2 Second, I'm going to decline the request  
3 to inquire into the Oceanside, California event.  
4 I think it's a really close call. I think that I  
5 could very easily allow that inquiry. And  
6 basically what it comes down to is the same  
7 evaluation under 404(b), which in large measure I  
8 think rests on what I see as a 403 analysis  
9 whether the prejudice outweighs the potential  
10 probative value, especially as to an event that  
11 may be a little bit removed in time, may be close,  
12 may be has some comparable characteristics to the  
13 argument of aggressiveness and violence; but I  
14 just think that the prejudicial effect outweighs  
15 the probative value. So like I say, I'm going  
16 with my gut on that. And at least as to this  
17 witness, I would preclude any inquiry as to that  
18 2002 Oceanside, California incident. So those  
19 will be my rulings.

20 Was there any other preliminary matters,  
21 Mr. Low?

22 MR. LOW: Yes, Your Honor.

23 THE COURT: You rose first.

24 MR. LOW: Thank you. I appreciate  
25 it. There'll be another witness, character

1 witness. His experience, again, will be with John  
2 in the military. He will tell you about a story  
3 where they were at Denny's and a guy tried to  
4 start some stuff with them, and John defused the  
5 whole thing and took them off, he broke it up.

6 I'm telling you this because if you heard  
7 that and then Mr. Blonigen again asks you to say  
8 that's opening the door, and you would be inclined  
9 to change what you just ruled, I want to know that  
10 ahead of time so I can do the right thing because  
11 I was under the impression that that stuff was out  
12 and that I wasn't allowed to inquire. Clearly,  
13 I'm wrong, so I want to make sure I'm clear this  
14 time before I go forward so that I know I  
15 understand what we're looking at if that testimony  
16 comes in. So are you able to share that with us,  
17 Your Honor?

18 THE COURT: I don't think I can give  
19 an advisory ruling without hearing the testimony  
20 and what's proposed. As I indicated, with respect  
21 to Mr. Lehman, since there was so much military  
22 testimony, that's why I am allowing for further  
23 inquiry as to specific instances as to the  
24 military discipline conduct side.

25 MR. LOW: All right, sir.

1 THE COURT: The other one, I don't  
2 know that I can tell you until I hear it.

3 MR. LOW: Well, if I -- are you able  
4 to tell me if I elicit any questions from the next  
5 witness on reputation for peacefulness, is that  
6 going to open the door with regards to the 2002,  
7 you know --

8 THE COURT: I would think so.

9 MR. LOW: Okay. That's -- I  
10 appreciate that.

11 THE COURT: I'm not going to give  
12 you an absolute "yes" or "no."

13 MR. LOW: Thank you. I appreciate  
14 that.

15 Lastly, it's my understanding that now  
16 the question that Mr. Blonigen or questions that  
17 he's allowed to ask with regards to the military  
18 discipline and so forth goes along the line of  
19 have you heard -- because the question to the  
20 witness by me was for reputation for peacefulness  
21 and to the military. So I don't want to object a  
22 lot; I just want to make sure I'm doing the right  
23 thing. Is there a limit that you're aware of with  
24 regards to the way the question Mr. Blonigen is  
25 going to ask needs to be phrased because I'm under

1 the impression there is, but clearly I've been  
2 wrong before.

3 THE COURT: I don't think I can jump  
4 in there either. I think I'll have to hear the  
5 question or questions -- that is the one question  
6 that I think in case law they have reviewed, do  
7 you have any knowledge of this or have you heard  
8 of this specific incident.

9 MR. LOW: And then along that line,  
10 is Mr. Blonigen allowed to inquire only or is he  
11 allowed to follow up and so forth and engage in a  
12 colloquy about their opinions on that? In other  
13 words, I'm under the impression he has to live  
14 with whatever answer he gets, that it's not  
15 allowed to get specific and argue back and forth  
16 on that.

17 THE COURT: If he doesn't know or  
18 have any knowledge of the military demotion or  
19 performance or DUI matter?

20 MR. LOW: Yes, sir.

21 THE COURT: Mr. Blonigen, what are  
22 you proposing there?

23 MR. BLONIGEN: Your Honor, Mr. Itzen  
24 will be doing the examination. I think the law is  
25 pretty clear that you can ask him did you know or

1 did you hear, but you have to accept their answers  
2 basically.

3 THE COURT: Correct.

4 MR. BLONIGEN: That's my  
5 understanding of the law.

6 THE COURT: But there may be  
7 follow-up questions under certain circumstances.

8 MR. BLONIGEN: Also, Judge, we'd add  
9 if they want to throw another witness in on this  
10 thing, they're ratcheting up the relevant value of  
11 this evidence. And as the *McDowell* case said, you  
12 can't simply open a door to something that  
13 otherwise is not admissible, such as the incident,  
14 the assault in Oceanside, and then pretend it  
15 didn't happen and present -- so if you're going to  
16 make that a center point of your -- yet another  
17 witness, I think it does increase the probative  
18 value of the evidence because it's being made more  
19 and more an issue in the case.

20 Secondly, Judge, Mr. Low told me this  
21 morning that his client was not testifying and  
22 that that had been decided. I'm a little  
23 concerned. I come in today, and I see them  
24 wheeling a paddle and a door -- a door to a car  
25 with a window into the conference room over here.

1 Now, I've had no notice of any experimentations or  
2 anything else, Your Honor, and that concerns me.

3 It concerns me particularly after, you  
4 know, some of the stuff we saw yesterday about  
5 suggesting we have jury views and things. So I  
6 would like the Court to address that with Mr. Low  
7 and what exactly the purpose of those items is.

8 THE COURT: Well, they're not in the  
9 courtroom at this time.

10 MR. BLONIGEN: They're not in the  
11 courtroom itself, no. But I can't -- and if  
12 they're for closing, Judge, they weren't items  
13 used in evidence in the case.

14 THE COURT: Mr. Low, demonstrative  
15 aids to be used during closing or during evidence?

16 MR. LOW: The door that Mr. Blonigen  
17 refers to is a car door from a 2007 Chevy Cobalt.  
18 The manuals and the specialists will tell you from  
19 2006 to 2010, it's the exact same door. So what  
20 am I using it for? Demonstrative only. That's  
21 it.

22 And then second of all, he also brought  
23 up the paddles. The paddles are Marine Corps  
24 paddles that you can only get if you're in Recon.  
25 And they're individually made for the person.



1 They reflect how they feel about you. Those are  
2 being brought in by a witness who is going to  
3 testify again about John's character with regards  
4 to how well he knows him. So that's -- that was  
5 demonstrative as well.

6 THE COURT: Okay.

7 MR. BLONIGEN: Your Honor, also, I  
8 would -- if Mr. Low can confirm the plan is not to  
9 have the client testify, I don't have to get into  
10 the next point. I don't know if you're ready to  
11 do that or not.

12 MR. LOW: If this is a good time,  
13 yes, sir.

14 MR. BLONIGEN: I had another issue  
15 to bring up if he was going to testify in *Harris*  
16 *versus New York*, Judge. If he's not going to  
17 testify, it's not an issue.

18 THE COURT: Well, let's take care of  
19 the advisement we need to do in the record. I'll  
20 be directing myself to you, Mr. Knospler. Do you  
21 understand you have a right to testify in this  
22 case if you wish to do so?

23 THE DEFENDANT: I do, Judge.

24 THE COURT: And you've had a chance  
25 to confer with your attorneys and give due

1 consideration to whether to testify or not?

2 THE DEFENDANT: I have.

3 THE COURT: You understand on the  
4 other side that you have an absolute right to  
5 remain silent and to not testify if you wish? And  
6 obviously, you've given some consideration to that  
7 also?

8 THE DEFENDANT: I understand, Your  
9 Honor.

10 THE COURT: You understand that it's  
11 a final decision, once you make that decision not  
12 to testify, it would be difficult to reopen the  
13 case or to have you change your mind?

14 THE DEFENDANT: I do, sir.

15 THE COURT: Okay. Are you making  
16 that decision to not testify in this case  
17 voluntarily and of your own free will?

18 THE DEFENDANT: I am.

19 THE COURT: And you have fully  
20 discussed your options with counsel, and you're  
21 making the decision based upon their advice but  
22 not -- you understand it's not their decision, but  
23 it is your decision?

24 THE DEFENDANT: I understand that,  
25 Your Honor.

1 THE COURT: Okay. And so you would  
2 confirm to the Court you would not -- you would  
3 exercise your right not to testify in this case --

4 THE DEFENDANT: I would.

5 THE COURT: -- today? Okay. Thank  
6 you very much.

7 MR. BLONIGEN: I think, Judge, if  
8 that's the case, then we're not going to have an  
9 impeachment issue. So *Harris versus New York* is,  
10 of course, whether you can use statements obtained  
11 in violation of *Miranda* in impeachment. And the  
12 Court says yes, but if he's not testifying, then  
13 it's not an issue.

14 THE COURT: That's exactly what  
15 crossed my mind when you mentioned the case law.  
16 Very good. Thank you very much.

17 Anything else?

18 MR. BLONIGEN: Judge, I know that --  
19 just to let you know what we're doing, we'll  
20 anticipate two very short rebuttal witnesses, the  
21 officer who was involved in Mr. Elkin's incident  
22 and Mr. Ellis, who would simply put in some of the  
23 measurements and things I referred to yesterday in  
24 my cross-examination of Mr. Daily. He will be  
25 also very, very short.

1 THE COURT: Thank you very much.

2 Well, let's have the jury panel brought  
3 in, then, Ms. Tuma.

4 THE CLERK: Yes, sir.

5 (The following proceedings were  
6 held in open court, in the presence of the jury:)

7 THE COURT: Good morning, everyone.  
8 Please be seated. Court will come back to order.

9 And let the record reflect that the 13  
10 members of the jury panel have now joined us, and  
11 Mr. Lehman has retaken the witness stand. So I  
12 believe we're in cross-examination of Mr. Lehman.

13 But first, let me confirm for the record,  
14 the parties ready to proceed here today, day seven  
15 of the trial proceedings, the State?

16 MR. BLONIGEN: Yes, sir.

17 THE COURT: And the Defense?

18 MR. LOW: Yes, Your Honor.

19 THE COURT: Okay. And we'd tell the  
20 ladies and gentlemen of the jury that apologies  
21 for being a little slow in getting started here  
22 today, but we did have matters we took up. So we  
23 have been working and we're prepared, I think, to  
24 move forward with the proceedings in this trial  
25 here this morning.

1                   So cross-examination, Mr. Itzen.

2                   MR. ITZEN: Yes, sir.

3                   CROSS-EXAMINATION

4 BY MR. ITZEN:

5           Q.     Good morning, sir.

6           A.     Good morning.

7           Q.     Now, on October 3rd of last year, you  
8 didn't see how much the defendant had to drink;  
9 correct?

10          A.     That's correct.

11          Q.     You didn't see how he interacted with  
12 other people that night?

13          A.     That's correct.

14          Q.     You didn't overhear his conversations  
15 with other folks that night; correct?

16          A.     That's correct.

17          Q.     You didn't see the defendant with  
18 marijuana that night?

19          A.     That's correct.

20          Q.     And you didn't see him get kicked out of  
21 the bar that night; correct?

22          A.     That's correct.

23          Q.     You would agree the only people that  
24 would have saw those things were the people that  
25 were there?

1 A. That's correct.

2 Q. And you weren't there when the officer  
3 asked him how his window got broke; correct?

4 A. That's correct.

5 Q. And you weren't there when the officer  
6 smelled the marijuana; correct?

7 A. That's correct.

8 Q. And you weren't there to hear him say he  
9 wasn't in a fight that night; correct?

10 A. Correct.

11 Q. In fact, the only person that would have  
12 heard those things would have been the officer;  
13 correct?

14 A. I can't speak to that.

15 Q. In fact, you had no interactions with the  
16 defendant on October 3rd of last year?

17 A. That's correct.

18 Q. Where were you October 3rd of last year,  
19 sir?

20 A. I was in Philadelphia at business school.

21 Q. Not in Casper?

22 A. That's correct.

23 Q. In fact, when was the last time you'd  
24 seen the defendant prior to October 3rd?

25 A. I saw him at a buddy and teammate of

1       ours, Matt Compton's wedding. Would have been  
2       August of 2011, I believe.

3           Q.     All right. Almost two-plus years;  
4       correct?

5           A.     That's right.

6           Q.     Now, you talked about your experiences in  
7       the Marine Corps. The Marine Corps taught you  
8       about guns; correct?

9           A.     Sure.

10          Q.     And they taught you about gun safety;  
11       correct?

12          A.     Correct.

13          Q.     And they taught you about making  
14       decisions when handling a gun?

15          A.     That's correct.

16          Q.     Now, the Marine Corps didn't teach you to  
17       handle guns when you were drunk; correct?

18          A.     No.

19          Q.     They didn't teach you about handling guns  
20       after using controlled substances?

21          A.     No.

22          Q.     In your experience in life, people lose  
23       the ability to clearly think when they're  
24       drinking; correct?

25          A.     Could be different for different people,

1 but yeah, generally.

2 Q. When people are drinking, they may not be  
3 able to accurately perceive things; correct?

4 A. I'm not sure. It depends on the level of  
5 drinking I would imagine.

6 Q. You would agree at some level, you're not  
7 able to accurately perceive things?

8 A. At an extremely heavy level of drinking,  
9 I would assume that yeah, there's some impact  
10 there. I think, again, it depends on the person.

11 Q. And when you use a gun, you got to  
12 accurately perceive events, don't you?

13 A. I'm sorry?

14 Q. When you're using a gun, you have to  
15 accurately perceive the events that you're looking  
16 at?

17 A. The best that you can.

18 Q. And alcohol doesn't help that, does it?

19 A. No, I wouldn't say helps.

20 Q. When you use a gun, you have to be able  
21 to think clearly; correct?

22 A. I don't know if you have to -- you have  
23 to think clearly when you use a gun. I mean,  
24 you --

25 Q. Those are some of the principles the



1 Marine Corps taught you; correct?

2 A. To be clearheaded when you use a gun or  
3 just to make the right judgment when you use a  
4 gun?

5 Q. Yes, sir.

6 A. Sure. We assess threats, sure.

7 Q. And you'd agree it's not a good idea to  
8 handle firearms when you're drunk?

9 A. Again, depends on the situation.

10 Q. And, in fact, the Marine Corps didn't let  
11 you get drunk and go use firearms; correct?

12 A. In the Marines, we didn't -- they didn't  
13 encourage us to drink and go use weapons.

14 Q. Correct. Because oftentimes, mistakes  
15 happen; correct?

16 A. Yeah. But if I was threatened with my  
17 life --

18 Q. Well, no, sir. Just hang on. Mistakes  
19 happen; correct?

20 A. I guess they could happen if you were  
21 drinking or if you weren't drinking.

22 Q. Now, you talked about the defendant in  
23 the military; correct?

24 A. I did.

25 Q. Were you aware he got demoted?

1 A. Yeah, I did hear about that.

2 Q. Got demoted from a sergeant down to a  
3 corporal, I believe; correct?

4 A. Yeah, I did hear about that.

5 Q. And that was in 2008?

6 A. Sounds about right.

7 Q. Now, were you also aware that he had an  
8 Article 86 filed against him for unauthorized  
9 absences?

10 A. I was not actually aware of that.

11 Q. Were you aware of an Article 91  
12 proceeding against the defendant for failure to  
13 cooperate?

14 A. No. But I've heard of other Marines  
15 getting --

16 Q. Sure. But you didn't know that about  
17 him?

18 A. No, not that exact one.

19 Q. Were you aware of an Article 92, failure  
20 to follow a direct order?

21 A. As a result of the NJP?

22 Q. I believe so, sir.

23 A. I heard something about the NJP, yeah.

24 Q. And an Article 117 as well?

25 A. I'm not sure what that is.

1 Q. But you've never heard about that;  
2 correct?

3 A. Not that article, no.

4 Q. Now, were you aware of his performance  
5 reviews?

6 A. Not exactly, no.

7 Q. And you wouldn't know if they were poor  
8 performance reviews or not?

9 A. I think we all got poor performance  
10 reviews from time to time. No, I was not aware of  
11 exact poor performance reviews.

12 MR. ITZEN: Your Honor, if I can  
13 just have a moment.

14 THE COURT: Yes.

15 Q. (BY MR. ITZEN) My final question for  
16 you, sir, were you aware the defendant was written  
17 up for using poor judgment while drinking by his  
18 superiors?

19 A. I was aware of an alcohol-related  
20 incident sometime in the Marine Corps by him, yes.

21 MR. ITZEN: Thank you for your time.

22 THE WITNESS: Sure.

23 THE COURT: Thank you, Counsel.

24 Redirect examination.

25 MR. LOW: Thank you.

## 1 REDIRECT EXAMINATION

2 BY MR. LOW:

3 Q. What does NJP stand for?

4 A. I can't even remember. It's been ten  
5 years for me, so.6 Q. Does the phrase nonjudicial punishment  
7 mean anything to you?

