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SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF NATRONA, STATE OF WYOMING

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|----------------------|---|---------------------|
| STATE OF WYOMING, |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Docket No.: 15984 B |
| |) | |
| JOHN HENRY KNOSPLER, |) | |
| Defendant. |) | |

VERIFIED MOTION FOR DNA TESTING

Comes now the Defendant, John Henry Knospler, by and thru undersigned counsel, and moves this court for an order directing that PCR STR-DNA Testing of evidence in the possession of the State be conducted as provided in the Wyoming “Post Conviction DNA Testing Act.” Wyo. Stat. § 7-12-302 *et seq.* This request is made under the specific provisions of Wyo. Stat. § 7-12-303 (c). Mr. Knospler alleges in support of this motion as follows:

1. Mr. Knospler has been convicted of a felony offense, to wit., second degree murder, and files this motion preliminary to filing a motion for new trial.
2. The Natrona County District Court entered the judgment and sentence of conviction.
3. Mr. Knospler asserts under oath and with a particularized factual basis as follows:

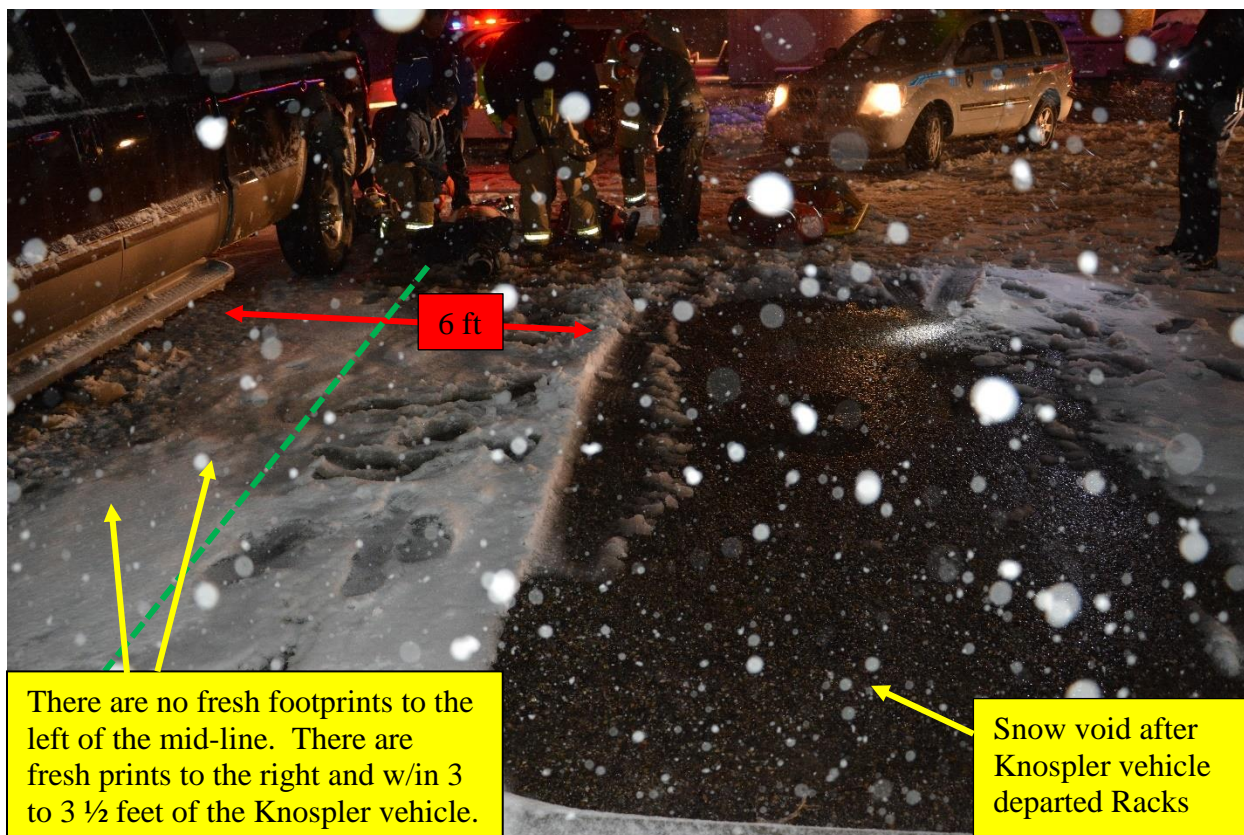
- a. The epithelial DNA evidence is material to establish that Mr. Baldwin grabbed Mr. Knospler's .45 Nighthawk at the time the firearm discharged. Mr. Baldwin could not have grabbed the firearm unless he had also broken the window from the outside in with blunt force, either with his fist, palm of hand, or shoulder.



