

Justin Malter

Thank you
Justin for being
honest.

3

1 THE COURT: Members of the jury, welcome
2 back. Hope you had a good evening. When we recessed
3 yesterday we had just finished with the testimony of
4 Detective Hall.

5 Mr. White, are you ready to continue?

6 MR. WHITE: Yes, sir. Thank you.

7 Judge, first thing, I'm going to move for the
8 admission of Defendant's A and B. Those were the --
9 essentially the statutes you took judicial notice of
10 yesterday. I don't believe there's going to be an
11 objection from the State.

12 THE COURT: Any objection?

13 MR. DWYER: No.

14 THE COURT: Defense A and B is admitted.

15 MR. WHITE: If you'll give me just a moment.

16 THE COURT: Okay.

17 (Pause in the proceedings.)

18 JUSTIN MALTER,

19 called as a witness by the defense, having been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WHITE:

23 Q Good morning.

24 A Morning.

25 Q If you'd pull the microphone a little bit closer to

1 you, please.

2 (Witness complied with request.)

3 A Is that good?

4 Q That's good. Thank you.

5 Would you please state your name for the record.

6 A Justin Malter.

7 Q Justin, where do you work right now?

8 A Whohot Mongolian Grill in Colorado.

9 Q Now, I want to direct your attention to some events
10 that happened in Wichita, Kansas on September 22nd of
11 2013. On that date were you living at a residence
12 identified as 3325 East Victor Place?

13 A Yes.

14 Q All right. Who were you living with at that residence?

15 A Jonmark Herrscher and Matthew Wimberly.

16 Q And generally speaking where did Jonmark sleep? Which
17 room was his?

18 A He had the front room facing Victor.

19 Q Which room was yours?

20 A I was in the middle room attached to the kitchen.

21 Q Which room was Matt's?

22 A He was in the back room. It was farthest away from
23 Victor Place.

24 Q Okay. Now, around the late evening of September 21,
25 2013, to the early morning hours of September 22, 2013,

1 were there any other individuals at that residence
2 along with you and Jonmark; and if so, who were they?

3 A There were some other individuals. There was Lelle,
4 Matthew's girlfriend at the time. I had friends named
5 Austin, Andrew was there. His friend Nathan was there.
6 A girl named Marly were some of the individuals.

7 Q Okay. Now, when did Andrew arrive at that residence?

8 A That was about midnight to 12:30.

9 Q Okay. Now, when Andrew arrived at that residence did
10 you have any contact with him whatsoever?

11 A No.

12 Q When did Matt arrive back home?

13 A That was after the bars closed so it was about 2:00
14 a.m. to 2:30.

15 Q Okay. Now, when Matt arrived home were the same people
16 still at the residence that you just described?

17 A No. Several had left by then. I believe it was just
18 Andrew there at the time and Matt came home with Lelle
19 and her cousin.

20 Q Okay. Now, had you guys been smoking weed?

21 A Yes.

22 Q All right. Now, Matt gets home from the bars; is that
23 correct?

24 A Yes.

25 Q Tell the jury what you observed when Matt got home from

1 the bars. Was there any interaction between Matt and
2 Andrew and if so, what?

3 A Yes. Andrew was saving a hit of acid for Matt whenever
4 he got home. He said it was a new type of acid so he
5 -- when Matt got home he asked for it and Andrew had
6 sold him the acid. I saw the exchange, \$20, and at
7 that time I saw Matthew consume it.

8 Q Okay. Did you see Andrew consuming acid?

9 A No, but I heard him talk about consuming it. I heard
10 him say he had consumed it.

11 Q Okay. Did you believe -- did you form an opinion as to
12 whether or not you thought that Andrew was under the
13 influence of any acid at that point in time?

14 A No opinion.

15 Q Okay. The point in time I'm talking about is around
16 2:00 or 2:30 in the morning.

17 A I wouldn't say for sure.

18 Q Okay. So what happened after you saw the transaction
19 and Matt consumed the acid? Tell the jury what
20 happened.

21 A I had gone to sleep at that time -- or Matthew and
22 Andrew had gone on a walk before that and me and
23 Jonmark had gone to sleep at that time.