8 A. Sure. Yes, it does.

9 Q. What is that, as far as you understand?

10 A. It can mean -- it's a penalty the Marines  
11 hand down for about anything. I feel like you  
12 could get an NJP for not tailoring your cammies  
13 the right way.14 Q. You ever hear of a thing called an  
15 Article 134?

16 A. I have not.

17 Q. They call it the general catchall.  
18 Remember that?

19 A. Yeah.

20 Q. And you can get an NJP because you showed  
21 up to formation late?

22 A. Sure.

23 Q. You can get an NJP because your gear  
24 locker wasn't straight?

25 A. That's right.

1 Q. You can get an NJP because you didn't  
2 clean your weapon right?

3 A. Yep.

4 Q. You can get an NJP because you left your  
5 weapon with your buddy and you went to use the  
6 head and you're never supposed to leave the weapon  
7 behind at any point?

8 A. Sure.

9 Q. You can get an NJP for being out in town  
10 and having too much alcohol?

11 A. That's exactly right.

12 Q. Even though civilians do nothing about  
13 it?

14 A. That's correct.

15 Q. There's a whole list of things you can  
16 get an NJP for?

17 A. There's a whole list. If you smile at  
18 somebody wrong, you get an NJP.

19 Q. Can you get an NJP because somebody above  
20 you gives you an order you think is illegal or  
21 improper but because you didn't carry it out, they  
22 get the power of judgment over you?

23 A. Absolutely.

24 Q. Nothing you can do about it?

25 A. That's right.

1           Q.     So I'm going to ask you to, in your  
2     opinion, from your experience, to judge John  
3     Knospler and inform these people of your  
4     experience with him over all the days you've known  
5     him and all the time you've known him.  What is  
6     that?

7           A.     Listen, we all make mistakes from time to  
8     time.  I've made plenty.  I think it's about --  
9     when you judge a person, I think it's about their  
10    body of work, not these discrete individual  
11    events.  When I look at Johnny, I look at the guy  
12    who when I was out in the field and couldn't get  
13    radio communication, it was cold, it was 4:00  
14    a.m., by myself in the rain, he came to my aid,  
15    tapped me on the shoulder and said, Hey, I got  
16    this, go get warm.  Not because John could get  
17    communication for me because he probably couldn't,  
18    it was almost impossible that night, but just  
19    because he knew I was in a bad spot and he wanted  
20    to help me.

21          Q.     Thank you.  I'm sorry.

22          A.     Also, this is the same Johnny who broke  
23    up a fight --

24                   MR. ITZEN:  Judge, I'm going to  
25    object.  This is nonresponsive.

1 THE COURT: Okay. Let's cut it off  
2 there. Would not be responsive to the last  
3 question, so I think it was covered, though.

4 MR. LOW: Thank you. Nothing  
5 further.

6 THE COURT: Okay. Anything -- hold  
7 up if you would, sir. Anything on recross?

8 MR. ITZEN: No, sir. Thank you.

9 THE COURT: Okay. Now you may step  
10 down. Thank you, Mr. Lehman. You're excused from  
11 this case.

12 Additional evidence, Mr. Low?

13 MR. LOW: Yes, sir. At this time,  
14 we would like to call Investigator Ellis to the  
15 stand.

16 THE COURT: You understand you're  
17 still under oath from earlier in the case?

18 THE WITNESS: I do, Your Honor.

19 THE COURT: Okay. Very good. Thank  
20 you. You may proceed.

21 SEAN ELLIS,  
22 called for examination by the Defense, being  
23 previously duly sworn, on his oath testified as  
24 follows:

25

## 1 DIRECT EXAMINATION

2 BY MR. LOW:

3 Q. Morning, sir.

4 A. Morning.

5 Q. Thank you. Is it true, sir, that you did  
6 a background investigation on Mr. Baldwin to see  
7 if, in fact, he had any convictions?

8 A. I did. I did a background investigation.

9 MR. BLONIGEN: Your Honor --

10 THE COURT: Okay.

11 MR. BLONIGEN: Your Honor, he's  
12 asking --

13 MR. LOW: Let's approach, then.

14 THE COURT: Please do.

15 (The following proceedings  
16 were held at the bench between the Court and  
17 counsel, out of the hearing of the jury:)

18 THE COURT: Thank you. Go ahead.

19 MR. LOW: I'm going to need  
20 permission -- and I confirmed with Mr. Newcomb  
21 before I started so I made no mistakes that,  
22 number one, Mr. Baldwin had a conviction -- he has  
23 several; but the one that I am allowed to talk  
24 about is one for battery and interference with a  
25 police officer, and the conviction is on 12



1 February 2009. I was under the impression that it  
2 was okay. I was not allowed to say it in opening,  
3 I confirmed it with Mr. Newcomb, and he said yes.  
4 So I said please hand me the paper because I want  
5 to make sure I'm specific and I make no mistakes.

6 So my next question for this witness is  
7 is it true you found a conviction for this, and I  
8 was going to read the title. That was what I was  
9 going to do.

10 THE COURT: Mr. Blonigen.

11 MR. BLONIGEN: Well, Your Honor, I  
12 can't imagine you'd allow. The officer already  
13 testified. Not only this, this is inaccurate, as  
14 the next witness will testify. We have the  
15 judgment and sentence, we have the citations  
16 issued. He was never charged with battery at all.

17 THE COURT: Okay.

18 MR. BLONIGEN: Now he has put out  
19 there in a very inappropriate way somehow and it's  
20 going to look like we're hiding some conviction on  
21 Mr. Baldwin.

22 MR. LOW: I'm just asking what he  
23 was convicted for. I haven't even got there yet.  
24 I'm only going to say, Listen, what did you find,  
25 that's the question. And he can say whatever he

1 wants.

2 MR. BLONIGEN: Well, you know --

3 THE COURT: It would relate to the  
4 February 12, 2009 incident alone?

5 MR. LOW: Exactly. And if you want,  
6 we can instruct the witness and tell him the date,  
7 which I was under the impression he knew of the  
8 rulings and he was only going to say that. I'm  
9 not going to ask to ask him anything else. I'm  
10 mindful, Your Honor. I'm just going to ask him --

11 MR. BLONIGEN: But, Your Honor, for  
12 him to say battery, we know it's not true.

13 MR. LOW: I didn't say --

14 MR. BLONIGEN: But he should  
15 specifically ask him about February 12, '09.

16 MR. LOW: I'll ask him February 12,  
17 2009.

18 THE COURT: I have a question about  
19 whether that would be hearsay or whether there's  
20 some exception that would apply.

21 MR. LOW: Well, we've got a business  
22 record exception. And it's a certified document,  
23 and therefore, it's authentic.

24 MR. BLONIGEN: Well, it's not  
25 certified.

1 MR. LOW: Sure it is. It's also a  
2 public record, Your Honor. It's common knowledge.

3 THE COURT: Well, I'm not going to  
4 preclude the inquiry with the understanding you  
5 need to address February 12, 2009.

6 MR. LOW: I will put the date in my  
7 question. Sorry. I'll put in my question a  
8 conviction specific to 12 February 2009.

9 THE COURT: Okay. And I'll grant  
10 the State leeway to fully examine and clarify.  
11 Okay.

12 MR. LOW: No objection.

13 THE COURT: Thank you.

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

16 THE COURT: Counsel, you may  
17 proceed.

18 Q. (BY MR. LOW) Thank you. Sir, were you  
19 able to check the background of Mr. Baldwin?

20 A. Yes. In any investigation, I do  
21 background checks on both parties.

22 Q. And did you learn of a conviction from 12  
23 February 2009 for Mr. Baldwin?

24 A. I did.

25 Q. And what was that conviction for, sir?

1           A.     If I recall, it was interference and  
2     minor in possession.

3           Q.     Interference with what, sir?

4           A.     With a police officer.

5           Q.     Is that interference with a police  
6     officer in the execution of his official duties as  
7     a police officer?

8           A.     Yes.   That's a Wyoming statute.

9           Q.     All right, then.

10                   MR. LOW:   Thank you, Your Honor.

11     Nothing further.

12                   THE COURT:   Cross-examination.

13                   MR. BLONIGEN:   Very briefly, Your

14     Honor.

15                                   CROSS-EXAMINATION

16     BY MR. BLONIGEN:

17           Q.     You also got the paperwork associated  
18     with that?

19           A.     With that charge?

20           Q.     Yes.

21           A.     That's correct.

22           Q.     You had the reports associated with that?

23           A.     I did.

24           Q.     Mr. Baldwin was never charged with  
25     battery on Mr. Elkin, was he?

1 A. No, he wasn't.

2 Q. Never entered a plea to that therefor, I  
3 take it?

4 A. No.

5 Q. In the reports, was there any indications  
6 he ever struck Mr. Elkin?

7 A. There was not.

8 Q. The interference with a police officer,  
9 he ran away, didn't he?

10 A. He did.

11 Q. And also, the officer who wrote those  
12 tickets is here today, isn't he?

13 A. He is.

14 MR. BLONIGEN: That's all I have,  
15 Your Honor.

16 THE COURT: Thank you.

17 Anything on redirect?

18 MR. LOW: No, sir. Thank you.

19 THE COURT: Okay. Thank you,  
20 Officer. You may return to counsel table.

21 MR. LOW: And if I may, Your Honor,  
22 I believe we have Defense Exhibit F, as in  
23 Foxtrot, 1 for identification. And they were the  
24 pictures taken in connection with the  
25 reconstruction. I'd like to move those into

1 evidence, if I may.

2 THE COURT: Let me take a look.

3 MR. BLONIGEN: I thought we admitted  
4 those yesterday.

5 MR. LOW: In an abundance of  
6 caution.

7 THE COURT: My records indicate that  
8 F1 was received. Ms. Chaney?

9 THE COURT REPORTER: Mine, too.

10 THE COURT: So I'd just confirm that  
11 that exhibit has been fully received.

12 MR. LOW: And then lastly in the  
13 abundance of caution, if there any exhibits that I  
14 have marked for identification other than ones you  
15 addressed earlier this morning, Your Honor, I  
16 would request that they be received into evidence.

17 THE COURT: I don't have any  
18 specific exhibit in mind, though. Do you?

19 MR. LOW: No. That's the problem.

20 THE COURT: I don't either, so.

21 MR. LOW: All right.

22 THE COURT: I'd so note that  
23 request. And I think without a specific  
24 delineation of the exhibit, I can't make a ruling;  
25 but I'd so note.

1 MR. LOW: Well yes, I don't, so  
2 thank you. I think that's -- let me double-check  
3 and make sure I'm not forgetting something.

4 Thank you, Your Honor.

5 THE COURT: Thank you very much.

6 If I hear you right, then, the Defense  
7 would rest?

8 MR. LOW: Defense would rest, Your  
9 Honor.

10 THE COURT: Okay. Any proposed  
11 rebuttal evidence, Mr. Blonigen?

12 MR. BLONIGEN: Your Honor, we have  
13 two very short witnesses, about five minutes each.

14 THE COURT: Okay. You may call your  
15 first prospective rebuttal witness.

16 MR. BLONIGEN: We'd recall Detective  
17 Ellis briefly, Your Honor.

18 THE COURT: Okay. Once again, I'd  
19 you confirm you realize you're still under oath?

20 THE WITNESS: I do, Your Honor.

21 THE COURT: Very good. You may  
22 proceed.

23

24

25

1 SEAN ELLIS,  
2 called for examination by the State, being  
3 previously duly sworn, on his oath testified as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. BLONIGEN:

7 Q. Detective Ellis, I'm just going to ask  
8 you a few questions. We asked Mr. Daily about  
9 some measurements yesterday, and I want to confirm  
10 this through evidence not just through a question.  
11 You were the individual in the pictures we saw?

12 A. I was.

13 Q. Did anybody ever measure you?

14 A. No.

15 Q. Did anybody ever weigh you?

16 A. No.

17 Q. Mr. Baldwin's autopsy says 230 pounds.  
18 What did you weigh at the time?

19 A. At the time, I weighed about  
20 approximately 207.

21 Q. How tall are you?

22 A. Six-three.

23 Q. Did you have shoes on?

24 A. I did.

25 Q. Would -- the distance you stand away from



1 the car in the pictures, was that distance from a  
2 mark in the scene?

3 A. It is not. It was a chosen nominal  
4 distance for reference for me.

5 Q. Could you tell where Mr. Baldwin was  
6 standing at the scene from what you saw?

7 A. We could not tell where Mr. Baldwin was  
8 standing due to the assistance from the  
9 firefighters and ruining the footprints.

10 Q. Can you tell us what the inseam of your  
11 pants were that you were wearing in that picture?

12 A. The jeans I was wearing in that picture  
13 were 33, 38.

14 Q. 38 inseam?

15 A. Yes.

16 Q. What about Mr. Baldwin's pants that were  
17 seized at the autopsy?

18 A. Mr. Baldwin's pants, I believe were a 36,  
19 32.

20 Q. So 36 waist, 32 inseam?

21 A. I believe so.

22 Q. Did you want to check them?

23 A. I can. They're here.

24 Q. I'm just asking because you said I  
25 believe so. Do you have a definite knowledge of

1 that?

2 A. I have looked at them, but it's been a  
3 while since I looked at them.

4 THE WITNESS: Your Honor, may I  
5 borrow your scissors?

6 Q. (BY MR. BLONIGEN) Are those the pants?

7 A. They are. These are -- this is not the  
8 original packaging. They have had to be  
9 repackaged. And the repackage was by me on the  
10 9th of December. The tag in the pants says 36,  
11 32.

12 Q. So what you said, 36, 32 inseam. Thank  
13 you for checking that.

14 When you have your knees bent in the  
15 pictures or you're standing up straight, do you  
16 have -- did -- was anybody able to tell if Mr.  
17 Baldwin's knees were bent or not?

18 A. No.

19 Q. How far -- how far exactly he leaned?

20 A. No.

21 Q. How much weight he had forward on his  
22 hands?

23 A. No.

24 Q. There was some talk about a pile of glass  
25 and a body that was mapped; is that correct?

1 A. Yes.

2 Q. Did you ever -- or strike that.

3 MR. BLONIGEN: I believe that's all  
4 the questions I have, Your Honor.

5 THE COURT: Thank you very much.

6 Cross-examination. Any questions,

7 Mr. Low?

8 CROSS-EXAMINATION

9 BY MR. LOW:

10 Q. Investigator Ellis, you ever see those  
11 young men who walk around and they wear their  
12 jeans and they wear them below their butt?

13 A. I have.

14 Q. And they got their underwear hanging out?

15 A. Yes.

16 Q. And they wear them really low on their  
17 legs?

18 A. Yes.

19 Q. Were you -- you weren't with Mr. Baldwin  
20 prior to October the 3rd, 2013; right?

21 A. Can you restate that for me?

22 Q. Yeah. You didn't spend time with Mr.  
23 Baldwin before he attacked Mr. Knospler October  
24 the 3rd, 2013, were you?

25 A. No.

1 Q. So you don't know how he wore his jeans,  
2 do you?

3 A. I do not.

4 Q. Okay. Thank you.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MR. BLONIGEN:

8 Q. You viewed the video from the bar?

9 A. Correct.

10 Q. Would it be fair to say that Mr.  
11 Baldwin's T-shirt is pretty small on him? In  
12 other words, it doesn't go very far down past his  
13 belt, does it?

14 A. It's not a long T-shirt.

15 Q. Okay. That's a better way to put it.  
16 Does he -- does he appear to be wearing heavily  
17 sagging pants in the video?

18 A. I do notice that he has a belt on, and  
19 they're not sagging to the point where I can see  
20 his buttocks or anything.

21 Q. All right. And you don't see his pants  
22 pulled up around his feet, do you?

23 A. Around his feet?

24 Q. Yeah. When we -- we see his video, he's  
25 walking, you don't see the pants clear down around

1 covering his shoes and stuff, do we?

2 MR. LOW: Objection. This is all  
3 leading. If he wants to testify as to what he  
4 saw, let's just listen to the detective.

5 THE COURT: I think I'll agree. It  
6 would be a leading question, so I'll sustain.

7 Q. (BY MR. BLONIGEN) Okay. Let me  
8 rephrase. Describe what you saw in the video  
9 about how he was wearing his pants.

10 A. It appeared to me Mr. Baldwin was wearing  
11 his pants as normal.

12 Q. Okay.

13 MR. BLONIGEN: No other questions,  
14 Your Honor.

15 THE COURT: Thank you.

16 Anything on recross?

17 MR. LOW: No, Your Honor. Thank  
18 you.

19 THE COURT: Thank you. Once again,  
20 Officer Ellis, you're excused to return to counsel  
21 table. The State may call an additional rebuttal  
22 witness.

