Case No. 14-1 12270-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS
Plaintiff / Appellee

vs.

WILLIAM PAUL SPANGLER
Defendant / Appellant

BRIEF OF APPELLANT

Appeal from the District Court of Shawnee County, Kansas
Hon. Mark S. Braun, District Judge
District Court Case No. 2013-CR-486

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NATURE OF THE CASE

The instant case is before the Court on the question of whether or not the trial court erred when it refused to instruct the jury on the theories of defense of another and defense of a dwelling. Defense counsel sought the instructions at the conclusion of trial, the law and the evidence, viewed in the light most favorable to the defendant, supported defendant's request and there is no question but that the failure to give the instructions substantially prejudiced defendant and impacted the jury verdict. Accordingly, the judgment and sentence entered should be vacated and the case remanded for a new trial.

STATEMENT OF THE ISSUES

I. The trial court erred when it refused the defense request to instruct the jury on the theories of defense of another and defense of a dwelling.

STATEMENT OF FACTS

Introduction

In the early morning hours of March 23, 2013, defendant, William Spangler, shot and killed Faustino Martinez, II, in the third floor hallway of the Capitol Suites Apartments, located in Topeka, Kansas. Minutes earlier, an altercation had taken place involving Mr. Spangler, his companion, Valerie Mentzer, Faustino Martinez, and members of Mr. Martinez's family. Ultimately, Faustino Martinez, who was openly armed when the altercation began, started pursuing Mr. Spangler up the stairs of the apartment building towards Mr. Spangler's apartment door. Mr. Spangler, fearing for his safety, the safety of Ms. Mentzer, and the safety of his home, turned and fired as he was being pursued. Mr. Martinez died at the scene.

The Capitol Suites Apartments

The Capitol Suites Apartments are located at 9th and Tyler, in Topeka, Kansas. (ROA Vol. VIII, p. 344 at 2-5). The area borders downtown Topeka, and was referred to at trial as "the 'hood," a slang term generally understood to mean a crime-ridden, rough part of the city. (ROA Vol. IX, p. 537 at 12-17; ROA Vol. XII, p. 814 at 5-6). The Capitol Suites Apartments are not open to the general public. (ROA Vol. VIII, p. 352 at 9-13). When a resident approaches the building, they must enter a first set of double doors, which remain unlocked at all times. (ROA Vol. II, p. 7 at 21-23; ROA Vol. VIII, p. 352 at 2-3; 11-12; ROA Vol. XVI, p. 4; ROA Vol. XVI, p. 16). Inside the first set of doors is a foyer area. (ROA Vol. VIII, p. 352 at 9-13; ROA Vol. XVI, pp. 4 and 16). In order to access the individual apartment units, you must go through a second set of doors which lead to the primary, interior portion of the building. (Id.; ROA Vol. II,

pp. 47-48). These doors remain locked at all times. (ROA Vol. II, p. 7 at 24-25, ROA Vol. II, p. 8 at 1-4). Once inside the second set of doors, access to the interior of the complex is through hallways and stairwells. (ROA Vol . VIII, pp. 351-355; ROA Vol. XVI, pp. 5-9, 10-13, 18-20 and 21). The individual apartments in the complex each have their own keyed door accessible from a common hallway. (ROA Vol. XI, p. 790 at 11-15; ROA Vol. XII, p. 827 at 4-7; ROA Vol. IX, p. 543 at 14-24; ROA Vol. XVI, p. 21).

The Events of the Evening

In the late afternoon and early evening hours of March 22, 2013, roughly eight hours before the shooting, Mr. Spangler was at home, in his apartment- No. 333 -on the third floor of the Capitol Suites Apartment building. (ROA Vol. XI, pp. 759-763; Vo. VII, p. 272 at 15-19). He had invited friends over to play video games and visit. (ROA Vol. XI, p. 760 at 1-11). There was a KU basketball game scheduled that evening, and Mr. Spangler and his friends decided to go to a local bar to watch the game. (ROA Vol. XI, p. 761 at 3-20).

Meanwhile, Gino Martinez, another resident of the Capitol Suites, was expecting guests of his own. Several family members were due to arrive at some point in the evening to begin preparing for a child's birthday party scheduled to be held the next day. (ROA Vol. II, p. 10 at 11-13). Although they lived in the same building, Gino Martinez and Mr. Spangler were not friends. They had passed each other in the hallway of the apartments on prior occasions, and each recognized that the other was an occupant of the building, but they had no relationship beyond that. (ROA Vol. V, p. 757 at 20-25).