24 Q All right. Was Matthew inside the house sleeping when
25 you and Jonmark were sleeping?

1 A No.

2 Q To your knowledge was there any bed or anything like
3 that made for Andrew to sleep in the front room?

4 A Not at all.

5 Q Okay. What happens -- are you awakened for some
6 reason?

7 A Yes. Matthew was banging on the door. I remember his
8 specifically yelling it's here, it's here. Let me in.
9 It's here. We had no idea what he was talking about
10 whenever he mentioned these things, but I do remember
11 those words.

12 Q You heard that?

13 A Yes.

14 Q Okay. If you were sleeping, how did you hear that?

15 A Well, I guess it woke me up I should say. I was
16 sleeping and those words woke me up specifically.

17 Q What did you think when you heard that?

18 A Somethings going wrong. I mean, it was very unusual.
19 I just thought like something was going wrong.

20 Q Did you know it was Matt?

21 A I mean, I recognized his voice but I guess I wasn't 100
22 percent sure it was him. But of course I recognized
23 it.

24 Q All right. Now, which door did Matt come in?

25 A That was the front door closest to Jonmark's bed.

1 Q Did you see Andrew enter the house at or about the same
2 time as Matt?

3 A I was in a different room so I didn't see him enter but
4 I could see the other door where you could possibly
5 come in so I knew he hadn't gone through that door.

6 Q What's the other door?

7 A There was the kitchen door kind of where the incident
8 happened at.

9 Q Okay. So you didn't see -- did you see anyone come in
10 the kitchen door?

11 A No.

12 Q You didn't see Matt come in the front door?

13 A Well, they had entered the house but not through the
14 kitchen door so I knew it -- and that's where the noise
15 was coming from was the front room.

16 Q Okay. So at some point do you go to the front room?

17 A Yes.

18 Q All right. Tell the jury what you observed. What
19 happened at that point.

20 A At that point I just heard -- it was really a lot of
21 nonsense talk. It was drug talk. I heard him saying
22 if you guys take a walk with me I could show you where
23 Jesus is. That revelations were coming. A bunch of
24 out of character things is what I heard and then all of
25 a sudden threats were being made toward Andrew. At

1 that point we kind of talked him out of it. Just tried
2 to calm him down and he had the knife pulled at this
3 time and finally we talked him into giving the knife
4 and we put it on the nightstand.

5 Q Okay. You said threats. What were the words that Matt
6 was using threatening Andrew? Tell the jury.

7 A I'm going to stab Andrew. That's what he would say.

8 Q Okay. Where is Andrew at that point? Where are you at
9 that point? Where's everybody at that point?

10 A We were all in the front room. Jonmark's bedroom.

11 Q Did you -- how many times does Matt say I'm going to
12 stab Andrew?

13 A I don't know to be specific how many times.

14 Q Okay. What was your opinion of that?

15 A Out of character. Completely out of character.

16 Q Were you in fear at that point?

17 A I myself was not. I was in fear for Andrew.

18 Q Okay. Did you say anything to Andrew about whether or
19 not he should stay?

20 A No. I told him he should leave at that point.

21 Q All right. Now, I think that you told the jury Matt
22 initially grabbed the knife, you guys told him to put
23 it down, he puts it down, he picks it back up; is that
24 correct?

25 A Yes. I don't think he specifically put it down. I

1 think Jonmark had taken it from him and put it down.

2 Q Okay. Where did you see Matt first obtain the knife
3 from?

4 A I believe his pocket. I believe it was his personal
5 knife.

6 Q All right. When he had the knife is that when he was
7 saying he's going to stab Andrew?

8 A Yes.

9 Q Okay. Is Andrew doing anything at that point?

10 A No. He was just watching in disbelief. He wasn't
11 talking him down or anything. He was just watching in
12 disbelief.

13 Q Did he say anything?

14 A Not that I remember.

15 Q Okay. At some point Matt either drops the knife or
16 Jonmark takes the knife from Matt; is that correct?

17 A Yes.

18 Q What does Jonmark do with the knife at that point?

19 A He puts it on the nightstand right next to his bed.

20 Q Okay. Did he close the knife?

21 A Yes.

22 Q Okay. Now, at that point what is happening with all
23 four people in the room? Describe the situation to the
24 jury.