23 MR. ITZEN: State would call Brad  
24 Halter.

25 THE COURT: Please come forward, if

1 you would, sir. The Clerk of Court to my left  
2 will give you the oath, and then you'll sit over  
3 to the other side here.

4 THE CLERK: You do solemnly swear  
5 that the testimony you will give in the case  
6 before the Court will be the truth, the whole  
7 truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes, I do.

9 THE COURT: Please be seated.

10 BRAD HALTER,  
11 called for examination by the State, being first  
12 duly sworn, on his oath testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ITZEN:

15 Q. Good morning, sir.

16 A. Morning.

17 Q. Could you please state your full name.

18 A. It's Officer Brad Halter with the Green  
19 River Police Department.

20 Q. And how long have you been with the Green  
21 River Police Department, sir?

22 A. Just a little over eight years.

23 Q. Were you so employed on February the 12th  
24 of 2009?

25 A. Yes, I was.

1 Q. Now, were you called to a fight in  
2 progress?

3 A. Yes, I was.

4 Q. Upon arrival, can you describe what the  
5 scene looked like for the ladies and gentlemen of  
6 the jury.

7 A. It's a residence located at 35 East Third  
8 South in Green River. There was several occupants  
9 or subjects standing outside the residence when I  
10 arrived.

11 Q. All right. Did you come into contact  
12 with a Michael May?

13 A. Yes, I did.

14 Q. And were there any injuries upon Mr. May?

15 A. If I recall correctly, Mr. May had a  
16 bloody nose.

17 Q. All right. Did you find out who or what  
18 caused Mr. May to have a bloody nose?

19 A. Yes, I did. I -- Mr. May stated to me  
20 that he had been punched in the face by Timothy  
21 Dow, and Timothy Dow also confirmed that he had  
22 assaulted Mr. May.

23 Q. All right. Did you speak with a Kevin  
24 Elkin that evening?

25 A. No, I did not.

1 Q. Was he on scene?

2 A. No, he was not.

3 Q. And, in fact, did you ever have contact  
4 with Mr. Elkin that evening concerning this or the  
5 next day?

6 A. No, I did not.

7 Q. Now, you also had contact with a James  
8 Kade Baldwin?

9 A. Yes, I did.

10 Q. And you ended up citing and arresting Mr.  
11 Baldwin that evening; correct?

12 A. Yes, I did.

13 Q. What were the two charges you arrested  
14 him for?

15 A. Interference with a police officer, and I  
16 believe the second was underage consumption.

17 Q. All right. Of alcohol?

18 A. Yes.

19 Q. Now, the interference with a police  
20 officer, did he leave the scene after being asked  
21 not to?

22 A. Yes. When I arrived, I initially  
23 contacted several subjects who I asked to stay  
24 there, and Mr. Baldwin immediately fled from the  
25 scene. And I gave chase and eventually caught him



1 and he was arrested.

2 Q. All right. Did Mr. Elkin ever say he was  
3 punched by Mr. Baldwin that evening?

4 A. No, he did not.

5 MR. ITZEN: I believe that's all the  
6 questions I have. Mr. Low will have a couple.

7 THE COURT: Thank you.

8 Cross-examination.

9 MR. LOW: I do, Your Honor, have a  
10 very specific question about what I just heard;  
11 but I wanted to approach with you and show you so  
12 that we're all good.

13 THE COURT: Okay. I'll grant  
14 permission. Please approach.

15 (The following proceedings were  
16 held at the bench between the Court and counsel,  
17 out of the hearing of the jury:)

18 THE COURT: Can you hear us? Go  
19 ahead, Counsel.

20 MR. LOW: So taken from the police  
21 report that we just heard about is the following:  
22 Mr. Baldwin began screaming inside the patrol  
23 vehicle and pounding his head against the window.  
24 Mr. Baldwin was arrested for, among other things,  
25 battery and interference with a police officer.

1 Mr. Baldwin knew that one of his male victims had  
2 cerebral palsy.

3 I'd like to cross-examine him on that,  
4 and I just want to bring it to your attention  
5 beforehand.

6 MR. BLONIGEN: Well, Your Honor, I  
7 don't think cerebral palsy is relevant. Secondly,  
8 the officer can identify when he's showing you the  
9 ticket he wrote he was never charged with battery.

10 MR. LOW: This is what he was  
11 arrested for. I was very specific. And he just  
12 got done asking him about it and his contact with  
13 him. I didn't -- I wasn't going to, but since  
14 they brought it up, I'm just going through the  
15 same facts they did what about happened that  
16 evening and what they said when they were  
17 arrested.

18 THE COURT: Mr. Blonigen.

19 MR. BLONIGEN: This is not  
20 Mr. Halter's report.

21 MR. NEWCOMB: This is taken from it.

22 MR. LOW: It's taken from it.

23 MR. BLONIGEN: Okay. Well, get the  
24 report and show it to him.

25 MR. LOW: I don't need to show it to

1 him. I can ask him about it.

2 THE COURT: Yeah, I think inquiry  
3 about the report is proper since he referenced it  
4 in his direct exam, so.

5 MR. BLONIGEN: Well, no, Your Honor.

6 MR. LOW: Well --

7 THE COURT: Hold up, Counsel.

8 MR. LOW: Yes, sir.

9 MR. BLONIGEN: Where is the evidence  
10 this is a correct summation of the report?

11 MR. NEWCOMB: The State provided the  
12 report, and that's exactly what the State  
13 provided. That is.

14 MR. BLONIGEN: The officer has his  
15 report. Ask him if it's in his report.

16 MR. LOW: I can ask him what I  
17 want --

18 THE COURT: And we can clarify.  
19 I'll allow inquiry. Thank you.

20 (The following proceedings were  
21 held in open court, in the presence of the jury:)

22 CROSS-EXAMINATION

23 BY MR. LOW:

24 Q. Sir, did you say you arrested Mr.  
25 Baldwin?

1 A. Yes, I did.

2 Q. And when Mr. Baldwin was inside of your  
3 car, did he begin screaming inside the patrol  
4 vehicle and pounding his head against the window?

5 A. Yes, he did.

6 Q. And what did you arrest Mr. Baldwin for  
7 at that time?

8 A. Interference and underage consumption.

9 Q. Anything else at that time that you  
10 arrested him for?

11 A. No.

12 Q. Did you ever arrest him for battery?

13 A. No.

14 Q. Okay. And is it true that Mr. Baldwin  
15 told you that he knew that one of his male victims  
16 had cerebral palsy?

17 A. No. Mr. Baldwin did not ever tell me  
18 that.

19 MR. LOW: All right. Thank you.

20 THE COURT: Thank you very much.

21 Anything on redirect?

22 REDIRECT EXAMINATION

23 BY MR. ITZEN:

24 Q. Officer, did you check on Mr. Baldwin  
25 after he hit his head in the patrol cage?

1           A.     Yes, I did.

2           Q.     And were you able to determine what was  
3 wrong?

4           A.     He had complained that the handcuffs were  
5 on too tight. I adjusted them, and he was seated  
6 back in the vehicle with no further incident.

7                   MR. ITZEN: Thank you.

8                   THE COURT: Anything on recross?

9                   MR. LOW: No thank you, Your Honor.

10                  THE COURT: Okay. Thank you very  
11 much, Officer. You're excused from any subpoena  
12 in the case and free to go.

13                   THE WITNESS: Thank you, sir.

14                  MR. BLONIGEN: That's all the  
15 rebuttal we have, Your Honor.

16                  THE COURT: I presume the evidence  
17 is submitted, and we can have the jury instruction  
18 conference and try to start final arguments. How  
19 about 12:30? Would that be all right?

20                  MR. BLONIGEN: That's fine, Judge.

21                  MR. LOW: Yes, Your Honor.

22                  THE COURT: Ladies and gentlemen of  
23 the jury, we have a jury instruction conference to  
24 do yet, and I wanted to accommodate lunch in there  
25 somehow. If we were a little bit earlier in the

1 morning, I'd try to maybe have final arguments  
2 start at 11:00 or so, but I think the best we  
3 could do is excuse you and ask you to come back at  
4 12:30 for final arguments. After that, the case  
5 will be submitted to the jury. And as I  
6 mentioned, the jury does need to stay together and  
7 participate in deliberations after that point in  
8 time.

9 So keep in mind the admonitions. You  
10 have now heard all the evidence, but we still ask  
11 you to keep the same rules of keeping your mind  
12 open and to not express any opinion on the case  
13 until it is finally submitted to you. So keep  
14 those matters in mind.

15 Why don't I ask counsel to meet with me  
16 for the jury instruction conference in 15 minutes.  
17 We should have a final packet of instructions --  
18 of proposed instructions ready in about five  
19 minutes, so we'll hook you up with your copy of  
20 those proposed instructions.

21 With that, the jury is excused, and we'll  
22 stand in recess until 12:30 p.m.

23 (At 9:54 a.m., a recess was  
24 taken until 10:46 a.m.)

25 (The following proceedings

1 were held in chambers:)

2 THE COURT: Okay. Let's go on the  
3 record. Convening with counsel in State versus  
4 Knospler in Criminal Action 19548-B.

5 I note that we had an informal jury  
6 instruction conference yesterday evening. We went  
7 through all of the instructions proposed by both  
8 the State of Wyoming and the Defense.

9 The Court would confirm that it will file  
10 with the Clerk of Court copies of all of the  
11 proposed jury instructions so we'll have that part  
12 of the record.

13 After considering the positions of the  
14 parties, the Court has come up with a packet of 34  
15 proposed jury instructions and a verdict form.  
16 And I'm going to note for the record I think the  
17 three or four areas that, as I recall, may need  
18 some explanation or some decision by the Court.

19 The first was the definition of malice or  
20 maliciously. And given the decision in *Wilkerson*  
21 *versus State*, we can no longer give the pattern  
22 instruction. And I would decline to give the  
23 State's Proposed Instruction Number 5 and have  
24 decided to give the Defendant's Instruction Number  
25 12, which includes the definition of malice

1 directly from the *Wilkerson* case.

2 Second, the State has proposed an  
3 instruction or two that would delineate that  
4 self-defense could only be asserted against murder  
5 in the second degree and voluntary manslaughter.  
6 And after some consideration as to how to approach  
7 a severing of involuntary manslaughter from the  
8 self-defense claim being asserted, I have come to  
9 the decision that we should simply give Pattern  
10 Instruction 8.14, which I note was not proposed by  
11 either party, the primary self-defense burden of  
12 proof instruction. The Defense proposed one that  
13 was set forth in the use note, but I think it was  
14 Mr. Low maybe espoused the general principle  
15 that's incorporated in that instruction, before  
16 the defendant may be convicted of any crime, the  
17 State must prove beyond a reasonable doubt that  
18 the defendant did not act in self-defense.

19 I note that the use note to that pattern  
20 instruction includes at any time, relates to any  
21 crime relates to the crime of homicide. And I  
22 note that in reading *Duran versus State*, which the  
23 State relied upon, there sure is some authority  
24 for the position being asserted by the State; but  
25 I don't think that decision absolutely precludes



1 self-defense in this case as a matter of law.

2 There's language that's included, there's  
3 reference to a majority decision, but the bottom  
4 line in the *Duran* case was that the trial court  
5 did not err in refusing to submit an instruction  
6 on self-defense to the jury under the  
7 circumstances in that case.

8 So absent a very clear delineation that  
9 self-defense could not be a potential defense in  
10 situations such as the one presented in this case,  
11 I think that allowing it to apply even to  
12 involuntary manslaughter should stand. So that's  
13 my analysis on that.

14 The third thing was the Defense's three  
15 instructions numbered 16, 17, and 18 relative to  
16 Wyoming Statute 6-2-602 and self-defense applying  
17 to a home or habitation. And I previously noted  
18 that Wyoming Statute 6-2-602(d)(i) does not apply  
19 to vehicles. And I agreed with the State and its  
20 analysis that applying that statute and these  
21 proposed instructions just does not fit the  
22 evidence in this case.

23 The next matter I had that I just want to  
24 run by counsel for the Defense especially is they  
25 had proposed an instruction on when a defendant

1 does testify, you have no right to disregard his  
2 testimony. And then there's a further discussion,  
3 but I have customarily used this instruction, it's  
4 numbered 9 in the packet, that the criminal  
5 defendant has a constitutional right not to  
6 testify, you must not draw any inference from that  
7 fact. And I think that that would fit our case  
8 where Mr. Knospler has not testified, and I think  
9 it's sort of a protective instruction that I would  
10 give rather than the one that refers to a  
11 situation where the defendant does testify.

12 And finally, I absolutely struggled with  
13 *Drennen versus State*, paragraphs 32 and 39, and  
14 how to instruct. And I came up with instructions  
15 number 27, 28, and 29, which basically adopted the  
16 format proposed by the State. I adopted the  
17 language of the definition of aggressor directly  
18 from the language of the *Drennen* decision, and I  
19 structured it the way proposed by the State. I  
20 still have some real concern about using that  
21 approach, but I think it's better than anything I  
22 could come up with; and so I decided to give those  
23 three instructions relative to the *Drennen versus*  
24 *State* requirements.

25 So with those matters, I'll hear from the

1 parties as to any objections for the record and  
2 any proposed declined instruction you'd like for  
3 me to mark.

4 Mr. Blonigen.

5 MR. BLONIGEN: Your Honor, the only  
6 one we'd like you to mark is to mark the  
7 instruction that says that self-defense is not a  
8 defense to involuntary manslaughter. I don't  
9 think we can do anything with it, but just in case  
10 we do.

11 THE COURT: Okay. I will do so.  
12 And I'll provide --

13 MR. BLONIGEN: It would be a bill of  
14 exceptions in any event. It wouldn't be in this  
15 case.

16 THE COURT: And I'll make sure each  
17 of you get a copy of the declined instruction.

18 The Defense, Mr. Newcomb.

19 MR. NEWCOMB: Yes, Your Honor.  
20 These are revised. The only -- the only -- two  
21 substantive changes. One is we removed the malice  
22 in the Court's instruction regarding other acts --  
23 excuse me -- not malice, other bad acts, so no  
24 objection to that.

25 The only one that we added, we made

1 reference to it, is our proposed number 5, which  
2 is the permissible inference. And the authority  
3 that we argued, it's on page 14. And, obviously  
4 there's no -- and 15 -- there's no direct jury  
5 instruction; but as a matter of law, Rule 3.8(d)  
6 imposes on the prosecutor and more generally the  
7 State, the representative, a duty to produce  
8 all -- all information, not evidence, but all  
9 information that tends to negate the guilt of the  
10 defendant.

11 And 3.8 creates a criminal procedural  
12 substantive right under *Hicks v. Oklahoma* -- Hicks  
13 is 447 U.S. 343 at 346 -- and by *Kyles v. Whitley*,  
14 which is 514 U.S. 419, 437, 38. And *Kyles* goes to  
15 the State is held liable or responsible for any  
16 nondisclosures of material exculpatory evidence  
17 from any police officer. Combined with *Hicks*,  
18 which is the right of the defendant to be informed  
19 of any information that negates the guilt of the  
20 defendant, the Fourteenth Amendment due process  
21 and simply the right to -- the right to an  
22 opportunity to present a complete defense as  
23 established in *Stalcup v. State*, should allow the  
24 giving of the Instruction 5.

25 THE COURT: I note that that was

1 added --

2 MR. NEWCOMB: Thank you, Your Honor.

3 THE COURT: -- to the list and we'll  
4 file that in. I'll decline to give that  
5 instruction.

6 MR. NEWCOMB: Two other matters,  
7 Your Honor.

8 THE COURT: Okay. Let's go back to  
9 the other acts evidence. You're not requesting an  
10 additional instruction?

11 MR. NEWCOMB: The instruction that  
12 the Court gave --

13 THE COURT: 5 and 5A are okay?

14 MR. NEWCOMB: Let me double-check.  
15 I believe that's -- yes, Your Honor.

16 THE COURT: Okay. Very good.  
17 You said there was additional matters?

18 MR. NEWCOMB: Yeah. Instruction  
19 Number 8. It's just a typo. It's here, Your  
20 Honor, highlighted in yellow.

21 THE COURT: Thank you for catching  
22 that.

23 MR. NEWCOMB: So we've objected to  
24 14 -- just to clarify, 14, 27, and to the absence  
25 of the habitation instruction.

1           THE COURT:   Okay.   Katie, would you  
2   give this to Kelly?   Need to correct Instruction  
3   Number 8.   And I'll mark Number 5 declined --

4           MR. NEWCOMB:   Thank you, Your Honor.

5           THE COURT:   -- for the record.

6           So how about time for final arguments, I  
7   always say this, and I know it's true, but it's  
8   hard for all of us in the system to fully  
9   appreciate it.   But the number one complaint I  
10   get -- have gotten from the juries over the past  
11   19 years is trying to do something about the  
12   attorneys going on and on and repeating  
13   themselves.   And we've got to balance that with  
14   making sure everybody has a chance to fully  
15   present.   I was thinking 45 minutes a side, but  
16   your thoughts, Mr. Blonigen?