- b. The .45 Nighthawk was recovered by law enforcement within a few minutes after the shooting at Racks. It had a severely damaged “crimped” shell jammed in the discharge port and the magazine had dropped approximately 1” from the pistol well. These facts are not in dispute and were presented at time of trial.



- c. The photo taken by law enforcement at approximately 12:32 pm, at Racks shows the MAXIMUM distance Mr. Baldwin could have been from the Knospler's vehicle. There are no “fresh” footprints in the snow within 2 ½ to 3’ of the red pickup truck hit with the bullet after it passed through Mr. Baldwin's body.



- d. The exit wound in Mr. Baldwin's lower back was 26" from the top of head as found during the autopsy conducted by Dr. Carver. (TT 708:18-711:3, 713:7-717:5) (See, Ex 15 in Knospler's showing in support of postconviction relief.)
- e. Based upon the location of the entrance wound, track of the bullet through Mr. Baldwin's body, location of the exit wound, and the impact on the red Ford pickup 78 ¾" above the parking lot to the west of the Knospler vehicle, Mr. Baldwin had to have been bent at the waist when the fatal shot was fired. Under these undisputed facts, the MAXIMUM distance Mr. Baldwin's head could have been from the driver's side window is shown in this photo taken during the Daily re-enactment requested by the Natrona County Attorney's Office. (See Ex 1, Knospler's showing in support of postconviction relief.)



f. Without the benefit of having conducted any re-enactment as recommended by Mr. Daily, Mr. Norris testified falsely and inaccurately that:

Tempered glass, which is in vehicles, is often referred to as safety glass because of how it breaks. And when it breaks, it will immediately fracture into hundreds, maybe thousands of very **small square and rectangular shaped pieces, so these have somewhat dull edges.**

And the reason for them using it in vehicles is because when it breaks, **you're not having those large shards of irregularly shaped glass flying all over the occupants of the vehicle.** It will break into these **very small pieces, and they're relatively dull.** And so it's much safer for the occupants if they're involved in some kind of vehicle crash.

When these windows are struck by a bullet, as soon as the bullet perforates the window, instantly it's going to fracture and break into all **these very small, square, rectangular shaped piece.** That's often -- in the industry, that's often referred to as dicing, the window dices. (Emphasis added) (TT 1560:6-25)

g. Mr. Norris falsely claimed in his direct examination that:

As the bullet perforates the window, the force is very concentrated. It's right there about - the amount of

surface area about as big as a .45-caliber bullet in this case.

So you'll have **a little bit of glass flying outwards right where the bullet is**, but then what happens to the window, it could be anybody's guess. (Emphasis added) (TT 1561:4-12)

- h. Mr. Norris gave misleading testimony regarding glass windows behaving “counter-intuitively”, citing to unidentified literature in his testimony and that was not referenced in his formal report or cited in his testimony, to wit:

And it's not uncommon that even in the literature, it's been published that oftentimes **glass struck by high velocity bullets** will behave somewhat counterintuitively, and they **actually break inward towards the direction of the gunshot**.