25 A At that point we kind of had Matthew calmed down a

yeah, a little hard to
set down a psychosis.

11

1 little bit. I felt better about the situation after
2 that, but I could still see the uncomfortability within
3 Matt that something kind of still wasn't right with
4 everything and so we thought we had it under control
5 and I believe that's when Andrew started walking to the
6 kitchen door and Matthew followed him.

7 Q Okay. What happened when Matthew followed Andrew?
8 What did Matthew do?

9 A Matthew had grabbed the knife and was following Andrew
10 and that was to the kitchen door, the back door closest
11 to my bedroom. And Jonmark had then grabbed the
12 baseball bat and chased after him and I stayed behind
13 and then I didn't see the initial stab happen but I did
14 see -- I did hear screams and then I ran out the front
15 door.

16 Q Okay. Where were you when you heard the screams?

17 A I was in the front room still.

18 Q Okay. What did you hear?

19 A Just a lot of commotion and screaming by Andrew is what
20 I heard.

21 Q Did you hear Matt saying anything when he obtained the
22 knife and was following Andrew? Was he saying anything
23 at that point?

24 A Nothing I remember.

25 Q When you heard the commotion did you hear Matt saying

1 anything at that point?

2 A No.

3 Q When you heard the commotion did you hear Jonmark say
4 anything at that point?

5 A No.

6 Q When did you leave the residence?

7 A It was shortly after -- I believe it was shortly after
8 the initial stab. As soon as I heard the first scream
9 is when I started running out so I don't know exactly
10 when I got out of there, but that's when I started
11 running out.

12 Q Where did you go?

13 A I ran -- I was by College Hill Elementary which is
14 close to the place and then I remembered we have a
15 friend that lived just a street away and so I started
16 running toward his house and that is when I saw the
17 cops pull up and so I ran -- whenever I saw the cops I
18 ran up to a cop and said, hey, I live at this
19 residence. And they kind of just told me stay by, stay
20 by and then they ran to the house.

21 Q Okay. Did you eventually go back to the house?

22 A Yes.

23 Q All right. And did you have any contact with any law
24 enforcement officers at the house?

25 A I talked to them before and afterwards. Before just

1 briefly. They just told me to stay around.

2 Q Okay. And did you tell any of those officers generally
3 what happened, what you observed?

4 A Yes.

5 Q Okay. Now, at some point were you contacted by an
6 officer named Detective Hall who requested an interview
7 of you?

8 A Yeah. I believe that was -- that was days after the
9 incident.

10 Q Any recollection of how many days after the incident?

11 A I would say two, maybe three.

12 Q Okay. All right.

13 MR. WHITE: Just a moment, Judge.

14 (A pause in the proceedings.)

15 Q Just briefly, when you were in the front room with Matt
16 and evidently Matt doesn't have the knife in his hand
17 at that point, do you ever remember him making a
18 statement insisting that you guys go on a walk with
19 him?

20 A Yes.

21 Q Why didn't you go on a walk with him?

22 A I knew that there really wasn't a point to the walk.

23 He said that he could show us where Jesus is and to me
24 it just sounded like not really a threatening situation
25 but something with no point. And I was already asleep

1 beforehand so I did not want to go on a walk at that
2 time.

3 Q No further questions. Thank you.

4 THE COURT: Cross?

5 MR. DWYER: May we approach, Judge?

6 THE COURT: Sure.

7 (An off-the-record discussion was had at
8 the bench between Court and counsel.)

9 CROSS-EXAMINATION

10 BY MR. DWYER:

11 Q Good morning, Mr. Malter.

12 A Good morning.

13 Q Prior to testifying did you have a chance to review a
14 transcript of your statement to Detective Hall?

15 A Yes.

16 Q And how many times did you look at that?

17 A I just looked at it this morning.

18 Q Did Mr. White go over that with you?

19 A Yes.

20 Q You were 18 at the time of the attack, correct?

21 A No. I was 19.

22 Q 19. You were friends with Jonmark?

23 A Yes.

24 Q You were friends with Mr. Wimberly?

25 A Yes. He was my roommate but yes, we were friends.

1 was for the jury.