17          MR. BLONIGEN:   I was thinking an  
18   hour but I can live with 45 minutes, Judge.

19          THE COURT:   Mr. Low?

20          MR. LOW:   I can say the same thing,  
21   whatever you need, Your Honor, I was thinking 60;  
22   but if you want us at 45, I'll get it done.   I  
23   agree with what you said about jurors' complaints.

24          THE COURT:   Let's go with 50.

25          MR. BLONIGEN:   Okay.

1 THE COURT: And --

2 MR. BLONIGEN: And any rebuttal.

3 THE COURT: -- if you want to  
4 reserve.

5 MR. BLONIGEN: Right.

6 THE COURT: Do you want a ten-minute  
7 warning or anything?

8 MR. BLONIGEN: Yeah, a ten-minute  
9 warning would be good, Judge. I'll try to keep  
10 track of it myself. You have a clock here that's  
11 pretty easy to see, so it's not as hard as that  
12 old courtroom. Your back isn't to it.

13 THE COURT: And final thing, I  
14 appreciate counsel very much, a very difficult  
15 case, very hard fought obviously. But I  
16 appreciate dealing with some real professionalism  
17 along the way. Nobody ever, I think, lost their  
18 cool or disrespected the Court or some of the  
19 other things that I've run into way too often, so  
20 I appreciate that.

21 So we'll start up, then, at 12:30 with  
22 the reading of instructions and final argument.

23 MR. NEWCOMB: Your Honor, your jury  
24 instructions required a disk. We gave you one.

25 THE COURT: I think we're good now,

1 but I'll supplement.

2 MR. NEWCOMB: Just want to make sure  
3 we comply.

4 (At 11:01 a.m., a recess was taken  
5 until 12:34 p.m.)

6 (The following proceedings were  
7 held in open court, in the presence of the jury:)

8 THE COURT: I believe we have  
9 everyone. Court will come back to order. The  
10 Seventh Judicial District Court convenes for  
11 further trial proceedings in State of Wyoming  
12 versus John Henry Knospler, Jr., Criminal Action  
13 19548-B.

14 When we adjourned, I told the ladies and  
15 gentlemen of the jury we would now have final  
16 arguments, which is correct; but before the final  
17 arguments, I'm required to make sure the final  
18 jury instructions are read in open court and that  
19 copies are provided to each and every juror.

20 So you have each received a copy of the  
21 instructions, and Instructions 1 through 5A were  
22 already read in open court, so I won't reread  
23 those unless there's some request from the  
24 parties. But I would start with Instruction  
25 Number 6. And bear with me, this will take a



1 while to read all of these; but you can sure  
2 follow along with the written copies that you  
3 have.

4 (Jury Instruction Number 6 through  
5 Jury Instruction Number 8 were read in open  
6 court.)

7 THE COURT: Instruction Number 9.  
8 You are instructed that a defendant in a criminal  
9 trial has a constitutional right not to testify.  
10 You must not draw any inference from the fact that  
11 the defendant has chosen not to testify in this  
12 case. Further, you must either -- that should  
13 read "neither" discuss this matter nor permit it  
14 to enter into your deliberations in any way. I  
15 will make a correction to that typographical  
16 error. The jury may do so on its copies if you  
17 wish to.

18 (Jury Instruction Number 10  
19 through Jury Instruction Number 34 were read in  
20 open court.)

21 THE COURT: And then with each  
22 packet of instructions is a copy of the verdict  
23 form. The original verdict form will be given to  
24 you, and that will be the one that would need to  
25 be completed on behalf of the jury. But the

1 verdict form has the case caption, and it reads:  
2 We the jury, duly empaneled and sworn to try the  
3 above entitled cause, do find as follows. Number  
4 one, as to the offense of murder in the second  
5 degree as charged in the Information, we find the  
6 defendant, John Henry Knospler, Jr., and a blank  
7 for "not guilty" or a blank for "guilty."

8 If you find the defendant not guilty in  
9 number one, then proceed to number two. If you  
10 find the defendant guilty in number one, do not  
11 answer number two or number three.

12 Number two, as to the lesser-included  
13 offense of voluntary manslaughter, we find the  
14 defendant, John Henry Knospler, Jr., and once  
15 again a blank for "not guilty" or a blank line for  
16 "guilty."

17 If you find the defendant not guilty in  
18 number two, then proceed to number three. If you  
19 find the defendant guilty in number two, do not  
20 answer number three.

21 And number three, as to the  
22 lesser-included offense of involuntary  
23 manslaughter, we find the defendant, John Henry  
24 Knospler, Jr., and a blank line next to "not  
25 guilty" or a blank line next to "guilty."

1           Dated this blank day of December, 2014,  
2           and a signature line for the presiding juror.

3           Thank you for bearing with me in that  
4           process. I know it's fairly long, and your  
5           attention to the instructions is greatly  
6           appreciated.

7           With that, we will turn to final  
8           arguments on behalf of the parties. I note I've  
9           set a time limit of 50 minutes per side. And the  
10          process is that the State of Wyoming goes first  
11          followed by the Defense, and then if the State has  
12          reserved a portion of its time, it would have that  
13          time for what we call rebuttal argument.

14          I note because of sort of concerns that I  
15          have along the way that there may be some factual  
16          matters that are contested, and we put on the  
17          attorneys a very high good faith requirement to  
18          only recite in their arguments and their  
19          presentations of facts as they were presented.  
20          But I also recognize that in some cases, there may  
21          have been evidence stated in varying ways and  
22          there may be some contest, and those factual  
23          issues are for the jury to decide; and so that  
24          will be up to you.

25          But with those comments, the State of

1 Wyoming may proceed first. Mr. Blonigen.

2 MR. BLONIGEN: Your Honor, may I  
3 have this workstation activated?

4 THE COURT: Sure.

5 MR. BLONIGEN: And when I'm  
6 completed with it, if I could go back to the  
7 overhead projector, please.

8 May it please the Court, Counsel.

9 THE COURT: Counsel.

10 MR. BLONIGEN: The man that Kade  
11 Baldwin met that night was not the man that you  
12 heard about for the last few days. He was not the  
13 man who the people at Racks met that night and  
14 talked about on the stand and in their statements  
15 to the police. He was not the man that Deputy  
16 Johnny Taylor contacted. The man they knew that  
17 night was this man.

18 (State's Exhibit 207 is  
19 played in open court.)

20 MR. BLONIGEN: Ladies and gentlemen,  
21 do you hear a frightened man in that video ten  
22 minutes after he gunned down Kade Baldwin in the  
23 parking lot? Where is the fear? There's  
24 calmness. There's even smugness. There is no  
25 fear.

1           And you can't remove either Kade Baldwin  
2           or John Knospler from the nights that were taking  
3           place that evening. Between their night, Kade  
4           Baldwin's celebrating his birthday, by all  
5           accounts getting along just fine with everybody.  
6           And the defendant, who acts strangely, talked  
7           about shooting and killing people, and solicited  
8           at least two of the employees for cocaine. We  
9           don't go into what happened that night blind. We  
10          have to put it in a context.

11           Now, we heard from a number of people at  
12          the bar that night. They gave statements to the  
13          police that morning. And what did they tell them?  
14          You know, and I can't say they were a hundred  
15          percent one statement to the next, but who would  
16          be? Who's a human tape recorder? Who's a human  
17          videotape?

18           Sonny Pilcher tells you he arrives at  
19          5:30, and what is the defendant doing? He's  
20          dancing in the rain. He's moving his car from one  
21          spot to another. He's trying to walk that rail in  
22          the front of the building, to the point where Mr.  
23          Pilcher says, you know, we better keep an eye on  
24          this. How he goes from the east end of the  
25          building to west end of the building. We know by

1 the end of the night he's not in either one of  
2 those places, he's right outside the front door.

3 Ervin Andujar. And it's interesting  
4 because yes, if I ask you, Did you see the car  
5 wreck, you would say, I watched the whole thing.  
6 You wouldn't remember that I kind of looked out of  
7 the corner of my eye when that other car was  
8 coming down the street. You'd say, I saw the  
9 whole thing. And that's what Mr. Andujar did.

10 But let's look at the other evidence of  
11 Mr. Andujar. What is corroborated? He says the  
12 defendant was talking about this stuff, about  
13 killing people and things. Other witnesses  
14 corroborate that. He says he kicked the defendant  
15 out about an hour and a half before the shooting  
16 happened because he had a joint, a joint that's  
17 not found. He manages to dispose of that before  
18 the police stop him. But come on, ladies and  
19 gentlemen, is he going to pick the guy that just  
20 happens to have a container with marijuana residue  
21 and rolling papers in the car to say he had the  
22 joint? Mr. Andujar is absolutely corroborated on  
23 that.

24 He says Mr. Baldwin was so drunk he had  
25 to wake him up and steer him out the door.

1       Everybody confirms that. He says Mr. Baldwin left  
2       and went around to the right, which we can see on  
3       the video, and went to the passenger side door.  
4       And we know from talking to Officer Preciado and  
5       even Mr. Daily yesterday that they saw footprints  
6       from the passenger side door around the front. We  
7       know that he said that he saw Mr. Baldwin with his  
8       hands on the windowsill leaning in.

9               Now, we were told in opening statement by  
10       the Defense that Mr. Andujar never said that  
11       before, but what did Mr. Daily say yesterday?  
12       Yeah, we knew about that statement. That's why we  
13       took some of the pictures we took down there in  
14       that shed is to show something similar to that.  
15       All those are corroborated.

16               We have others. Westy Guill talks about  
17       seeing him go out and tap on the window on the  
18       passenger side again. And he thought he did it on  
19       the driver's side, but then he said, I'm not sure.  
20       Yeah, I know I said that before, but I'm not sure.

21               Amber Hudson talked about what she saw,  
22       that he was over on the driver's side of the  
23       vehicle. Now, how in the world did they see all  
24       these things and talk about them clear back then  
25       if they couldn't see them? They talked about

1 those things that night.

2 You will notice that Mr. Daily, when he  
3 said he considered all the evidence to try to make  
4 this work, never considered a single eyewitness.  
5 And what do they tell you is happening that night?  
6 No conflict between these two people at all.  
7 That's absolutely agreed on in the evidence.  
8 These two people didn't have a problem with each  
9 other. The one time they're together you can see  
10 on the video. And remember the video has that  
11 time difference, so you have to account for that.  
12 But holding the door for each other. Does that  
13 sound like two people who have been having  
14 problems that night? Not at all.

15 What do multiple witnesses say Mr.  
16 Baldwin said when he left? Hey, my friend's here.  
17 And we showed you the pictures of the car, and you  
18 can see how this tragic mistake took place. But  
19 ladies and gentlemen, there is absolutely no  
20 question in the evidence that when Mr. Baldwin  
21 left that night, he had no intentions of  
22 contacting the defendant. He was going home.

23 We heard a story in opening statement,  
24 and that's what it is, a story. The judge has  
25 told you in Instruction Number 6 that what the



1 attorneys say in their arguments is not evidence.  
2 You have to rely on that. But we were told about  
3 this great confrontation that takes place out  
4 there in that parking lot, yelling and screaming,  
5 Get out of the car, I'm taking the car, some  
6 profanity I think was laced in there, how the  
7 defendant was asleep in his car. There's no  
8 evidence to support that.

9 And while it's true the State has the  
10 burden of proving there is no self-defense, how do  
11 you prove a negative? You prove a negative by  
12 showing there's no evidence the alternative ever  
13 happened. There is no evidence of any argument  
14 between these two. Moreover, you have Ms. Cormier  
15 who's out in the parking lot. And you can look at  
16 the video and see she had to be out in that  
17 parking lot when these things happened.

18 And what's important is what Ms. Cormier  
19 doesn't hear. She doesn't hear any yelling. If  
20 this argument is taking place between a rolled up  
21 window, you would think that Mr. Baldwin would be  
22 yelling. You could understand why the people in  
23 the bar don't hear the shot because everybody says  
24 the music is very, very loud. But Ms. Cormier is  
25 out in the parking lot. And if that gun is in a

1 closed car, is that going to affect how much the  
2 sound carries? Use your common sense.

3 When we go out there and we look, what  
4 else do we know? Well, we know a couple things.  
5 The defendant gets kicked out. He waits an hour  
6 and a half in that parking lot. The only evidence  
7 we have of him doing anything is that Mr. Norcross  
8 said it looked like the occupant of the vehicle  
9 had gone back and relieved himself in the back of  
10 the car. There's no indication he was sleeping  
11 and hunkered in. And why would he be, ladies and  
12 gentlemen? He had 300 bucks in his pockets and a  
13 couple of credit cards. He can call a cab. He  
14 can get a hotel.

15 Why is he hanging out in the parking lot  
16 of a bar where he has been kicked out, where he  
17 has been soliciting the purchase of cocaine, where  
18 he has been looking for marijuana to smoke, if  
19 it's simply to sleep? If you want to go get a  
20 hotel, get a hotel. You need a cab, get a cab.  
21 If you want to go to another bar, go to another  
22 bar. All those make sense. What doesn't make  
23 sense is somebody who's just been kicked out of a  
24 bar waits around for an hour and a half.

25 And poor James Baldwin, out there to

1 celebrate his birthday, drunk as can be, goes to  
2 the wrong car. He tries to get in that car. He  
3 lifts the handle. You heard the people talk about  
4 how he tries it and it's locked. Remember, these  
5 are manual locks, they're not electric locks, and  
6 nothing happens. And he goes around to the other  
7 side of the vehicle.

8 Now, this is where the Defense would like  
9 you to believe that he punches out the window; but  
10 none of the witnesses saw anything closely  
11 resembling that. And you have to really ask  
12 yourself, it's not impossible to punch out a  
13 window, but we know from the evidence itself it's  
14 extremely difficult. It's going to take a lot of  
15 force. And you got a man with a .20 blood alcohol  
16 content, on snow, in a situation he wasn't  
17 expecting, somehow is going to load up that like  
18 that fellow you saw on the film clip yesterday and  
19 get this done.

20 Two big problems with that. One, they  
21 don't see it. And ladies and gentlemen of the  
22 jury, why wouldn't they? They saw him bending  
23 over the car. They saw him walk from the front  
24 around the front end. Why would they not see it?  
25 Two, where are the injuries? Now, Dr. Melinek

1       stated, Well, they're consistent with. She never  
2       really explained why nor did she explain why they  
3       weren't more severe than they were. Because you  
4       looked at them, you know there's a problem with  
5       that idea. You saw that guy load up yesterday and  
6       make that punch. What in the world is that going  
7       to do to your hand?

8               Mr. Daily said the same thing, but  
9       remember Mr. Daily also told them, I'm not a  
10      pathologist, I don't claim to be an expert in this  
11      area. He said the same thing about Mr. Norris,  
12      but yet then he goes on to opine about pathology  
13      things and gun things. We know that's really  
14      interesting.

15             But did you notice something? Dr. Carver  
16      told you there's a problem with this. I would  
17      expect more injuries up the arm. And if you're  
18      doing what Mr. Daily suggested, which is he had  
19      started to pull back out, there should be more  
20      yet. I'm not seeing them.

21             Not only that, Mr. Daily has Mr. Ellis  
22      take these pictures. And the pictures are fine,  
23      folks. The problem isn't that they did this. The  
24      problem is when you try to come in and sell this  
25      as being precise when it's not precise. Mr.

1 Ellis, you saw him bending in that car. There was  
2 hardly any room for him. Kade Baldwin is a lot  
3 bigger guy as you saw in the pictures, yet there's  
4 no injuries here, there's no injuries on the left  
5 arm. None at all.

6 But what did Dr. Carver say? It is  
7 consistent with him making contact with the glass  
8 afterward. Mr. Daily and Mr. Norris and everybody  
9 agrees that once that glass is shattered, it has  
10 no strength. It's going to go wherever. And Mr.  
11 Norris told you when they did the test firing, the  
12 poorest indicator of direction of force was where  
13 the glass was.

14 Now, in fact, if you take Mr. Daily's  
15 theory that somehow where the glass is is related  
16 to him punching out this window, let's look again  
17 at some of the things he saw. Did you notice the  
18 window when the big fellow punched it out in the  
19 film yesterday, it didn't go poof? It came out in  
20 fairly big pieces. And you can see it in these  
21 photographs, there's fairly big pieces. In fact,  
22 if he -- if James Baldwin is punching out the  
23 right side of that window, why does a bunch of  
24 glass end up on the dash? It doesn't make a lick  
25 of sense.