And that's -- that's been documented in the literature, and that is something that I've been trained to look for as well. (Emphasis added) (TT 1562:9-16; See also, testimony confirmed on cross-examination based on “experience” at TT 1570:24-1571:4)

- i. The .45 caliber bullet fired from Mr. Knospler's Nighthawk was NOT a “high velocity” round but “big and slow” weighing .230 grains and with a sub-sonic muzzle velocity of 780 to 850 fps. Sniper rifles used by SWAT and the military will typically have super-sonic muzzle velocities in excess of 2,000 ftp with different bullet aerodynamics.
- j. In six re-enactments shooting the driver's side window from the inside/out conducted by Defendant's counsel and forensic consultant as recommended in the

Daily report to the Natrona County Attorney, dagger shaped shards of glass were consistently drive outward along the bath of the bullet. (See, exhibits 1. 58-60, 72 – 74, 92-94 in Mr. Knospler’s showing in support of postconviction relief.)



- k. These dagger like shards were not found in any of the glass recovered at the Racks crime scene, viewed or collected from the Knospler vehicle when searched by Wyoming law enforcement, nor in the search conducted by the defense of the broken glass fragments in the Knospler vehicle before the three shoots conducted on September 9, 2017.
- l. In the six defense re-enactments, the driver’s side tempered glass did NOT react “counter-intuitively” as claimed by Mr. Norris, but consistent with Newton’s 2nd and 3rd laws of motion. (See, Ex 43, 47, 49, 62-3, 73-4, 76, 86-7, 76, 93-4 in Mr. Knospler’s showing in support of postconviction relief.)

m. No glass shards or cuts on the face, nose, ears, or eyes were found on Mr.

Baldwin body at the time of the autopsy. Such injuries would be expected if his face were close to the location where the bullet exited the driver's side window under the State's theory as shown in the photo in para 2(e) above.



4. The evidence requested to be tested is still in existences since the State has refused to release the .45 Nighthawk under the rationale that they might need the firearm in the event of a re-trial. He has no reason to believe that the State would have intentionally or negligently interfered with the chain of custody of the evidence.
5. The DNA evidence to be collected and tested would be epithelial cells from locations on the .45 Nighthawk and from the top of the spent "crimped" cartridge.

6. On May 11, 2016, the Wyoming Supreme Court recognized that the Wyoming Crime Lab was qualified to perform autosomal STR testing of as few as 8 to 10 epithelial cells (“touch” DNA) and Y-STAR testing in *Bean v. State*, 2016 WY 48, 373 P.3d 372, (2016). This opinion was released AFTER Mr. Knospler was sentenced on May 19, 2015, and AFTER his conviction was affirmed by the Wyoming Supreme Court on January 21, 2016. This “touch” DNA testing was accepted in Wyoming after Mr. Knospler was convicted and Wyo. Stat. § 7-12-303(c) (viii) is applicable.
7. The “theory” of defense presented in the motion for new trial will be consistent with that at the time of trial, to wit, Mr. Baldwin broke the driver’s side window through blunt force and was in a struggle with Mr. Knospler when the firearm was discharged. Mr. Knospler was acting in self-defense and Mr. Baldwin was the aggressor.
8. The .45 Nighthawk and spent cartridge was not previously tested. In fact, the Natrona County Attorney’s Office in consultation with the Wyoming Crime Lab specifically requests that multiple forensic examinations NOT be conducted. (See, Ex 28 in Mr. Knospler’s showing in support of postconviction relief.)
9. Mr. Baldwin’s epithelial DNA could only be on the .45 Nighthawk and the crimped spent cartridge if a) the window was already broken, and b) was deposited at the time the firearm was discharged and the spent cartridge jammed.
10. This exculpatory epithelial DNA evidence would establish self-defense and eviscerated the State’s theory that Mr. Knospler fired through the window and could have simply driven away in safety.
11. Mr. Knospler’s attorney failed to seek pre-trial DNA testing (just as the State did not request such testing). This decision was not a matter of strategy or tactic.