After Mr. Spangler and his guests left the building, Gino Martinez's guests arrived. They included his cousin, Faustino Martinez, II, his cousin Narcissa Martinez and her husband, DeJohn Phillips, and his cousin Maria Garcia. (ROA Vol. II, p. 8 at 15-25, ROA Vol. II, p. 9 at

1-24). After hanging out for a period of time in Gino Martinez's apartment on the second floor of the Capitol Suites Apartments, Ms. Garcia and Ms. Martinez left the apartment to buy groceries and supplies for the birthday party. (ROA Vol. II, p. 64 at 9-24). They left the apartment between midnight and 1:00 a.m. (ROA Vol. X, p. 568 at 16-19). When they returned to the Capitol Suites, they parked the car and observed Gino Martinez, Faustino Martinez, and Mr. Phillips in the parking lot. (ROA Vol. II, p. 65 at 1-3). They began to unload the groceries from the car. (ROA Vol. II, p. 65 at 6-12). Because the second set of doors leading into the Capitol Suites automatically lock when closed, Gino Martinez propped the doors open with a box of juice pouches so that the groceries could be taken in without him having to unlock the door each time the girls made a trip from the car into the building. (ROA Vol. II, pp. 12-13).

A few minutes later, Mr. Spangler returned to the Capitol Suites Apartments. He had been gone for approximately five hours. During that time, he had watched the KU game at a local bar with his friends, and had called another friend, Valerie Mentzer, to join him. (ROA Vol. XI, p. 763 at 3-7). Ms. Mentzer joined Mr. Spangler and his friends at the bar, arriving some time between 10:00p.m. and 11:00 p.m. (ROA Vol. IX, p. 466 at 3-6). When the bar closed, she and Mr. Spangler left in her car to go back to Mr. Spangler's apartment. (ROA Vol. IX, p. 468 at 10-17). They arrived at the Capitol Suites and observed two men standing by another car in the parking lot. (ROA Vol. IX, p. 471 at 13-18).

When Mr. Spangler and Ms. Mentzer got out of her vehicle, Mr. Spangler could clearly see that one of the men, Faustino Martinez, was armed. (ROA Vol. XI, p. 766 at 3-4). Mr. Phillips testified that he and Faustino were both "open carry" advocates, that they were both armed, and that neither of them were attempting to hide that fact. (ROA Vol. VIII, p. 409 at 2-20). In addition to being visibly armed, Faustino Martinez was intoxicated. ROA Vol. II, p. 60

at 18, ROA Vol. VII, p. 294 at 19-25). Although his cousin, Gino Martinez, testified that they had only consumed a "few drinks" throughout the evening, his testimony was clearly refuted by the medical examiner, who testified that autopsy results revealed Faustino Martinez's blood alcohol content to be .283, three and a half times the legal limit of .08. (Id.).

Ms. Mentzer was frightened by the men in the parking lot. (ROA Vol. IX, p. 473 at 25). She proceeded to the first set of doors to the Capitol Suites Apartments, and avoided making eye contact with the men. (ROA Vol. IX, p. 549 at 3-6). Mr. Spangler, also aware of Faustino Martinez's threatening actions, engaged in a verbal dispute/stare down with him. (ROA Vol. XI, p. 765 at 6-25). It was not a pleasant exchange. (ROA Vol. XI, p. 765 at 15-17). Mr. Spangler advised Ms. Mentzer "don't turn around, just go." (ROA Vol. XI, p. 766 at 6). A few seconds later, Mr. Spangler believed that Faustino was about to give chase, and he told Ms. Mentzer, "Go, I mean, go now." (ROA Vol. XI, p. 767 at 1-2).

Mr. Spangler and Ms. Mentzer entered the first set of doors, and then encountered the second set of doors that, instead of being shut and locked, were still propped open with the box of juice pouches. (ROA Vol. II, p. 13 at 18-22). Ms. Mentzer and Mr. Spangler entered the second set of doors by jumping over the box, and proceeded up the stairs to Mr. Spangler's apartment. (ROA Vol. XI, p. 767 at 11-22, ROA Vol. XI, p. 771 at 9-10). After entering his apartment, Mr. Spangler ran to his bedroom to retrieve his weapon. (ROA Vol. XII, p. 789 at 1-5). He heard unfamiliar voices in the hallway and as he left to investigate he directed Ms. Mentzer to shut and lock the door. (ROA Vol. XI, p. 790 at 11-15; ROA Vol. XII, p. 827 at 4-7). At this point, Ms. Mentzer is "scared to death". (ROA Vol. XII, p. 827 at 16-17). Although Ms. Mentzer was able to lock the deadbolt on the door, she was shaking too badly to secure the chain lock. (ROA Vol. IX, p. 543 at 14-24). Mr. Spangler's apartment contained the inheritance he