1           But Dr. Carver said that could be  
2 consistent with falling. And we don't know how  
3 far he was leaning on that windowsill, we don't  
4 know how much his knees were bent, we don't know  
5 any of those things.

6           THE COURT: You wish the document  
7 camera?

8           MR. BLONIGEN: Yes, please.

9           Now, Dr. Carver told you about that, and  
10 Mr. Norris told you about it. What else did they  
11 find? The one critical finding that Mr. Daily  
12 wanted to ignore from Dr. Carver is right in his  
13 report made in November of last year: I found  
14 microscopic fragments of glass upon microscopic  
15 examination in the skin slides around this area.  
16 Then they -- well, that can't be it. They come up  
17 with something about, Oh, must have rubbed. You  
18 know, we rub glass in and we rub gunshot residue  
19 off? And frankly, there's no evidence of either  
20 one. They didn't cite any particular study or  
21 incident where that was ever known to happen. In  
22 fact, Mr. Daily says he thought from that that it  
23 was just glass. He never thought it was  
24 microscopic.

25           But Dr. Carver, folks, did the autopsy;

1 and he told you what happened. He told you the  
2 bullet entered and hit the rib. He did the  
3 dissection. The other interesting thing about  
4 this hand is not only are the injuries not  
5 consistent, but there were x-rays of the right  
6 hand. And isn't that interesting because if Dr.  
7 Melinek and Mr. Daily really thought this guy  
8 loaded up like that fellow yesterday without the  
9 glove and everything on and went through that  
10 window, don't you suppose they would have bothered  
11 to look at the x-rays and see if there was a  
12 fractured hand? Wouldn't it be the most natural  
13 thing in the world, Well, if that guy loaded up  
14 like that, let's look at his hand. Let's look at  
15 the x-ray. The only one that did was Dr. Carver,  
16 and he said there were no fractures.

17 The expert can say something, but unless  
18 they can say why they believe something, how do  
19 you ever go back to the jury room and say, Oh,  
20 that guy has to be absolutely right because he has  
21 a lot of degrees?

22 DNA. Every single version of this event,  
23 whether it was Dr. Melinek or Mr. Daily's, has the  
24 defendant sitting firmly in the driver's seat.  
25 Mr. Daily never wavered from that yesterday, did

1 he? No, I put him in the driver's seat, that's  
2 where I think he is. Well, and how far can you  
3 reach in there? Well, we heard about arms being  
4 about 40 inches long. Clear into the passenger  
5 side. Where is he reaching? Right side of the  
6 window. It's the only one that works to try to  
7 get those injuries up there that Dr. Carver told  
8 you don't fit as going through this way.

9 Think about that. You saw the blood on  
10 his hand. You saw the blood on his arm. You  
11 heard the thorough examination done. There's no  
12 blood smears or transfers on the inside of this  
13 car or on the defendant or on any of his clothing.  
14 Now, how do you stick that arm through that  
15 driver's side without accomplishing that? So Mr.  
16 Daily didn't consider that either, the complete  
17 absence of any blood transfer evidence.

18 They tested, what blood they did find was  
19 Mr. Knospler's. The few they left for retesting,  
20 because they're supposed to do that, were  
21 microscopically small things. We don't get  
22 microscopically small things here, folks. We're  
23 talking about smears. In fact, if you look at  
24 Laboratory Item 9 that they did find Mr.  
25 Knospler's blood on, it's so small you can hardly



1 see it in the photograph. Bloody hand and arm  
2 coming through that window, where's the blood?  
3 Mr. Daily never explained that either.

4 Now, Dr. Melinek thought there was blood,  
5 but we heard that they tested the material along  
6 the window there, and it had no DNA in it. There  
7 was no indication of any DNA at all which would  
8 have been present in blood. No indications of  
9 blood either. Not only that, that's clear on the  
10 left side of the window. This is on the right  
11 side of the window.

12 How do we explain? Because neither Dr.  
13 Melinek or Mr. Daily tried to explain. How do we  
14 get a punch loaded up like you saw on that screen  
15 yesterday with no injuries here, no injuries here,  
16 just a minor abrasion there that Dr. Carver called  
17 superficial? These he called very superficial.  
18 He had a little nick here, he has a little nick  
19 here, and he has scratches here that Dr. Carver  
20 said didn't seem to be consistent with extending  
21 his arm through the window. How did he not get  
22 anything on the shoulder?

23 You'll see in the photographs that you go  
24 through here, that the defendant's car had all  
25 sorts of glass in it, including -- this is taken,

1       you'll see in the photographs, by Mr. Baker. Look  
2       at that glass to the middle left of the top  
3       window. How in the world, if he gets in there as  
4       far as they want to say, do we not have some  
5       abrasion or something on Mr. Baldwin's left  
6       shoulder? Are we now going to say he's standing  
7       sideways and reaching through the window? Where  
8       are the scrapes along the stomach because we know  
9       they're not there. And remember, again, the  
10      eyewitnesses who saw nothing like that. The  
11      injuries don't match up.

12               And, in fact, it's also interesting that  
13      when they stopped that car, it's large pieces of  
14      glass. And remember what the officer said, Well,  
15      no, I didn't see any glass fall off it. Well, we  
16      all know there was glass on top of Mr. Knospler.  
17      We found it when we inspected the pants. But how  
18      come it's sitting where it is right now and how  
19      come that joint is gone? It would appear that  
20      that glass was moved somehow before he was  
21      stopped.

22               In addition, we know that if he had glass  
23      on him and he went like this, where would the  
24      glass go? Again, a natural human response, it  
25      would go all over the car. We're told it doesn't

1 matter how it's distributed on the windshield  
2 because somehow when we go around corners, it just  
3 stayed there. This was an altered scene, and it's  
4 an altered scene because Mr. Knospler drove away.  
5 He fled.

6 Finally, the fairy tale we were told in  
7 opening statement was that somehow this guy backed  
8 up clear across the seat. Well, that's not  
9 consistent with anybody's testimony. What did Mr.  
10 Daily tell you about the car? He never said the  
11 car stalled. He never said the car stopped. He  
12 said the tires slipped. And, in fact, when he was  
13 asked, Well, did it show that he stopped and then  
14 he backed up? He started qualifying, saying,  
15 Well, no, no, he's making a right turn. And we  
16 all know when we make a right turn or we make a  
17 left turn, our back tire is not going to perfectly  
18 follow our front tire because we're in the process  
19 of turning, thus the two marks. And that's what  
20 Mr. Daily said yesterday.

21 And I asked him to clarify that on  
22 cross-examination, Was it a free rolling tire  
23 entering that spin? Yes. Was it a free rolling  
24 tire coming out of that spin? Yes. No  
25 indications of backing up and no indications the

1 defendant was stopped. It was what you've all  
2 experienced if you have a front-wheel drive car.  
3 When you go off the pavement and you first hit  
4 that snow and slush, what happens? Tire spins.  
5 Mr. Andujar said the tires spun.

6 And in fact, when we asked Mr. Daily  
7 about that, well, could it just mean that he  
8 stopped in seven feet and then fired a shot? He  
9 said, yeah, could be consistent with that. So Mr.  
10 Daily kept pushing everything into a category, but  
11 this is very general evidence.

12 We also have to look at the defendant's  
13 statement and look at what he said to Officer  
14 Taylor. Ladies and gentlemen, imagine the  
15 situation put to you in opening statement, that he  
16 is asleep and he is suddenly awakened by the glass  
17 crashing in inside there as his window explodes.  
18 Not a cut on him by the way. And so I hurriedly  
19 take my gun and I shoot him. Well, it was  
20 terrible, but I had to do it.

21 Wait a minute. If that indeed is what  
22 happened, look at what he said to Officer Taylor  
23 when Officer Taylor stops him. You heard the  
24 demeanor, I won't go into that again; but when  
25 he's asked the questions, what are his responses?

1           Looks like you've got a broken window,  
2 what's going on? Did you just get into a fight at  
3 the bar?

4           I wonder how that happened there.

5           Now, ladies and gentlemen, you're the  
6 reasonable, prudent person we're going to talk  
7 about in these instructions. Would that be your  
8 response if that's just what happened ten minutes  
9 ago? Would you be upset? I don't care what your  
10 training is. Would you -- you know, but what does  
11 he say? I wonder how it happened there. Okay.

12           Did you get into a fight at the bar?

13           I had no altercation with anyone.

14           And again, the officer tries an even more  
15 direct question. Okay, how did your window get  
16 broken?

17           Well, you're going to have to investigate  
18 that.

19           Consider the defendant's demeanor and  
20 conduct and the content of the answers he gave  
21 that night. Where is that self-defense? It's not  
22 there. The defendant had the gun, as you can see  
23 in the photograph, ready. You can see the  
24 backpack has been laying there. And there's  
25 certainly no indication he fumbled or tried to get

1 into the backpack. He either had the gun out in  
2 his lap or it's sitting right where it is right  
3 there. He pulls it out. What does he have to do  
4 with it? Well, he has to get it across to where  
5 it's firing out the window; right? We don't know  
6 where. Mr. Daily sure can't tell us that, but we  
7 know it's got to be pointed out the window because  
8 the bullet goes out the window.

9 How come for Mr. Norris's testimony we  
10 don't have any pattern if there's no window in  
11 that? From everything you heard, this guy is all  
12 the way in up to his arm. He tests the shirt not  
13 just visually, he looked at it chemically. And we  
14 know that that lead wipe and stuff survived  
15 because the color tests show it. And we know  
16 right here in the morgue that night, that that  
17 bullet wipe he talks about is already present.  
18 Now, I guess it just magically only erases some of  
19 the lead deposits or some of the powder deposits.  
20 You saw at 24 inches there was a very pronounced  
21 pattern, although it certainly wasn't as good at  
22 the lower distances.

23 All those things show that Mr. Baldwin  
24 didn't punch that window out. He didn't haul up  
25 and punch that thing out, and there's no evidence

1 to support it whether somebody says it's  
2 consistent or not. How come the injuries to the  
3 hand aren't greater? How come there's no fracture  
4 of the hand? How come there's no serious  
5 swelling? How come there's no serious bruising?  
6 How come there's no serious cuts? How come  
7 there's no DNA in the car? When all those  
8 negatives add up, it didn't happen that way.

9           And then you take a look at what the  
10 defendant said to the police that night in  
11 response to the questions they asked. Doesn't add  
12 up because, ladies and gentlemen, it might not  
13 be -- because this is not a contested point, it  
14 has not been talked about a lot; but we have to  
15 remember that it is absolutely undisputed in this  
16 case that this man was unarmed, had nothing in his  
17 hands that could be construed to be a weapon, and  
18 was gunned down by another fellow sitting in a  
19 running car. All those things are absolutely  
20 undisputed. And that's a long way -- that doesn't  
21 mean that self-defense is impossible; but come on,  
22 folks, where is the necessity? Where is the  
23 necessity the judge's instructions talk about?  
24 You just don't get to shoot somebody because  
25 you're angry or you're having a bad night or maybe

1       you didn't like some drunk jiggling the handle of  
2       your car. The law doesn't say that.

3               What else is missing in this evidence to  
4       support self-defense? Well, take a look at the  
5       defendant's actions that night and the evidence  
6       that's present for us and the rules the judge gave  
7       you, particularly in Rule 23. And there's a  
8       couple steps to this. First, we look at the  
9       person. Did they -- did they have reasonable  
10      grounds to and actually believe they were in  
11      danger not of getting a punch in the nose, but of  
12      serious bodily injury or death? Remember, to make  
13      somebody the aggressor also, it can't be mere  
14      words. You're going to have more than that. The  
15      judge has instructed on that. You can read those  
16      instructions.

17              The defendant says he was threatened.  
18      Doesn't make a lot of sense from the other  
19      evidence, but that's what he said happened. But  
20      where is the evidence that he had reasonable  
21      grounds to believe and actually did believe that  
22      he was in danger of serious bodily harm or death?  
23      That he actually thought that up here, this  
24      trained Marine we've been told relentlessly,  
25      remember, trained combat veteran, familiar with



1 weapons and physical hand-to-hand combat, where is  
2 the evidence that he honestly believed that he was  
3 in danger of death or serious bodily injury?

4           Would it be produced in the mind of a  
5 reasonably prudent person? Reasonably prudent  
6 person, ladies and gentlemen, not a reasonably  
7 prudent drunk man. He is tremendously impaired.  
8 How is he even in any shape to assess this  
9 situation, yet he has a gun out and at the ready?  
10 It's like Mr. Daily said yesterday, it's every bit  
11 as dangerous as a car. And that at those kind of  
12 blood alcohols, there is no critical judgment.  
13 None. The doctor said much the same thing. Dr.  
14 Melinek said that his BA would be about the same  
15 as the others -- as Mr. Baldwin's, excuse me.

16           So where is that reasonably prudent  
17 person? Where is he? Where is the evidence that  
18 shows that he reasonably did believe, that he  
19 actually believed that he was in that kind of  
20 danger? There is none. Even if Mr. Baldwin broke  
21 the window, where is the danger of serious bodily  
22 harm or death?

23           Who is the aggressor? Because the judge  
24 asked you to determine that. Now, the aggressor  
25 is the person who brings force and deadly force

1 into the situation. And that's only one person.  
2 That's the defendant. And if he does that, he has  
3 an absolute duty to retreat, without question.  
4 Now, we know that he could have simply driven  
5 away. Mr. Daily even agreed that yes, you know,  
6 this is not a serious -- he spun his tire. Drive  
7 away. Drive away.

8 Mr. Daily even says, Well, maybe he  
9 pulled completely back out of the car before he  
10 drove off. Drive away. Drive away. Did he  
11 pursue any -- do we have evidence he pursued  
12 any other alternative? Does he roll down the  
13 window, you know, a half an inch and say, Hey, you  
14 got the wrong car? No evidence of that. Does he  
15 try to defend himself physically without a weapon?  
16 No evidence of that. Does he even take the pistol  
17 out, point it at somebody and say, Hey, back off  
18 buddy? No evidence of that.

19 What does he do? Well, there's no  
20 evidence of that, but what we have had this whole  
21 trial is the constant drumbeat that somehow the  
22 defendant is worth more than Kade Baldwin. And it  
23 has nothing, absolutely nothing to do with this  
24 case. But the defendant isn't off the hook even  
25 you were to find that Mr. Baldwin broke that

1 window. Even if you were to find -- before the  
2 shot, breaks it after the shot, doesn't matter.  
3 You know, and all the doctors talked about, yes,  
4 this is very sharp glass. Yes -- Mr. Carver said  
5 yes, he can fall into it, that's how these  
6 injuries could occur, it would explain these  
7 injuries.

8           Because even if he was the guy in the  
9 video clip, the law says that prior to resorting  
10 to deadly force, the defendant has a duty to  
11 pursue reasonable alternatives under the  
12 circumstances. The defendant may use deadly force  
13 only if necessary and must consider reasonable  
14 alternatives, which may include retreat before  
15 resorting to deadly force. So even if he's that  
16 guy in the video clip, ladies and gentlemen, the  
17 defendant has a duty to retreat if it's a  
18 reasonable alternative. He had every reasonable  
19 alternative. Mr. Daily never said that car got  
20 stuck or couldn't move or anything like that. It  
21 was a spun tire. In fact, Mr. Andujar talks about  
22 it. Mr. Daily even talks about it.

23           They're going to come in and say, Well,  
24 Mr. Daily, the State didn't bring him. Yeah, no  
25 kidding. He told us it was a contact wound, then

1 that changed. He told us this was a precise  
2 recreation. Well, was that really true? Now, I  
3 don't care if he's sagging his pants or not,  
4 six-inch difference in the inseam, 30 pounds  
5 difference in the weight. We have them standing  
6 in places where we don't know if he stood or not.  
7 And it's not necessarily his fault because some of  
8 these things are unknowable, you just don't have  
9 the information; but don't act like you do.

10 Where was the gun? Well, we'll draw a  
11 line back and forth. We won't take into account  
12 the bullet hitting bone. And remember what Dr.  
13 Carver said, even as it goes through the soft  
14 tissues and the organs, its trajectory will  
15 change. And it was a -- the trajectory was  
16 downward as noted, but it was also just slightly  
17 left or right or right to left, excuse me.

18 So yeah, Mr. Daily's conclusions are open  
19 to question. But even in his conclusions, he  
20 doesn't get the defendant there. That car isn't  
21 prevented from leaving in any way, not a single  
22 way. In fact, he said it was just as consistent  
23 with pulling up seven feet and popping off a  
24 round.

25 Ladies and gentlemen, this isn't about

1 everything that the defendant said. We've talked  
2 about many things that were said that had no basis  
3 in the evidence at all. And it's not about  
4 whether Ms. Hudson served Jameson or a gin and  
5 fin. What it's about is personal responsibility.  
6 Personal responsibility when you take the life of  
7 another. And as the judge has instructed you,  
8 when you take the life of another, it's when it's  
9 the last alternative, when it's an absolute  
10 necessity. The law does not count as taking a  
11 life under those circumstances other than set  
12 forth in the jury's -- judge's instructions.