2 A Right here (indicating).

3 Q So it's the house directly to the left of yours?

4 A Yes.

5 Q Okay. Thank you. You can have a seat.

6 (Witness complied with request.)

7 Q So the night of the attack people were drinking, people
8 are smoking marijuana. You knew that Andrew was going
9 to give this acid to Mr. Wimberly; correct?

10 A Yes.

11 Q The jury has heard all that. They've seen the pictures
12 of the residence. There was drug parapheneila in the
13 house; correct?

14 A Yes.

15 Q At any point in time did an officer ask you to sign a
16 waiver to search the house?

17 A Yes.

18 Q And you didn't sign that; right?

19 A No. I did not.

20 Q Were you worried about officers seeing the parapheneila
21 or the underage drinking, things of that nature?

22 A I was worried about that, but mostly it was the house
23 belonged to Jonmark's dad beforehand then passed on to
24 Jonmark and so I figured since I lived there I was --
25 it was Jonmark's place technically and so I didn't want

1 to give consent without Jonmark's permission.

2 Q But you were worried in some capacity about maybe
3 getting in trouble for the drugs and the underage
4 drinking, that sort of thing?

5 A I was a bit worried about that, yeah.

6 Q Were you concerned at all that you could be charged as
7 a aider and abettor in this drug transaction that took
8 place since you allowed it in your house?

9 A No. I was not afraid of that.

10 Q And why not?

11 A I believe I didn't have anything to do with that
12 transaction specifically.

13 Q Even though you allowed it to happen in your residence?

14 A I witnessed it but it wasn't my choice or anything.

15 Q Okay. Now, isn't it true that Andrew came over there
16 to stay the night?

17 A I wouldn't say stay the night. I mean, he never really
18 went to sleep anywhere or anything.

19 Q You don't recall Andrew asking permission to stay the
20 night from Jonmark or you?

21 A I don't recall that.

22 Q Okay. You testified that you never saw Andrew come in
23 through the kitchen door; correct?

24 A Yes.

25 Q You were assuming that he had done that; correct?

1 MR. WHITE: No objection.

2 MR. DWYER: And I'd ask to publish.

3 THE COURT: 42 and 43 are admitted, and you
4 may publish.

5 Q (BY MR. DWYER) Mr. Malter, this is your appearance as
6 it was the night of the attack; correct?

7 A Yes.

8 Q State's Exhibit 43. When we're looking at this picture
9 -- I'm going to put State's Exhibit 19 up on the easel
10 here -- can we see portions of your front door in that
11 picture?

12 A Yes.

13 Q Okay. Is it up in the upper left-hand corner?

14 A Yes.

15 Q And so the bed for Jonmark would be off to the left of
16 the picture; is that right?

17 A Yeah. It would be back here (indicating).

18 Q And so we see this -- what is this big white thing in
19 the center of the picture?

20 A I have no idea.

21 Q Is it a blanket?

22 A It looks like a comforter to me.

23 Q Okay. It looks like some sort of bedding?

24 A Yes.

25 Q And to be fair, on State's Exhibit 19, this diagram

Whakepy

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1 over here on the easel, that's over on the right-hand
2 side of that front room; correct? Could you point for
3 the jury where that would be, the comforter on that
4 diagram.

5 A I'm trying to see if -- is this the doorway there?

6 Q Yes, sir.

7 A It would be about right here (indicating).

8 Q Okay.

9 A This is the TV where that is at the top.

10 Q All right. And is it possible that that's bedding that
11 was being used by Andrew?

12 A I don't think it's possible.

13 Q You don't think it possible?

14 A No. He had no intention of going to sleep that night.

15 Q Okay. And you know that how?

16 A He was -- he had told me many times that he was on
17 drugs and he -- he was specifically waiting for Matt to
18 get home so I imagine he was planning on hanging out
19 for a while.