received from the death of his father- a sum Ms. Mentzer described as "a lot of money". (ROA Vol. IX, p. 489 at 1-11). Mr. Spangler believed Faustino Martinez and others in pursuit were coming back to mess with him, kick his door in and do something to him. (ROA Vol. XII, p. 835 at 21-24).

After leaving his apartment, Mr. Spangler proceeded back to the staircase leading from the second floor to the third. It was then that he encountered Faustino Martinez again, standing on the landing with Gino Martinez and Ms. Garcia. (ROA Vol. XI, p. 791 at 16-24). Mr. Spangler displayed his weapon as a "scare tactic," hoping that it would discourage Faustino from further confrontation. (ROA Vol. XII, p. 792 at 12-16). Faustino Martinez was undeterred, and said, "what?. . . You're going to shoot me?"(ROA Vol. XII, p. 792 at 22-24). Gino Martinez and Ms. Garcia witnessed this exchange. (ROA Vol. XI, pp. 734-735). Ms. Garcia heard Faustino Martinez ask Mr. Spangler if he was going to shoot him, saw Mr. Spangler lower his weapon, turn, and run away. ROA Vol. II, p. 74-75; ROA Vol. V, p. 735 at 1-8). Faustino Martinez began running after him. (Id.).

As the chase proceeded up the stairs, Faustino almost caught Mr. Spangler- he got close enough that he was able to step on the heel of Mr. Spangler's shoe, causing him to stumble and nearly fall. (ROA Vol. XII, p. 793 at 22-25, ROA Vol. XII, p. 794 at 1-3). Fearing for himself and Ms. Mentzer, and fearing that Faustino Martinez would be able to easily access his apartment, Mr. Spangler turned and fired as he was running. (ROA Vol. XII, p. 795 at 20-25). Mr. Spangler intended it as a "warning shot" and aimed the weapon to Faustino's left side. (ROA Vol. XII, p. 850 at 3-5). The "warning shot" did not slow Faustino Martinez down- he continued to chase Mr. Spangler. (ROA Vol. XII, p. 796 at 5-6). Mr. Spangler fired again, aiming for Faustino's leg. (ROA Vol. XII, p. 850 at 11-17). Faustino Martinez was struck once on the left

side of his abdomen. (ROA Vol. XII, p. 841 at 21-25). Mr. Spangler stood in shock for a moment, and then panicked and ran from the building. (ROA Vol. XII, p. 847 at 22-23).

Faustino Martinez's body was found near the far north end of the third floor hallway. (Vol. XVI, p. 5; Vol. VII, p. 272 at 12-14). The third floor hallway is eighty-eight (88) feet in length from end to end (Vol. VII, p. 339 at 9-11). Mr. Spangler's apartment- No. 333 –was four doors down the hallway on the left from where Faustino Martinez's body was located. (Vol. VII, p. 300 at 4-10; Vol. XVI, p. 37). That distance is less than 50 feet. (Vol. XVI, p. 21).

Within hours of the shooting, Mr. Spangler voluntarily turned himself into police without incident. (ROA Vol. XII, p. 804 at 12-15). He was arrested and taken into custody. (ROA Vol. XII, p. 805 at 1-25). Mr. Spangler was charged with Murder in the First Degree. (ROA Vol. I, p. 11). A preliminary hearing was held on May 13, 2013, and the matter proceeded to trial on August 5, 2013. (ROA Vol. II; ROA Vol.'s V – XIII). At the conclusion of trial, the State requested that the jury be instructed that Mr. Spangler was the primary aggressor in the altercation. (ROA Vol. XII, p. 934 at 13-19). The State's request was granted. (ROA Vol. XII, p. 935 at 21-24; ROA Vol. I, p. 60). Defense counsel requested that the jury be instructed on self defense, defense of others, and defense of a dwelling. (ROA Vol. XII, pp. 920-932). The Court agreed to instruct the jury on self-defense, but declined to instruct the jury on defense of others, or defense of a dwelling. (ROA Vol. XIII, p. 966 at 4-16; ROA Vol. I, pp. 58-59). Mr. Spangler was found guilty of Murder in the Second Degree. (ROA Vol. XIII, p. 1058 at 5-7). Mr. Spangler was sentenced to 186 months in the custody of the Kansas Department of Corrections. (ROA Vol. I, p. 71).