13 Finally, ladies and gentlemen, I'd like  
14 to talk briefly about the verdict form. You'll go  
15 through it, I'm sure you have; but you'll notice  
16 that before you can reach one of the  
17 lesser-included offenses, you must determine if  
18 the defendant is guilty or not guilty of  
19 second-degree murder before you proceed to any of  
20 those offenses. And in this case, ladies and  
21 gentlemen, the State would submit that the  
22 evidence and the law show that you should not go  
23 beyond that first option of second-degree murder.

24 Reckless indifference to the value of  
25 human life. The way he handled that gun, the way

1 he shot that man out in that parking lot that  
2 night without seeking alternatives, isn't that  
3 reckless indifference to the value of human life?  
4 It's not justified because it doesn't fit the law  
5 of self-defense.

6           Would we reward a man that's so drunk he  
7 doesn't know what he's doing by saying, Oh, you  
8 must have been perfectly reasonable when you  
9 decided to kill that man? No, that's not a  
10 reasonably prudent person. You cannot go beyond  
11 that first line of second-degree murder because of  
12 the evidence and the law.

13           And there's responsibility. Where is the  
14 personal responsibility of John Knospler? Where  
15 is the personal responsibility of the man who  
16 blasted a hole in that kid's chest? An unarmed  
17 man, a very dead young man, who deserved better  
18 than to be gunned down in the parking lot of a  
19 bar. That's what the evidence shows, ladies and  
20 gentlemen; and we'd ask you to return that  
21 verdict. Thank you.

22           THE COURT: Thank you very much,  
23 Counsel.

24           I note that you've used 37, 38 minutes.

25           MR. BLONIGEN: Thank you, Your

1 Honor.

2 THE COURT: Ladies and gentlemen of  
3 the jury, anyone need a short break? Okay. We'll  
4 proceed directly with final arguments on behalf of  
5 the Defense, then.

6 Mr. Low, you may proceed whenever you're  
7 ready.

8 MR. LOW: Thank you, Your Honor.  
9 Your Honor, I just need one more second.

10 THE COURT: That's fine.

11 MR. LOW: Thank you for that, Your  
12 Honor. Thank you, gentlemen.

13 All right, Your Honor. Thank you. I'm  
14 just going to grab a chair real quick. If you  
15 could set that on the other side. Thank you very  
16 much. Appreciate it, sir.

17 Thank you, Your Honor.

18 THE COURT: You may proceed.

19 MR. LOW: Appreciate it.

20 I'm standing here, I'm being quiet, and I  
21 hope it doesn't make you uncomfortable. I'm not  
22 trying to stare you down, but I'm -- this is some  
23 incredible responsibility I have, and I take it  
24 incredibly seriously. As I stand here in the  
25 moment, I ask myself how I'm feeling. I'm

1 grateful. I'm afraid that I'll say the wrong  
2 thing, and I'm really afraid I won't say enough.  
3 And if you grate the judge like I do, then I'm  
4 really afraid I'll say too much and I'll be here  
5 too long, and I definitely don't want to do that  
6 to you because enough is enough.

7 But this is an incredible honor for me.  
8 How often in our lifetime do we ever get a chance  
9 to make a difference in somebody's life? How  
10 often in our lives do we ever -- does someone ask  
11 us that I -- I need your help. If you could make  
12 a difference in someone's life, would you?

13 That man has dedicated his life to  
14 service, not service of himself, not the pursuit  
15 of money or glory for himself. What kind of  
16 person believes in something bigger than  
17 themselves? Wants to be part of something that  
18 stands for something and stands for somebody else?  
19 And not only believes in it but sacrifices day  
20 after day and year after year and puts his actions  
21 on the line on a daily basis for everybody else  
22 and then lives with the consequences of the pain  
23 when there's loss?

24 Think of the uncommon person that takes  
25 care enough about other people's needs to put



1       theirs last. His mother, Patricia, here. She  
2       gave John and her only other son Jacob to us  
3       because her family believes in something. They  
4       stand for something. And it's not just words;  
5       it's action. And I'm incredibly grateful and  
6       honored by that, that you think enough of me to  
7       stand for something now.

8               I guess one thing we can definitely say  
9       is saying don't make it so. Man, you hear people  
10      tell you things all the time, that it's gotta be  
11      this and it's gotta be that. Argument is not  
12      fact. And I tried to highlight in the opening  
13      statement that we're going to hear a lot of  
14      argument. Argument means that, well, here's my  
15      opinion; and since I'm saying it, just -- that's  
16      good enough, just take it as so.

17              Argument is not fact. Opinion  
18      represented as fact is a lie. An accusation,  
19      that's the same as name calling, and that's what  
20      you do when you don't have any facts. I'll get to  
21      this in a second.

22              John was a guest here. He was here  
23      because the land made him feel better, and I  
24      suspect everybody here may feel the same way.  
25      First time I came to Wyoming, I was out there at

1 the Tetons, those big granite peaks. That's magic  
2 land. I don't know what it is. That's the most  
3 beautiful airport in the world I've ever been to,  
4 and I've been to a few. There's just something  
5 spiritual about the place. Like Ria will tell  
6 you, it's God's country. I understand that now.  
7 And so does John.

8 He's a guest here. He is not from out of  
9 town. I don't know why that was on the slide in  
10 opening statement. What was that supposed to say  
11 to you, to say to you in opening statement that  
12 he's from out of town? I don't know anybody else  
13 right now who's earned the right more than John  
14 and his Marine buddies over here in the front row  
15 because they've fought for everybody in this  
16 country, not just people from Pennsylvania or  
17 Chicago, all of us. Are they not welcome here?  
18 Is that what we're saying? That don't feel true  
19 to me, unless you're willing to pick up a gun and  
20 take his place because that would require actions,  
21 not accusations. You're welcome wherever in this  
22 country you'd like to go as far as I'm concerned  
23 because you earned it. And he's a guest here,  
24 isn't he?

25 And I guess that in this case, it's

1 enough for people to say, Well, he didn't look  
2 right to me. You know, he had a weird smile. He  
3 didn't look the same to me. He was creepy. I  
4 didn't spend any time to get to know him. I just  
5 judged him based on the way he was dressed, based  
6 on the way he looked, and based on the way he  
7 wouldn't give me any money. And think about it.  
8 It's just an accusation. I don't even have to  
9 prove it to you. I just have to say it.

10           You want to know how much that offends  
11 me? Jacob, if somebody doesn't like the way you  
12 look, I guess there's something wrong with you.  
13 Is that who we are? That's disgusting to me. And  
14 these men deserve better than that, especially in  
15 a court of law. That's insulting to me. And  
16 forgive me for my anger. I'm not angry at anybody  
17 here, but you know why I'm angry? I guess if I'm  
18 open and honest, I'm angry because I'm afraid that  
19 that would actually pass.

20           I heard tell, Oh, you better be careful,  
21 Mr. Low, he's from out of town. I will not accept  
22 that. I refuse to. I remember during the jury  
23 selection process and I asked the question, Does  
24 it matter at all that he's from out of town? And  
25 I think the words were, That's highly overrated or

1 words to that effect, and I believe that. So I'm  
2 just going to pass that because I'm done with that  
3 topic now.

4 This is a demonstrative piece of  
5 evidence. That just means it doesn't go in the  
6 back with you. We call it demonstrative because  
7 it allows me to make a point. And to that -- that  
8 degree, this is a door, driver door off a 2007  
9 Chevy Cobalt. That's the same door, it's just a  
10 different color. Interior, same interior.

11 Maybe you're sitting in your car. You  
12 know there's lots of places in Wyoming to drive,  
13 and there's nowhere to stop maybe except a rest  
14 stop or a wide spot on the side of the road. You  
15 have a lot of wide open country. If you're  
16 responsible, you don't keep driving because you're  
17 tired, you know, so you're dozing off a bit. And  
18 you know that's really unsafe. You don't want to  
19 do that. So you pull over and put it in park and  
20 you're going to take a nap.

21 Now you got a gun in glove box, but you  
22 want to be ready. And you reach over and you take  
23 it out and lay it where you can get to it, and you  
24 close the glove box. It's also snowing real hard  
25 and it's dark, real dark. Probably the reason why

1       you're sleepy. Take a nap. And it's peaceful and  
2       it's quiet. And you can -- you can tell it's  
3       snowing hard by how quiet it is. And the windows  
4       are covered up and you're all alone. You're all  
5       by yourself. It's just you.

6                   MR. LAWSON: Get out of the car.  
7       Get out of the car or I'm going to kill you.

8                   MR. LOW: Freeze. What do you do?  
9       What do you do? Right now you get the luxury of  
10      thinking about it. What if you're all by  
11      yourself, alone? What if you have a loved one who  
12      is sitting next to you? I don't know what I would  
13      do. I heard some people say in jury selection I  
14      know what they'd like to be able to do. Sure, I'd  
15      like to be able to be one of those people, and I'd  
16      like to think I could do something. I don't know.  
17      I don't.

18                   But if I had a loved one in the seat next  
19      to me and they did something and they grabbed that  
20      gun and as this window explodes around me and that  
21      person comes in and I've got nowhere to go and  
22      that loved one in the seat next to me takes that  
23      gun and -- and unfortunately has to take another  
24      life. Would anybody here want to criticize their  
25      loved one for saving their life? Can you imagine

1 saying to your husband, your wife, your brother,  
2 or your friend that you shouldn't have done that?  
3 I'm going to criticize you now. How dare you save  
4 my life? How dare you?

5 Justified to do it. Two reasons. Very  
6 clear. I'm going to kill you. I'm going to take  
7 your life. Clear words of intent followed up by  
8 the smashing of a window. That's aggressive and  
9 that's angry and that's somebody who is meaning to  
10 cause you death or great bodily harm, which you've  
11 already read in the jury instruction and I'll show  
12 in a second. You're absolutely entitled in this  
13 moment to defend yourself because it is clear that  
14 this person has ill will and has the aggressive  
15 force to do something about it. Six-foot-three,  
16 232 pounds, 24 years old, and liquored up, and  
17 he's coming for you. And you had that much time  
18 to think about it. What if it hadn't been John?  
19 What might have happened? What if it had been  
20 Kevin Elkin? Might be a different kind of trial.

21 But we deal with facts. And here's a  
22 very, very critical point. The law says, the  
23 judge says, the jury instructions say, the  
24 constitution says, and everybody here in this  
25 country agrees that if you're going to accuse

1       somebody of something, that you've got prove it.  
2       Where I'm from, if you call somebody a dirty name  
3       or if you call them some kind of name or accuse  
4       them of something ugly, man, you better have some  
5       really good proof or you're going to have a  
6       problem.

7                You see, it's too easy, the founding  
8       fathers of this country, the people had lived in a  
9       foreign country and understood what it felt like  
10      to have the government, the imperial government,  
11      just a monarchy, come in and yank you out of your  
12      bed in the middle of the night and take you down  
13      to a dungeon, a tower, a place of absolute death,  
14      and stuff you in a concrete tomb or a stone tomb,  
15      and you would dwell there. And if it wasn't  
16      enough, you couldn't eat and you would freeze, and  
17      the conditions were as nasty as you can imagine.  
18      It was the absolute torture of not knowing if you  
19      would ever get out of there, if you would ever be  
20      released, if loved ones had no idea where you  
21      were, that would cause people to go insane. It's  
22      cruel.

23               So those same people who knew how that  
24      was to live that way for hundreds of years came up  
25      with an incredible and the most beautiful idea,

1       that people like John and his friends like Scott  
2       and Steve and the other Steve and Kurt and John's  
3       beautiful gal, Holy Nhiza, who's also a Marine,  
4       laid their life down for; and that is if you're  
5       going to call someone and tell them that they've  
6       done something dirty, if you're going to point  
7       your judgmental little finger at them and say  
8       they've done something wrong, I want proof. I  
9       don't want argument, just facts, because that's  
10      what's fair. And what is unfair is to ask him to  
11      have to prove it.

12                I'm going to demonstrate for you right  
13      now. Grant, I accuse you right now of -- I just  
14      looked at you. And, Grant, you were thinking  
15      about -- well, you were thinking about stealing my  
16      Post-its. I know you are. You are a thief. Now  
17      get up here and prove you weren't. Prove you  
18      weren't thinking of that. What do you think about  
19      me now?

20                Maybe I think of something really  
21      disgusting. How about this one? Grant, prove you  
22      weren't just thinking about molesting a boy.  
23      Sometimes the accusation says more about the  
24      person making it than it does about the person  
25      who's accused of it. And if I'm going to make



1 that kind of disgusting accusation that will brand  
2 him for the rest of his life and change his life  
3 and his family's life forever, I better have some  
4 facts because argument ain't getting it done.

5           Wouldn't that be fair that if you're  
6 going to say that, you better have some facts?  
7 Not the kind of facts, well, is it possible, could  
8 it be, may be, are there other reasonable  
9 conclusions, because that's what you heard out of  
10 every single one of the Government's witnesses.  
11 The Government in this case were, like, Well, I've  
12 got, you know, this potential possibility, but  
13 there's all these other ones, but let's just focus  
14 on this one.

15           It's not fair to guess somebody into a  
16 criminal conviction. Is it? It's not fair to  
17 guess somebody into a murder two conviction or now  
18 manslaughter, involuntary manslaughter. Is it?

19           So what are the facts? You just heard on  
20 the video John tells the officer his life was  
21 being threatened and he was a law-abiding citizen.  
22 Let's freeze on that one just for a second. Did  
23 you hear any proof from the Government at all at  
24 any time that would contradict this, that John was  
25 being threatened? Did they ever say any

1 contradictory proof?

2 Oh, I know. I heard a little bit about a  
3 gal by the name of Cormier who went out to the  
4 car, and this is important. Did you notice they  
5 couldn't show you in any way, shape, or form if  
6 she was still in the car when this all went down?  
7 They don't know what time exactly she got out  
8 there. They didn't tell you what time she left.  
9 We don't know how long she was there. We know the  
10 radio was on, the door was closed. How do you  
11 make the leap from, well, there was someone  
12 somewhere in the parking lot but we don't know  
13 when, how long, or what she heard, and that's  
14 proof?

15 This is uncontested, uncontroverted.  
16 That means he didn't disprove it. And it's his  
17 job, according to the jury instruction, it's his  
18 mission, it's his duty, it's supposed to be a  
19 solemn oath to prove it, not to argue it. And  
20 he's got zero. We could walk right there.  
21 Because it's been proven by the videotape how John  
22 felt instantly when he's pulled over.

23 What else do we have? Baldwin punches  
24 out the window. Now keep in mind that this got  
25 proven not with my witnesses initially, with his.

1 His own team of investigators and police officers  
2 while sitting on the stand proved the following  
3 facts, facts: broken glass spread throughout the  
4 car, long before anybody on the Defense team even  
5 got close to it. Oh, by the way, how the glass  
6 got all over the car, did you notice that that was  
7 all argument? Did anybody come in here and prove  
8 to you any other way that that glass got there  
9 that would eliminate and absolutely disprove that  
10 it came out from a punch?

11 And this is critical. Not only does the  
12 Government and the Government men have to prove  
13 their version -- and this is key -- they are  
14 required by law to disprove the Defense version.  
15 Here's why. Suppose you have a set of facts, like  
16 the colors of a pen. One version points towards  
17 innocence. The other version points towards  
18 guilt. Which version does the law require you to  
19 adopt? Require you to adopt? You have to adopt  
20 the version that points towards innocence.

21 It's not enough for him to just take a  
22 version. He can't. He has to also disprove the  
23 other reasonable conclusions if there are more  
24 than one. And he didn't even do that. He didn't  
25 even get close. Why? He just picked a version.

1 And if you'll notice, that changed from time to  
2 time. Anybody notice that his version in opening  
3 is, well, a little different now? That's okay.  
4 That's how the evidence sometimes unfolds when  
5 you're in a possible factual position. He didn't  
6 use and have anybody to disprove that this is how  
7 it happened. Nobody.

8 Injury to the right arm. By the way, and  
9 we have it right here, do you recall Dr. Carver  
10 when he was on the stand? He wrote that down.  
11 Remember Dr. Carver said blunt force injury to the  
12 hand. And I wrote it down when he was saying it.  
13 Consistent with intent to punch an intact window.  
14 Do you remember Dr. Carver said that? Why are we  
15 arguing about this? I took the time to ask him  
16 those questions and lock him down so there was no  
17 confusion and wrote it down right in front of you.  
18 That was on Wednesday, December 17th. And then,  
19 of course, Mr. Blonigen tried to recall him; and  
20 you notice there was that little thing going on,  
21 there were some words, and he says, Well, there's  
22 another possible conclusion as well. Okay.