12. Mr. Knospler received ineffective assistance of trial counsel through the failure to pursue statutory discovery and request independent testing of the evidence, including PCR STR-DNA testing. (See. Court comments on failure to follow Rule 16 and 26.2 Rules of discovery at TT: 909:18-911:7, 1478:7-1482:13, 1616:22-1622:12).
13. The “theory” of the defense was self-evident in this case. However, “effective” assistance requires that defense counsel obtain the forensic scientific evidence in support of the defense theory and that would scientifically refute the speculation endemic to the State’s theory and “opinion” by Mr. Norris at trial. See, *Strandlien v. State*, 2007 WY 66, 156 P.3d 986 (2007) (Postconviction granted for failure to retain expert on accident reconstruction. Cross-examination of state’s witnesses not suffice.)
14. Mr. Knospler alleges that:
 - a. Trial counsel received the Daily Report in July 2014. However, he failed to investigate the circumstances related to the forensic aspects of the broken tempered driver’s side glass based upon the State’s theory of an “inside/out” shot. Mr. Daily unequivocally recommended that such a re-enactment be conducted, but neither the State or the defense did such a reenactment. Defense counsel did not have Mr. Daily conduct the requested reenactment testing that he requested. (See, *Strandlien v. State, supra*) (“An expert would have testified that the collision was unavoidable, reinforcing Strandlien's version as to how the collision occurred. The expert also would have discredited the troopers' opinions as to the cause of the collision. Although trial counsel cross-examined the troopers at trial, he did not touch on the majority of the inadequacies identified by the expert. We

find that had the expert testified at trial, it is reasonably probable that the outcome of Strandlien's trial would have been different.” ; Cf, *Shipman v. State*, 2001 WY 11, 17 P.3d 34 (2001) (Defendant failed to specify how Wyoming Crime Lab testing was inadequate or how he was prejudiced by failure to conduct independent testing.). The results of reenactment of the window shooting would have logically resulted in further investigation of the specific evidence (not opinion) regarding what happened at the time of the shooting relating to the dropped magazine and spent cartridge damage and “jam.”

- b. Trial counsel did not challenge that the .45 Nighthawk “jam” was the result of “limp wristing” on the part of Mr. Knospler as represented by the prosecutor. (See, State’s opening at TT 201:24-202:6; Norris testimony ref: limp wristing at TT 1487:19-1489:10, 1496:19-1497:2; Defense brief cross-exam at TT1610:1-13, 1611:5-9, and re-direct at TT 1636:17-22) Trial counsel failed to recognize that the “jam” could have been for other reasons, such as the interference with the slide as testified to by Mr. Norris (See TT at 1489:15-22, 1496:18-1497:2), or through an obstruction caused by a hand over the discharge port. (See, Ex 95 in in Mr. Knospler’s showing in support of postconviction relief, Mr. Knospler’s showing ref: access to .45 Nighthawk and reenactment.)
- c. Trial counsel did not recognize that the discoloration to the right palm of Mr. Baldwin as identified in Ex 107, 225 was NOT the result of fingerprinting. The file info on these photos show they were taken at 8:31 am on 10/4/13 at the morgue. The fingerprint ink first appears on photos taken at 9:05 am on 10/4/13. (See TT at 591:15-592:11)

- d. Trial counsel spent considerable effort in his cross-examination of Mr. Norris challenging the distance testing of the deposit of gunshot residue on Mr. Baldwin's T-shirt as being at or more than 24". (TT 1584:17-1588:9) Rather than attacking Mr. Norris on this issue, trial counsel failed to recognize that after Mr. Baldwin broke the driver's side window, it would be a natural reaction to attempt to push the firearm away and obstruct the discharge port. This would have placed the entrance wound between 23 and 28" from the firearm's muzzle.