20 Q All right. Fair to say that once Andrew and Matt had
21 left you don't know what happened until you walked out
22 in the living room; is that correct?

23 A Yes.

24 Q You don't know if Andrew came back, got some comforters
25 and laid down, do you?

1 A No, I do not.

2 Q So it's possible that Andrew came home -- or came to
3 your residence while you were asleep and got a blanket
4 and laid down; is that fair?

5 A Yeah.

6 Q So you wake to this banging, you come into the living
7 room, you see present in that room Jonmark, Mr.
8 Wimberly and Andrew's off kind of near that bedding;
9 correct?

10 A Yes. He was closer to the doorway leading to the
11 kitchen in the bedroom.

12 Q Okay. So he's further to the south near the entrance
13 to your room; correct?

14 A Yes.

15 Q Okay. And at this point in time when you walk in does
16 Mr. Wimberly already have the knife out?

17 A No.

18 Q Okay. So this is the point in time where he's talking
19 to you about taking a walk, et cetera; correct?

20 A Yes.

21 Q And then at some point in time Mr. Wimberly sees
22 Andrew; is that right?

23 A They were together beforehand.

24 Q Well, no. I mean after he comes back in, changes from
25 talking to Jesus to threatening to stab Andrew, he

1 looks at Andrew; correct?

2 A Yeah.

3 Q Is that a yes?

4 A Yes.

5 Q In fact, do you remember telling Detective Hall that I
6 don't know why he was upset about Andrew? I don't know
7 why he choose Andrew.

8 A Yeah. I thought it was very weird that I felt no
9 threat at the time.

10 Q Okay. I understand that, but my question is do you
11 recall telling Detective Hall that you don't know why
12 Mr. Wimberly chose Andrew?

13 A I don't recall that.

14 MR. DWYER: May I approach?

15 THE COURT: You may.

16 MR. DWYER: I'm on page 24.

17 Q (BY MR. DWYER) I know you've had a chance to review
18 this before. This is your transcript; correct?

19 A Yes.

20 Q Okay. I'm just going to have you read the bottom of
21 page 24 to yourself and then look up whenever you're
22 done.

23 (Witness complied with request.)

24 Q Does that help refresh your recollection as to what you
25 told Detective Hall?

1 A Yes.

2 Q Isn't it true that you told Detective Hall that you
3 don't know why Mr. Wimberly chose Andrew?

4 A Yes.

5 Q In fact, you told Detective Hall that he was
6 concentrating on Andrew; correct?

7 A I don't know if I said that.

8 MR. DWYER: May I approach again?

9 THE COURT: You may.

10 Q (BY MR. DWYER) I'm on that same page where we were at.

11 A Okay.

12 (Witness reviewed document.)

13 Q Is that fair?

14 A Yes.

15 Q You did tell Detective Hall that Mr. Wimberly was
16 concentrating on Andrew?

17 A Yes.

18 Q Mr. White asked you how many times did Mr. Wimberly say
19 he was going to stab Andrew; correct? And you didn't
20 remember how many times. Would you say it was more
21 than once?

22 A Yes.

23 Q Would you say it was more than ten?

24 A No.

25 Q Anywhere in between there you feel comfortable saying?

1 A Yes.

2 Q What number would you give us?

3 A I couldn't say a number for sure.

4 Q Do you remember telling Detective Hall that Mr.
5 Wimberly insisted on stabbing Andrew?

6 A Yes.

7 Q So as this is going on Mr. Wimberly pulls out the knife
8 and opens it; correct?

9 A Yes.

10 Q And you're able to talk him down; correct?

11 A Yes.

12 Q And you or Jonmark, somebody takes the knife away,
13 closes it, puts it on the nightstand; correct?

14 A Yes.

15 Q Was it you or Jonmark?

16 A I believe Jonmark.

17 Q By that time you're telling Andrew to leave; correct?

18 A Yes.

19 Q You were in fear for Andrew's safety?

20 A Yes.

21 Q Did you -- when Mr. Wimberly was insisting on stabbing
22 Andrew, did you form an opinion as to what type of
23 violence or hurt was going to befall Andrew?