23 How many times did I have to ask the  
24 witnesses, Well, which one is it? And what would  
25 they say? I don't know, both are possible, one is

1       probable, I don't know. And how many times did I  
2       ask them, Wouldn't you have to guess? And you  
3       could tell their answers, the ones who were being  
4       honest and the ones who didn't want to use that  
5       word, but they went with it.

6               Broken glass fragments in the back of the  
7       hand. Remember when Dr. Carver was sitting up  
8       there and I said, Sir, could it be one or the  
9       other?

10              And he goes, Well, you know, it's -- I  
11       can't tell right now.

12              I said, Did you find any other evidence  
13       that would help you figure it out?

14              And I remember that moment, he said, No,  
15       I don't think there was any.

16              And I said, Are you sure?

17              And he goes, I don't think there was.

18              And I asked him, What about the glass  
19       that was stuck in the back of his hand? Did that  
20       maybe give you an indication of how it may have  
21       happened?

22              And to his credit, he said, Yes, it's  
23       consistent with someone punching through a glass  
24       window.

25              And it makes sense. As I hit this

1 window -- now think about it. I'm above the  
2 window because I'm six foot three, and I'm 232  
3 pounds. Where am I going to contact that window?  
4 Up here like this? Or here like this? Look at  
5 that. Look at that. Right here. And as my fist  
6 passes through the glass because I'm not wearing a  
7 glove, so it's going to cut my skin because it's  
8 softer and more supple and tender than a glove.  
9 Now the glass is broken, I'm passing through, and  
10 it starts leaving fragments in my hand, starts  
11 peeling the skin back, and catches my arm, cutting  
12 my arm and gets my shoulder.

13 See, what I don't understand is that if  
14 the thing is already all broken, it'll fall and  
15 crumble like you've seen in the other videos.  
16 Blunt force trauma, broken glass fragments in the  
17 back of the hand, and dicing and grating, which  
18 you heard Dr. Carver all said was consistent with  
19 someone punching through the window.

20 But let's talk about it. We heard  
21 Mr. Blonigen say, Wait a minute, his hand wasn't  
22 broken, so it couldn't have been that. Isn't  
23 that -- this is what's amazing to me. If you're  
24 going to tell me that the only way to punch  
25 through a glass window will always result in a

1 broken hand, then prove it. Don't argue it.

2 Prove it. Show me.

3 And did he ever ask the expert to tell  
4 you that? This is a play on words. This is what  
5 you call a lawyer trick. Is it consistent with,  
6 and then he'll say yes, and then he argues and  
7 throws his own words in later. Let's make it  
8 simple. Are you telling us, Doctor, that if you  
9 punch a glass window, you have to break your hand?  
10 Did you ever hear that question? Nope. Did the  
11 doctor ever say that you have to break your hand  
12 if you punch this glass window? Nope. Did any  
13 expert on glass and punching glass come in and  
14 tell you that if you punch this glass, every time,  
15 every human, that you're going to break your hand?  
16 Nope.

17 This is the part about arguing is not  
18 facts because if that was true, he'd have proven  
19 it. It's really easy. He has access to experts.  
20 We all do. Just call one up and say, If you're an  
21 expert on this, tell us about it. Why did he  
22 choose not to do that? It's his choice. You see,  
23 it's easier to just kind of say is it consistent  
24 with one theory and then argue later that if  
25 you're going to break this window, you have to

1 break your hand.

2 That's an accusation. Now prove it.  
3 Prove it. Because if you can't, you better not  
4 say it because someone's life is at stake right  
5 now. So you can't even argue that because  
6 argument doesn't equal facts.

7 Bullet trajectory. Straight through the  
8 body. Let's look at this overhead, if I can --  
9 it's up.

10 Thank you, Your Honor.

11 This picture -- sorry. I'm messing it  
12 up. There's your case right there. You can see  
13 the red string. That represents the bullet path.  
14 It's the only explanation that satisfies every bit  
15 of fact with no argument, and it came from their  
16 expert who they have relied upon for years. And  
17 they just decided, Well, we ain't going to tell  
18 y'all about that because if you remember, you  
19 didn't hear a thing about it in opening statement.  
20 You didn't hear a thing about it in opening  
21 statement saying, Well, we got an expert, he gave  
22 us an opinion, we paid him a lot of money for it,  
23 oh, but we just decided today to walk away from  
24 it.

25 And here's the really telling fact. When



1 he was on the stand, this good, honest, decent,  
2 25-year law enforcement man, I asked him, Did they  
3 ever come up to you and say, you know what, that  
4 don't sound right to me or what about this fact,  
5 that doesn't make any sense? And you know what  
6 his answer was? No. Never.

7 So what they tried to do instead is  
8 insinuate that along the way, as he's gathering  
9 evidence and he has some ideas about what it could  
10 be, such as a close gunshot wound, all the tests  
11 aren't in yet, thank God for this man that he  
12 doesn't make up his mind and say, No matter what  
13 the evidence looks like, I'm going with this  
14 because that's what I have to do. Instead, he  
15 adapts, he looks at the facts, and he is  
16 open-minded and open to changing his mind as he  
17 gets more evidence, and he did exactly that. And  
18 when he was done and he gave his opinion, they had  
19 no criticism of any kind until Mr. Blonigen comes  
20 on the case.

21 And I thought one of the most interesting  
22 facts of this testimony was yesterday, when I  
23 asked Mr. Daily, Well, Highway Patrol Person  
24 Sodon -- Sawdon, sorry, Officer Sawdon, did he  
25 agree with you?

1           Yes, he did.

2           What about Investigator Ellis? He was  
3 there, he was participating, he was helpful. Did  
4 he agree?

5           And he said, You'd have to ask him.

6           And I said, Well, did he disagree?

7           He goes, Well, he didn't say anything to  
8 me.

9           Why was it this morning when Investigator  
10 Ellis was on the stand do you think that  
11 Mr. Blonigen refused to ask his own witness that  
12 question? Do you agree, Investigator Ellis, with  
13 Mr. Daily, 25 years, national reputation, smarter  
14 than a lot of people, and certainly much better  
15 educated than a lot of people focusing in this  
16 area? Why didn't they ask him that question?  
17 Well, might have a little bit to do with why they  
18 didn't show you the inside of that paper bag that  
19 had the two shovel fulls of glass in it that  
20 looked like it was more like, according to Officer  
21 Daily, a half cup of glass in it.

22           See how you can just kind of shift it a  
23 little bit? See how you can -- saying it doesn't  
24 make it so? Opinion is not fact. And  
25 representing your opinion as if it's a fact,

1 that's malice. That's reckless. That's  
2 manslaughter to me. That's criminal. You should  
3 not exaggerate. Facts only.

4 Spinning tire marks in the snow. Did  
5 anybody at any point ever contradict the physical  
6 evidence, the pictures, or Mr. Daily on this  
7 point? Nobody. Now, he'll write down right now,  
8 you'll see he's getting ready to do it, wait a  
9 minute, what about Mr. Andujar? By the way, he  
10 used the pronouns "they" quite a bit. Let's make  
11 sure we're really clear on this. There was four  
12 people standing at that door. Two of them said  
13 they didn't start watching until after the guy had  
14 fallen down, so now we're down to two people. One  
15 was pretty short and had to be lifted, and she  
16 said she didn't see it until after anyway. So  
17 that leaves with you with Westy, who said he went  
18 out there and he saw the guy knocking on the  
19 passenger side, and he walked away. When Westy  
20 comes back, the guy is already on the ground, so  
21 he's out. So that leaves Andujar and the gal, and  
22 she told you she only saw him fall in the snow.  
23 We all know he fell in the snow. It's what  
24 happened before then that matters; right?

25 Let's play that video because this is

1 important. Here's the Government man's star  
2 witness. And by the way, who said how much -- you  
3 heard me lock him into this. Did you see the  
4 entire time? Did you watch the entire time, Mr.  
5 Andujar?

6 Judge, we'll need to turn on this station  
7 over here.

8 MR. BLONIGEN: Well Your Honor, he  
9 isn't intending to play Mr. Andujar's statement,  
10 is he? That's not an exhibit.

11 MR. LOW: No, that's okay. It's the  
12 one you entered into evidence.

13 THE COURT: Which exhibit are we  
14 talking about?

15 MR. LOW: This station over here,  
16 Your Honor.

17 THE COURT: It is a received  
18 exhibit, though?

19 MR. LOW: Yes, sir. It's received.  
20 I'll tell you which one it is. It's received  
21 Exhibit Number 301, Your Honor.

22 THE COURT: Thank you.

23 MR. LOW: Yes, go ahead.

24 (State's Exhibit 301 is  
25 played in open court.)

1 MR. LOW: Pause it.

2 Mr. Andujar, did you watch the entire  
3 time?

4 Oh, yes. I watched the entire time.

5 Did you ever take your eyes off at any  
6 point?

7 Never took my eyes off at any point.

8 I wrote this down when we talked to him  
9 on the stand. You heard him say it.

10 Go ahead, Grant. Keep going.

11 (State's Exhibit 301 is  
12 played in open court.)

13 MR. LOW: What's he paying attention  
14 to there? What's he paying attention to there?  
15 Go ahead and play it. Thank you.

16 Yes, the entire time, never took my eyes  
17 off.

18 What's he paying attention to there? And  
19 there? And there? And there? And there? And  
20 there?

21 There's Mr. Westy back on the scene where  
22 he tells you he's already lying down. Mr. Andujar  
23 leans in.

24 Can I have a five-minute warning, please?

25 THE COURT: Okay.

1 MR. LOW: Thank you. And freeze.

2 Grant was good enough to sit and detail  
3 this for us this morning while we were working it  
4 up, and he came up with that this little video  
5 clip taken by the Government -- I'm sorry,  
6 received by the Government, studied by the  
7 Government. Good investigator was good enough to  
8 cut the ten hours plus down to relevant time so we  
9 wouldn't force you to watch all of that. And out  
10 of this episode here where the man sat on that  
11 stand and looked you dead in the eye and lied to  
12 you, he lied to you, he didn't watch it the entire  
13 time.

14 Grant counted out 118 seconds of  
15 opportunity to watch. Total time actually  
16 watching: 67 seconds. Total time not looking:  
17 51 seconds. That percent was 43.2 percent of the  
18 time, Mr. Andujar ain't got a clue what's going  
19 on, yet he's going to sit here and tell you what  
20 he saw happen. He looked away nine different  
21 times. First time, ten seconds; second time,  
22 seven seconds; then two seconds, then two seconds,  
23 ten seconds again, eight seconds, two, one, and  
24 nine. How long does it take to throw a punch?

25 Then you got Sonny. I guess these two

1 forgot what they told each other. And Sonny tells  
2 you, Oh yeah, Mr. Andujar told me it was too dark  
3 and too snowy, he couldn't see well. We locked  
4 him into that.

5 But I thought the interesting thing was  
6 that Mr. Andujar told the police, which you heard  
7 and we played it and you got to hear it, video  
8 wasn't working but don't matter, you can still  
9 hear it.

10 What did you see?

11 Oh, I saw him get stabbed.

12 I mean, if he's watching like he says he  
13 is, which he clearly isn't, then how could he sit  
14 here and tell us he got stabbed because that's  
15 what he told the police that morning. Come on,  
16 man.

17 This is -- this is very important. You  
18 could not have got that bullet dent in the truck  
19 where it was unless the car had moved forward.  
20 How do we absolutely, factually know for an  
21 absolute certain that the car moved forward?  
22 Because of the black spot in the snow. It's here  
23 somewhere. And I'm sorry, I didn't pull it, and  
24 you don't want to watch me waste your time looking  
25 for it. You've seen enough of that.

1           The car absolutely had to pull forward.  
2       You can see it with the tire tracks in the snow,  
3       and you can see it based on where the dent was in  
4       the truck.   Positively had to happen before the  
5       dent, otherwise the dent is not there.

6           So why did the car pull forward before  
7       the shot?   We have plenty of argument, but where's  
8       the fact?   Why would somebody leave or try to  
9       leave before they shot when someone supposedly is  
10      banging on the passenger window and now is on the  
11      driver's side?   He is trying to do the thing he  
12      was taught to do and the thing that is reasonable  
13      and fair and conscientious, and that's leave.   And  
14      to his greatest fear, he gets stuck in the snow  
15      with a front-wheel drive single drive car and that  
16      tire loses traction.   It's proven on the facts,  
17      it's proven on the evidence.

18           And here's the thing.   Did Mr. Blonigen  
19      bring anybody else, did he bring any other  
20      accident reconstructionist to contradict his first  
21      one?   No.   This is key and it is critical.   You  
22      know he had an opportunity to get all kinds of  
23      opinions, all kinds of experts.   Why wouldn't you  
24      bring another one, then, if what you say is true?  
25      Why just argue it?   Prove it.   If he's wrong,



1 prove it because that's your duty and your  
2 mission, and that's what the people ask you to do.

3 You see, asking you all to guess isn't  
4 fair to you. Why would he ask you to guess? You  
5 heard me ask you in opening -- or I'm sorry -- in  
6 jury selection, how do innocent people get  
7 convicted? Remember when I asked you all that?  
8 How does that happen? I absolutely refuse to  
9 believe that it's from jurors who don't care and  
10 they want to convict innocent people. I do not  
11 believe it and I refuse to. That's not how it  
12 happens.

13 What's the next --

14 THE COURT: Counsel, per your  
15 request, you're at 45 minutes, 5 minutes  
16 remaining.

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

19 It happens because people make  
20 accusations and they don't bring proof and then  
21 try and confuse things. He should have brought  
22 another expert if this man was wrong, but he  
23 didn't because he couldn't find one because no one  
24 is willing to come and say what you heard one  
25 expert say is absolutely absurd. Absurd.

1           Lastly, you got the distance the car  
2 moved before it shot, 7.2 feet, before the shot.  
3 The GSR on the T-shirt. This is critical. I'm  
4 rolling the window down to mimic it being gone.  
5 If I'm now leaning in here and I've got my arm in  
6 here, look at the angle of me. What's out in  
7 front? Here's the T-shirt. Here's the entrance  
8 wound right here. Now look at the surface area  
9 that is available to absorb that GSR. They looked  
10 at one small part of the T-shirt, and they did  
11 find it by the way, and we heard about it with  
12 Norris, how is that going to get there like that  
13 through that little teeny hole in the glass?

14           Well, here's the key. If the guy is in  
15 here and you've now slid over and you're back like  
16 this, push him away, and you shoot, it goes and  
17 hits him in the chest, you got some of the  
18 particles inside the door frame, and guess what?  
19 They found them there. It's exactly where they  
20 were. So it blocks the ability to get on the  
21 T-shirt because a lot of the T-shirt is behind the  
22 door.

23           What else? Where else could it be? It's  
24 going to be on his head, it's going to be on his  
25 face, it's going to be on his neck. It's far

1 enough away where it's not going to burn him.  
2 Remember, two feet or less. Actually, the burning  
3 is somewhere around 18 inches. Three feet, four  
4 inches, slide over, you're not going to burn his  
5 face or his skin. But will it leave the sand that  
6 Mr. Norris talked about? Sure.

7 And here's the thing that really doesn't  
8 make sense. They claim they took those samples  
9 but they decided not to test them. They took the  
10 samples, decided not to test them. Why? And  
11 if -- why would you argue something different now  
12 when you had the ability to prove it? Don't argue  
13 about it.

14 Not to mention all the other reasons  
15 about why because of the conditions outside. I  
16 don't have time to go through it, the judge is  
17 going to cut me off in a second. I promised, I  
18 agreed to it, so it's not his fault. I made an  
19 agreement.

20 Lastly, the coroner said that those glass  
21 particles around the epidermal surface -- that  
22 means skin, epidermal means skin -- were irregular  
23 fragments of refractile material consistent with  
24 glass deposited on the surface, epidermal surface.  
25 That means they're on the skin, a few of them

1 around the bullet hole. They're not in the wound.  
2 They're not dust as somebody tried and slip in  
3 hoping no one would listen to or pay attention to.  
4 They are irregular fragments out of his own  
5 expert. Why would he all of a sudden change the  
6 word and try and go with dust? Why? Who does  
7 that?

8 Judge, I guess that's my time.

9 He's not guilty of murder or manslaughter  
10 or involuntary manslaughter because as the jury  
11 instruction says, I think it's Number 23, you've  
12 got them there, self-defense is a complete defense  
13 to everything. And being drunk doesn't mean you  
14 don't get to defend yourself anymore. It's not  
15 what it means. You are entitled to always defend  
16 yourself, and it's time to fight for John because  
17 now he needs your help. Thank you. Thank you for  
18 your patience.