ARGUMENTS AND AUTHORITIES

I. The trial court erred when it refused the defense request to instruct the jury on the theories of defense of another and defense of a dwelling.

A. Standard of Review

The standard of review applicable to the instant case was recently discussed by the Kansas Supreme Court in *State v. Plummer*:

> "(1) First, the appellate court should consider the reviewability of the issue from both jurisdiction and preservation viewpoints, exercising an unlimited standard of review; (2) next, the court should use an unlimited review to determine whether the instruction was legally appropriate; (3) then, the court should determine whether there was sufficient evidence, viewed in the light most favorable to the defendant or the requesting party, that would have supported the instruction; and (4) finally, if the district court erred, the appellate court must determine whether the error was harmless, utilizing the test and degree of certainty set forth in *State v. Ward*, 292 Kan. 541, 256 P.3d 801 (2011), *cert. denied* 132 S. Ct. 1594 (2012)."

State v. Plummer, 295 Kan. 156, Syl. ¶ 1, 283 P.3d 202 (2012).

B. Discussion

Preservation

In the instant case, defense counsel requested that the jury be instructed on self defense, defense of others, and defense of a dwelling. (ROA Vol. XII, pp. 920-932). The Court agreed to instruct the jury on self-defense, but declined to instruct the jury on defense of others, or defense of a dwelling. (ROA Vol. XIII, p. 966 at 4-16). A criminal defendant is constitutionally entitled to present his or her theory of defense. *See State v. Baker*, 281 Kan. 997, Syl. ¶¶ 2, 4, 7, 135 P.3d 1098 (2006). The district court must instruct the jury on the law applicable to the defendant's theories for which there is supporting evidence. *State v. Bell*, 276 Kan. 785, 792, 80 P.3d 367 (2003). "A defendant is entitled to an instruction on his or her theory of the case even though the evidence thereon is slight and supported only by the defendant's own testimony." *State v. Barnes*, 263 Kan. 249, 265, 948 P.2d 627 (1997). The issues related to the instructions- cornerstones of

defendant's alternate theories of defense -were preserved at the trial court level.

Legally Appropriate / Sufficiency of the Evidence

In the case at bar *both* defense of another and defense of dwelling instructions were legally appropriate *and* supported by adequate evidence. The statutory framework for defense of another is set forth at K.S.A. 2012 Supp. 21-5222:

> K.S.A. 2012 Supp. 21-5222. *Same; defense of a person; no duty to retreat*
>
> (a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force.
> (b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.
> (c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

When Mr. Spangler and Ms. Mentzer got out of her vehicle in the parking lot of The Capitol Suites Apartments it was very early in the morning and dark. Nevertheless, Mr. Spangler could clearly see that one of the men, Faustino Martinez, was armed. In addition to being visibly armed, Faustino Martinez was intoxicated. Although his cousin, Gino Martinez, testified that they had only consumed a "few drinks" throughout the evening, his testimony was clearly refuted by the medical examiner, who testified that autopsy results revealed Faustino Martinez's blood alcohol content to be .283, three and a half times the legal limit of .08. Those facts- and what followed –set the stage for Ms. Mentzer to be scared to death. She avoided eye contact with them when she walked by. The men and Mr. Spangler had stare down and verbal dispute. At that point, Mr. Spangler advised Ms. Mentzer "don't turn around, just go" as they walked away. A few seconds later, Mr. Spangler believed that Faustino was about to give chase, and he told Ms. Mentzer, "Go, I mean, go now."

Mr. Spangler and Ms. Mentzer entered the first set of doors, and then encountered the second set of doors that, instead of being shut and locked, were still propped open with the box of juice pouches. Ms. Mentzer and Mr. Spangler entered the second set of doors by jumping over the box, and proceeded up the stairs to Mr. Spangler's apartment clearly believing the men in the parking lot were giving chase and they were under threat. After entering his apartment, Mr. Spangler ran to his bedroom to retrieve his weapon. He heard unfamiliar voices in the hallway and as he left to investigate he directed Ms. Mentzer to shut and lock the door. At this point, Ms. Mentzer is "scared to death". Although Ms. Mentzer was able to lock the deadbolt on the door, she was shaking too badly to secure the chain lock. Mr. Spangler's apartment contained the inheritance he received from the death of his father- a sum Ms. Mentzer described as "a lot of money". Mr. Spangler believed Faustino Martinez and others in pursuit were coming back to get him and Ms. Mentzer who was huddled behind the door to the apartment.