24 A No. To be honest, I did not think anything was going
25 to come of the situation until it actually happened.

- 1 Q But yet you insisted on Andrew leaving.
- 2 A Yes.
- 3 Q Did you think that Mr. Wimberly was just going to beat
4 him up?
- 5 A No. I thought he was just scared at the moment that
6 Andrew was in the house and so I thought it would help
7 him calm down further if Andrew were to leave.
- 8 Q What led you to believe that Mr. Wimberly was scared of
9 Andrew Langston?
- 10 A Nothing in particular. It wasn't like out of fear of
11 him.
- 12 Q So he never said hey, who is that guy? I'm afraid of
13 him.
- 14 A No.
- 15 Q He never pointed to him and said who's that?
- 16 A No.
- 17 Q Does Mr. Wimberly look different than he did the day of
18 the attack?
- 19 A Yes.
- 20 Q Has he lost a lot of weight?
- 21 A Yes.
- 22 Q Fair to say that Mr. Wimberly was a much bigger person
23 than Andrew?
- 24 A Yes.
- 25 Q And this all happened much later than 2:30 after the

1 bars closed; correct?

2 A Yes.

3 Q So Andrew is leaving. He's going out through your
4 bedroom and into the kitchen and that's when Mr.
5 Wimberly picks up the knife off the nightstand, opens
6 it and runs after Andrew or goes after Andrew; correct?

7 A Yes.

8 Q Okay. And I believe you said you were still in the
9 living room; is that right?

10 A Yes. Still in Jonmark's room.

11 Q Okay. Where at in Jonmark's room?

12 A I was standing about right here (indicating).

13 Q Okay. And for the record you're indicating just to the
14 south of that big rectangle on the right-hand side?

15 A Yes. Because I could see him go through here and I saw
16 him turn the corner and as I heard the screams I ran
17 through this door (indicating throughout).

18 Q Okay. When you say -- you saw who turn the corner?

19 A It was Matt, Andrew, and Jonmark all turned the corner
20 at once -- or --

21 Q You watched all three of them go into the kitchen?

22 A Yes.

23 Q What did you think was going to happen when you saw Mr.
24 Wimberly running after Andrew with the blade open?

25 A I thought something bad was going to come of the

1 Q And you were at the corner of Clifton and 1st -- the
2 College Hill Elementary is the big building at the top
3 of the map?

4 A Yes.

5 Q There's a church right here (indicating); correct?

6 A Yes.

7 Q And then you started to turn left and you went down 1st
8 Street to the west; correct?

9 A Yes.

10 Q You saw cops at the corner of -- what is that, Rutan?

11 A Yes. I saw them turning right here going -- because
12 they were coming to pull into this parking lot. I was
13 going this way when I saw them (indicating throughout).

14 Q All right. So you said your friend Jay lives to the
15 north of 1st and Rutan somewhere on Rutan?

16 A Yes.

17 Q Okay. So fair to say you ran basically around the
18 block?

19 A Yes.

20 Q And -- you can have a seat.

21 (Witness complied with request.)

22 Q Why were you going to Jay's house?

23 A Just so I could call the cops. I wanted to make sure
24 somebody was calling 911 at that point.

25 Q Okay. Why didn't you go across the alleyway to your

1 boss's house?

2 A I was so focused on getting out of the area at that
3 time, just getting away from the house.

4 Q You didn't think to help your friend?

5 A No.

6 Q And it didn't cross your mind that you knew your
7 neighbors or anything like that to call 911?

8 A No.

9 Q Were you wearing any shoes?

10 A No.

11 Q Were you aware that the State was trying to subpoena
12 you to testify?

13 A Yes.

14 Q Isn't it true that you're here today on a defense
15 subpoena?

16 MR. WHITE: Objection. What's the relevance?

17 THE COURT: Overruled.

18 Q (BY MR. DWYER) You can answer the question.

19 A I'm sorry. What was the question? That I'm here
20 today?

21 Q Isn't it true that you're here today on a defendant's
22 subpoena, not from the State?

23 A I don't know what the subpoena is. I know I'm here
24 today.

25 MR. DWYER: One moment.