19 THE COURT: Take down the  
20 displays --

21 MR. BLONIGEN: No, Judge. Leave  
22 them up, please.

23 THE COURT: Want him to leave the  
24 charts also?

25 MR. BLONIGEN: Sure, Judge, let's

1 leave all the props up.

2 This is the story of this case. Right  
3 here. We write stuff on the board the way we want  
4 to hear it. We don't include everything because  
5 it's microscopic, remember, the doctor testified  
6 that that is on his microscopic study he found  
7 that. And then we have the door, ladies and  
8 gentlemen. And hidden behind the props and the  
9 easel is the man who killed. But let's hide him  
10 behind the rhetoric, let's hide him behind the  
11 props, and not look at the evidence.

12 Nothing in the law requires you, despite  
13 what counsel said, for the State to disprove every  
14 fact they allege. The Judge has instructed you on  
15 what the law is. You won't find that in there.  
16 We don't have to disprove every theory they have.  
17 You won't find that in there either.

18 You have to go back to the evidence as  
19 presented. Mr. Andujar, yeah, he was looking off  
20 and everything; but look at when he is paying the  
21 most attention. And how, then, if he sees  
22 nothing, is he able to describe the fact that we  
23 know is true from other evidence, that he walks to  
24 the car, walks around, is leaning against the car  
25 door, falls, and then the car takes off? He

1 described that on the morning of the event. You  
2 don't need experts to tell you what's going on.  
3 Experts are not a substitute for your judgment,  
4 judgment from the evidence. That's why the judge  
5 instructed you that it's up to you what parts you  
6 take.

7 And finally, we talk about the defendant  
8 being stuck. Mr. Daily never said anything of the  
9 sort, and you can go back and you can look at the  
10 pictures. And guess what? We don't have to take  
11 an expert's word for something. You may  
12 consider --

13 THE COURT: Counsel, per your  
14 request, you have ten minutes remaining.

15 MR. BLONIGEN: Yes, sir.

16 THE COURT: Thank you.

17 MR. BLONIGEN: You may consider the  
18 evidence presented to you and the reasonable  
19 inferences and conclusions which may be drawn  
20 therefrom in the light of your knowledge,  
21 observation, and experience of life.

22 We spent half that closing statement  
23 talking about nothing that had to do with  
24 evidence. Why is it rather than talking about the  
25 evidence, we always want to talk about what kind

1 of Marine he was rather than could that really be  
2 caused by that?

3 And Dr. Carver did not say punched -- he  
4 said -- striking the window is what he said. You  
5 can go back, talk about what you heard, compare it  
6 to what we say. But he is very clear on rebuttal  
7 that these wounds just don't quite add up to him.

8 That's common sense. You saw what that  
9 guy had to do to break that window. Is it  
10 impossible to break a window? Do you have to  
11 break your hand? No. But wouldn't you at least  
12 look at the hand if it was broken? Wouldn't you  
13 at least stop and say you mean a little cut  
14 here -- and remember Dr. Carver says these are  
15 just like layers of skin, that's it.

16 And remember one other important thing.  
17 Mr. Daily said he could proceed and, in fact, he  
18 did just proceed and drive away. The tire slipped  
19 once. It continued in the same direction, in the  
20 same pattern, he said that. Rolling tire going  
21 in, rolling tire coming out. So even if you were  
22 to take everything they just said, the defendant  
23 had more than an adequate opportunity to retreat,  
24 and he has to seek reasonable alternatives.  
25 There's got to be a reasonable alternative to

1 James Kade Baldwin laying dead in that parking lot  
2 when alls he did was lift a door handle.

3 Mr. Daily said that it would be just as  
4 consistent with the defendant going forward,  
5 stopping, and then firing the shot. He never said  
6 he was stuck, he never said he couldn't move, and  
7 your own common sense tells you that when you look  
8 at the stuff.

9 So let's get rid of the stand-in doors.  
10 By the way, can you imagine Mr. Baldwin fitting  
11 through this thing? Bigger than me, quite a bit  
12 bigger than me. When this theory doesn't make  
13 sense, you don't have to follow it.

14 When you had all this, the GSR, it was  
15 found in these areas. Where is the gun if he's  
16 sitting right there because that -- that car seat  
17 is about there, he has to pick it up from right  
18 over there and bring it over, and it's not going  
19 to leave any traces? Nothing? Yet his own expert  
20 said -- Dr. Melinek says indeterminate or  
21 intervening target. Mr. Norris said indeterminate  
22 or intervening target. Dr. Carver said  
23 indeterminate or intervening target. Mr. Daily  
24 says no intervening target but he does say  
25 indeterminate. So Mr. Norris, who apparently has



1 raised the ire of counsel, his findings were  
2 adopted by all three experts, including two the  
3 Defense called. So really how unreliable is he?

4 If it would have happened the way the  
5 defendant said, there would be a whole 'nother  
6 series of physical evidence. That's not guessing,  
7 that's not asking you to guess. That's applying  
8 reasonable inferences to your everyday common  
9 sense and experience. And this is a question of  
10 responsibility. That man took another man's life.  
11 Shouldn't take that lightly either.

12 THE COURT: Thank you, Counsel.

13 We'll now submit the case to the ladies  
14 and gentlemen of the jury. First thing we need to  
15 do is have Ms. Keffer take the bailiff's oath for  
16 deliberations.

17 THE CLERK: You do solemnly swear  
18 that you will take charge of this jury; that when  
19 so directed by the Court, you will keep them  
20 together and not allow them to separate; that you  
21 will not communicate with them about the case or  
22 allow anyone to communicate with them in any way;  
23 and when so directed, return them into this court,  
24 so help you God?

25 THE BAILIFF: I do.

1                   THE COURT:   And Ms. Keffer, let me  
2                   give you the original instructions and the  
3                   original verdict form, which is the one that would  
4                   need to be completed and signed and brought back  
5                   to Court.

6                   Next, Mr. Bartling, when we break here,  
7                   I'm going to ask you to not go with the other 12  
8                   jurors. Thank you for your service as the  
9                   alternate. I would ask you to -- if you'd just  
10                  sort of wait in the bar, Mrs. Tuma will visit with  
11                  you, help you get any coat or anything that you  
12                  need. She'll also take down your phone number and  
13                  be glad to advise you of the final decision in the  
14                  case since you've been involved with it since the  
15                  outset.

16                  To the remaining 12 of you, ladies and  
17                  gentlemen, the case is now submitted to you to  
18                  agree upon a verdict. You're to stay together  
19                  under the guard of the bailiff. You will confine  
20                  your deliberations to the jury room and will  
21                  communicate with no one except yourselves and with  
22                  the bailiff to make any requests that you may have  
23                  or to announce that you've reached a verdict. If  
24                  you have any requests that need to be made in any  
25                  fashion, they need to be made through the bailiff.

1           You will take with you to assist in your  
2 deliberations the instructions given by the Court,  
3 the exhibits introduced into evidence during  
4 trial, and, of course, you may take with you your  
5 notes. You're not to be given any other materials  
6 such as newspapers or books or dictionaries or  
7 anything else without the permission of the Court.  
8 Since there are the video clips that are in  
9 evidence, you may use a player and monitor that's  
10 available, I believe, in the jury room for your  
11 use.

12           If necessary, you may make arrangements  
13 through the bailiff for any meal or meals that may  
14 be required.

15           I can assure you that the bailiff will  
16 prevent anyone from overhearing your  
17 deliberations, and that they will remain  
18 confidential. Once a verdict is reached, the  
19 announcement needs to be made through the bailiff;  
20 and I ask that all counsel be available and  
21 parties to be back within ten minutes of any call  
22 so that there won't be an undue delay in  
23 finalizing the proceedings in this case.

24           With that, the 12 members of the jury  
25 panel are excused, and the case is now submitted

1 for the jury's deliberations.

2 (The jury began deliberating at  
3 2:44 p.m.)

4 (At 5:17 p.m., the following  
5 proceedings were held in open court in the  
6 presence of the jury:)

7 THE COURT: Thank you very much.  
8 Please be seated. Court will reconvene.

9 The Seventh Judicial District Court does  
10 come back to order in the State of Wyoming versus  
11 John Henry Knospler, Jr., in Criminal Action  
12 Number 19548-B.

13 The Court notes for the record the  
14 presence of the attorneys that have been with us  
15 all along, the defendant, Mr. Knospler, and the 12  
16 members of the jury panel.

17 The Court is advised that the jury has  
18 selected a presiding juror and has reached a  
19 verdict. Mr. Huber, you are the presiding juror?

20 PRESIDING JUROR HUBER: That is  
21 correct, Your Honor.

22 THE COURT: Have you completed the  
23 jury form or the verdict form on behalf of the  
24 jury?

25 PRESIDING JUROR HUBER: I have, Your

1 Honor.

2 THE COURT: Would you give it to the  
3 bailiff for delivery to the Court.

4 The verdict form is properly executed and  
5 completed and signed off on, dated on behalf of  
6 the jury in this case. So I'll give it to Mrs.  
7 Tuma for reading here in open court.

8 THE CLERK: Yes, sir.

9 In the Seventh Judicial District Court,  
10 Criminal Action 19548-B, the State of Wyoming  
11 versus John Henry Knospler, Jr., Verdict.

12 We the jury, duly empaneled and sworn to  
13 try the above-entitled cause, to find as follows.  
14 Number one, as to the offense of murder in the  
15 second degree as charged in the Information, we  
16 find the defendant, John Henry Knospler, Jr.,  
17 guilty.

18 It is dated this 23rd day of December,  
19 2014, and it is signed Kevin Huber, presiding  
20 juror.

21 THE COURT: Thank you very much.

22 Is there any request for the jury to be  
23 polled?

24 MR. LOW: Yes, Your Honor.

25 THE COURT: Okay. Ask Mrs. Tuma if

1       you would poll the jury at this time.

2                   THE CLERK:   Susan Shell, is this  
3       your verdict?

4                   JUROR SHELL:   Yes, it is.

5                   THE CLERK:   Britney Butler, is this  
6       your verdict?

7                   JUROR BUTLER:   Yes.

8                   THE CLERK:   Vickie Pavey, is this  
9       your verdict?

10                   JUROR PAVEY:    Yes.

11                   THE CLERK:   Michael Martinez, is  
12       this your verdict?

13                   JUROR MARTINEZ:   Yes.

14                   THE CLERK:   Robin Archer, is this  
15       your verdict?

16                   JUROR ARCHER:    Yes.

17                   THE CLERK:   Elizabeth Luers, is this  
18       your verdict?

19                   JUROR LUERS:     Yes.

20                   THE CLERK:   Kaylee Neal, is this  
21       your verdict?

22                   JUROR NEAL:     Yes.

23                   THE CLERK:   Elizabeth Kurtz, is this  
24       your verdict?

25                   JUROR KURTZ:    Yes.

1                   THE CLERK:   Katie Pearson, is this  
2 your verdict?

3                   JUROR PEARSON:   Yes.

4                   THE CLERK:   Carole Christman, is  
5 this your verdict?

6                   JUROR CHRISTMAN:   Yes.

7                   THE CLERK:   Carolyn Richmond, is  
8 this your verdict?

9                   JUROR RICHMOND:   Yes.

10                  THE CLERK:   Kevin Huber, is this  
11 your verdict?

12                  PRESIDING JUROR HUBER:   Yes.

13                  THE COURT:   Thank you very much.

14                  Based upon the poll of the jury and the returned  
15 and properly executed verdict form, I'll ask  
16 Mr. Blonigen and the District Attorney's Office to  
17 prepare an order establishing the judgment of the  
18 jury for the offense of murder in the second  
19 degree.

20                  The next thing I need to do is to excuse  
21 the ladies and gentlemen of the jury. And I do so  
22 with a couple of advisements. First of all, there  
23 was the advisement that you were to not talk to  
24 anyone about the case. That is lifted. You may  
25 now talk to anyone you wish to discuss the case

1 with, but you need not talk to anyone. And if  
2 anyone should persist in discussing the case with  
3 you over your objection or if anyone should be  
4 critical of your jury service, please report it to  
5 me, and we'll take immediate action. So to  
6 clarify, that requirement that you not discuss the  
7 case is lifted, but it's in your court totally as  
8 to whether you wish to discuss the case with  
9 anyone.

10           The second thing I'd like to do is to  
11 just say thanks for your jury service. I never  
12 figured out a good way to fully express all of the  
13 thanks that the Court has for the service of  
14 jurors in difficult cases such as this. But I  
15 have adopted the policy of looking for quotes that  
16 best express some of the sentiments relative to  
17 jury service. And I have a recent professional  
18 publication of an organization that I'm involved  
19 with, and it has an article by William G. Young.  
20 And he's a Federal District Court judge, I believe  
21 out of Massachusetts.

22           Two quotes from his article. Ninety  
23 percent of the jury trials on the planet take  
24 place in the United States of America. No country  
25 uses juries, the direct democracy of the people,



1 more than we do; it is a part of our DNA as  
2 Americans.

3 And then second, sort of I think  
4 concluding his comments and thoughts, he says, Now  
5 on the 16th of April last year, and on many other  
6 occasions because I'm the juror liaison in our  
7 court, I went down to greet the jurors. And I  
8 looked out there, and there they were:  
9 firefighters, teachers, average Americans. And  
10 I'm here to tell you that they have the capacity  
11 to govern. Every single jury trial in which you  
12 participate is both a test and a celebration of  
13 the free people governing themselves.

14 And I concur in that. The importance of  
15 the jury trial to our democratic society cannot be  
16 understated. So on behalf of the Seventh Judicial  
17 District Court, I will excuse you at this time.  
18 You're free to go.

19 Is there anything else to be taken up at  
20 this time other than ordering the presentence  
21 investigation, Mr. Blonigen?

22 MR. BLONIGEN: Your Honor, we would  
23 move -- pursuant to Rule 46.2, there is a  
24 presumption of detention given the serious nature  
25 of this offense and the defendant's poor contact

1 with the community. According to Rule 46.2, a  
2 defendant who has been found guilty of an offense  
3 and is awaiting sentence, be detained unless this  
4 Court can specifically find no risk to anyone in  
5 the community and no risk of flight. So pursuant  
6 to Rule 46.2, we'd ask for detention at this time.

7 THE COURT: I'll take that up here  
8 directly, but why don't I excuse the ladies and  
9 gentlemen of the jury panel, again with my thanks.  
10 And we'll reconvene after they've exited.

11 (The following proceedings  
12 were held in open court, out of the presence of  
13 the jury:)

14 THE COURT: Thank you very much. I  
15 will reconvene briefly as to the State's request  
16 pursuant to Rule 46.2. Anything from the Defense?

17 MR. LOW: Been out on bond, quite a  
18 bit of bond. More importantly, half of that is  
19 not even his. He doesn't have a passport. He's  
20 not going anywhere. His family is here, it's  
21 Christmas. He's going to come back, like he  
22 always has, and face what's coming to him.

23 So I'd ask you to show some compassion  
24 and let him spend some time with his family since  
25 they traveled all this way. He'll come back when

1       you tell him to.

2                   THE COURT:  As I recall, were there  
3       specific orders relative to the passport and  
4       firearms in Circuit Court?

5                   MR. BLONIGEN:  At least as to the  
6       passport, yes, Judge, and firearms.

7                   THE COURT:  Okay.  Anything else  
8       from the State?

9                   MR. BLONIGEN:  Your Honor, the rule  
10      says there's a presumption unless it's overcome by  
11      evidence.  I haven't seen any evidence.

12                   THE COURT:  Well, I think there  
13      probably is the evidence of the defendant making  
14      the court appearances.  We've had several of them  
15      in this case.  I think notifying the Court of a  
16      change in address, but he has remained out of  
17      state.  Obviously, he's appeared here at this  
18      trial, and there's the evidence of the bond.

19                   But I would agree with the State, Rule  
20      46.2 is very specific.  And I believe the  
21      defendant should be remanded to the custody of the  
22      sheriff at this time, pursuant to Rule 46.2, given  
23      the risk of flight, potential danger given the  
24      nature of the offense, and the considerations that  
25      are included in file relative to bond.

1           So I will remand you to the custody of  
2 the sheriff, and we'll get the presentence  
3 investigation going at this time.

4           Thank you very much. Court will stand  
5 adjourned.

6                           (The trial proceedings adjourned  
7 at 5:26 p.m., December 23, 2014.)

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C E R T I F I C A T E

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2  
3 I, JONI L. CHANEY, Official Court  
4 Reporter within and for the Seventh Judicial  
5 District Court of Wyoming, do hereby certify that  
6 I reported by machine shorthand the proceedings  
7 contained herein and that the foregoing 1998 pages  
8 constitute a full, true, and correct transcript.

9 Dated this 8th day of June, 2015, at  
10 Casper, Wyoming.

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13 \_\_\_\_\_  
14 JONI L. CHANEY, RPR  
15 Official Court Reporter  
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