That is not where it ended, however. After leaving his apartment, Mr. Spangler proceeded back to the staircase leading from the second floor to the third. It was then that he encountered Faustino Martinez again, standing on the landing with Gino Martinez and Ms. Garcia. In Mr. Spangler's mind, they had followed him up the stairs and into the complex in an attempt to find his individual unit. Mr. Spangler displayed his weapon as a "scare tactic," hoping that it would discourage Faustino from further confrontation. Faustino Martinez was undeterred, and said, "what?. . . You're going to shoot me?". Ms. Garcia heard Faustino Martinez ask Mr. Spangler if he was going to shoot him, saw Mr. Spangler lower his weapon, turn, and run away. Faustino Martinez began running after him.

Given what happened- a verbal confrontation with armed, intoxicated and angry men in a darkened parking lot, followed by a chase into the internal confines of the apartment building

and a chase up the stairs –it was perfectly reasonable to believe Faustino Martinez and his associates were headed to Mr. Spangler's apartment for the purpose of entering it and doing harm to Ms. Mentzer. Under these circumstances, Mr. Spangler was entitled to an instruction on defense of another.

The next question is whether or not the internal confines of the Capitol Suites Apartments and/or Mr. Spangler's individual apartment qualify as a "dwelling" such that he would be entitled to use force against another in defending them. Dwelling is defined at K.S.A. 2012 Supp. 21-5111(k) as follows:

> The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.
> ...
>
> (k) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

The use of force in defense of a dwelling is set forth at K.S.A. 2012 Supp. 21-5223:

> (a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such use of force is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling, place of work or occupied vehicle.
> (b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, place of work or occupied vehicle if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or another.
> (c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling, place of work or occupied vehicle.

The Capitol Suites Apartments are located at 9th and Tyler, in Topeka, Kansas, an area that borders downtown Topeka, and was referred to at trial as "the 'hood," a slang term generally understood to mean a crime-ridden, rough part of the city. The Capitol Suites Apartments are not open to the general public and when a resident approaches the building, they must enter a first set of double doors, which remain unlocked at all times. Inside the first set of doors is a foyer

area. In order to access the individual apartment units, you must go through a second set of doors which lead to the primary, interior portion of the building. These interior doors remain locked at all times- this is precisely why the juice boxes had to be placed on the ground to prop them open. Once inside the second set of doors, access to the interior of the complex is through hallways and stairwells. The individual apartments in the complex each have their own keyed door accessible from a common hallway.

Common sense tells us that tenants at The Capitol Suites are given two keys upon leasing an apartment- one key allows them to enter the second set of doors on the far side of the foyer and the other key allows them access to their respective apartment. Common sense also tells us that residents are discouraged from opening the second set of doors for someone they do not know, and they are also discouraged from propping the doors open and leaving them unattended for any purpose. The intent behind the front door-foyer-interior door arrangement is so visitors and business invitees can come in, have a place to wait and then be escorted through the interior portion of the dwelling to the individual apartments. The hope is that this second set of locked doors will keep residents secure from intruders entering the building for nefarious purposes. The layout is analogous to a freestanding home, whereby the homeowner locks the primary entrance in an attempt to protect the interior rooms and occupants from an intruder. However, if an intruder is able to breach the primary entrance, they then have easier, perhaps unfettered, access to the whole home.

This is exactly what happened in the early morning hours of March 23, 2013. Faustino Martinez- who was not a resident of the Capitol Suites Apartments -had been granted access to

the locked doors by another resident, his cousin, Gino Martinez[1]. He was then free to pursue Mr. Spangler throughout the building, and his ability to access Mr. Spangler's apartment, and to harm any occupants inside, increased exponentially. Faustino Martinez's body was found less than 50 feet from Mr. Spangler's apartment door. In the case at bar, the layout of The Capitol Suites Apartments constitutes a building or portion thereof ... which is used or intended for use as a human habitation, home or residence and, as a result, Mr. Spangler was entitled to use force to defend them against an unlawful attacker. As such, he was entitled to an instruction on defense of a dwelling.