- e. Trial counsel failed to recognize that the Daily Report also recommended that a reenactment of shooting the T-shirt should be conducted under similar circumstances that existed on the night of the shooting, albeit under a different rationale. (See Ex 1 at p. 12, in Mr. Knospler's showing in support of postconviction relief.)
- f. Trial counsel failed to recognize that after Mr. Baldwin's T-shirt was impacted directly from a shot from a distance of between 23 and 28", there was additional dispersal of the gunshot residue under Locard's Exchange Principle, a bedrock principle of forensic science.

- g. Trial counsel failed to recognize that the EMTs in their attempts at resuscitation rolled the wet T-shirt up around Mr Baldwin's neck dispersing whatever GSR residue would have been present, i.e. Locard's Exchange Principle.

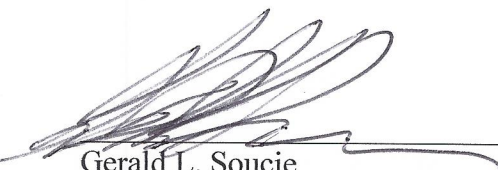


- h. Trial counsel failed to recognize that the scenario as advanced by the State regarding clearing a canted "jam" and dropping the magazine was not possible. The magazine needed to be properly seated in the magazine well to load the 1st cartridge in the chamber. If the magazine was in this location at the time the firearm discharged, then there would have been a second jam below the canted shell. This did not take place. Therefore, the magazine had to have been dropped 1" BEFORE the shot was fired. This is consistent with Mr. Knospler struggling with Mr. Baldwin over the firearm BEFORE the shot was fired.
- i. Trial counsel failed to recognize that PCR STR-DNA testing of the firearm and spent cartridge for a DNA profile from Mr. Baldwin should have been conducted and would have been conclusive forensic evidence of a scenario involving self-defense and a shooting that happened when Mr. Baldwin was grabbing the firearm after breaking the window.

15. Mr. Knospler understands that PCR STR-DNA testing shall be conducted at the Wyoming Crime Laboratory at his expense, unless that laboratory believes it has a conflict. If a conflict is asserted, then Mr. Knospler requests they PCR STR-DNA testing be conducted by the UNMC Human DNA Identification Laboratory in Omaha, Nebraska. This facility is ASCLAD certified and performs PCR STR-DNA testing for Omaha PD, Douglas County, and multiple other law enforcement agencies.

<https://www.unmc.edu/pathology/clinical/clinical-pathology/molecular-forensics.html>

WHEREFORE for the reasons stated in this motion, Defendant requests that an order be entered as provided in Wyo. Stat. § 7-12-304 (a) directing that the Natrona County Attorney respond to the motion with 60 days, or other time as found by the court, and (d) that the Natrona County Attorney take necessary steps to preserve the .45 Nighthawk firearm and spent .45 cartridge during the pendency of the proceedings, and prepare and file an inventory of said evidence to be served on Mr. Knospler's counsel and filed with the court.



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DEFENDANT’S VERIFICATION AND OATH

I, John H. Knospler Jr., after being placed under oath, swear and affirms that I am the Defendant in these proceedings, that I have reviewed and am aware of the facts as alleged in this motion, and the facts are true as I verily believes.

John Knospler, Inmate # 29961
Wyoming Medium Correctional Institution
7076 Rd 55F
Torrington, WY 82240

Subscribed and sworn to me this ____ day of February, 2018.

Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the _____ day of February, 2018, a true and correct copy of the foregoing verified motion was hand delivered/mailed to the Natrona County District Attorney’s Office, 201 N David St # 4, Casper, WY 82601, delivered by email to Caitlin.harper@wyo.gov and priority mail to Caitlin Harper, Assistant Attorney General, Wyoming Attorney General’s Office, 2320 Capitol Ave, Cheyenne, WY 82002, Ph. (307) 777-6702, and by priority mail to the Director, Wyoming Combined Laboratories, Attn: DCI-CL, 208 South College Drive, Cheyenne, WY 82007.

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One of Defendant’s Attorneys