Error Not Harmless

If an instruction is legally appropriate and factually supported, a district court errs in refusing to grant a party's request to give the instruction. *Plummer*, 295 Kan. at 160. The next question is whether or not that failure is fatal- that is, would the outcome of Mr. Spangler's trial have been different had the Court given the instructions on defense of another and defense of dwelling. There is no doubt that it would have. The question of whether or not the failure to instruct was harmless is analyzed under the rubric in *State v. Ward*:

> "[B]efore a Kansas court can declare an error harmless it must determine the error did not affect a party's substantial rights, meaning it will not or did not affect the trial's outcome. The degree of certainty by which the court must be persuaded that the error did not affect the outcome of the trial will vary depending on whether the error implicates a right guaranteed by the United States Constitution. If it does, a Kansas court must be persuaded beyond a reasonable doubt that there was no impact on the trial's outcome, i.e., there is no reasonable possibility that the error contributed to the verdict. If a right guaranteed by the United States Constitution is not implicated, a Kansas court must be persuaded that there is no reasonable probability that the error will or did affect the outcome of the trial."

[1] The State may seek to argue that Faustino Martinez was lawfully present within the dwelling because his cousin had let him in- a the point in time he began chasing Mr. Spangler through the building (a point that is undisputed) he was committing a crime and any license he had to be at The Capitol Suites Apartments had expired.

State v. Ward, 292 Kan. at 565.

In the case at bar, the jury found Mr. Spangler guilty of Murder in the Second Degree. Given the evidence produced in the case viewed in *any* light, but particularly in the light most favorable to Mr. Spangler, the failure to instruct the jury on defense of a dwelling and defense of another deprived him of the right to present his theory of defense. In a criminal action, a trial court must instruct the jury on the law applicable to the defendant's theories for which there is supporting evidence. *State v. Williams*, 277 Kan. 338, 356, 85 P.3d 697 (2004). A criminal defendant is constitutionally entitled to present his or her theory of defense. *See State v. Baker*, 281 Kan. 997, Syl. ¶¶ 2, 4, 7, 135 P.3d 1098 (2006). Therefore, this Court must be convinced that there is "no reasonable possibility that the error contributed to the verdict". Under the circumstances, the trial court's error directly contributed to the verdict- defense of another and defense of dwelling were integral to Mr. Spangler's alternate theories of defense that were developed throughout the trial. As noted by Judge Atcheson in the *Bellinger* case:

> Human endeavors are often messy, perhaps no more so than when they turn violent and people wind up seriously injured or dead. The trauma of witnessing those sorts of events can confuse and confound recollections. This is a case in which the facts surrounding a few minutes in the lives of the Bellinger clan on June 4, 2009, are messy. Taking those facts most favorably to Robert Bellinger, he has presented circumstances permitting him to advance a claim of self-defense. **We have juries to clean up those messes by weighing evidence, evaluating credibility, and finding facts. But juries then must be fully instructed on the relevant law to know what to do with those facts.** The jury in Robert Bellinger's trial was not so instructed. And as a result, he was deprived of a fair hearing on his claim of self-defense. He is, in my view, entitled to another trial.

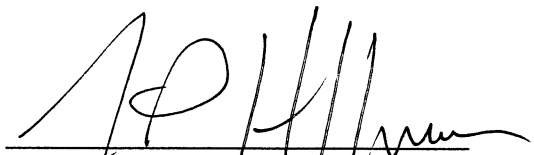
State v. Bellinger, 47 Kan. App. 2d 776, 278 P.3d 975, 993 (2012) (Atcheson, J., dissenting) (*emphasis added*). Though the *Bellinger* case is not entirely analogous to the case at bar, the sentiment rings true- in the haze of conflict and competing justifications arising from the events of March 23, 2013, Mr. Spangler's theories of defense of another and defense of dwelling were supported by the evidence and the jury was in a position to "clean up that mess". In order to do

so, however, the jury should have been instructed on the law applicable to the mess. Unfortunately, the trial court elected not to give defense of another and defense of dwelling instructions which hamstrung the jury and denied Mr. Spangler a fair trial.

CONCLUSION

For the above and foregoing reasons, the judgment of conviction should be set aside, defendant's sentence vacated and the case remanded for a new trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 20th day of OCTOBER, 2014, two (2) true and correct copies of the above and foregoing document were deposited in the United States Mail, First Class postage prepaid, addressed to:

Chadwick J. Taylor
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and a true and correct copy was deposited in the United States Mail, First Class postage prepaid, addressed to:

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