

LAM 54

Judge is wearing a MAGA hat

Prosecutor is Mr. Magoo

Rittenhouse is a terrible actor and the only hope they have is a mistrial with prejudice

NONE OF THESE THINGS ARE TRUE

-Judge is super cranky old white dude who goes out of his way to be fair to the prosecutor

-Prosecutor does many things exceptionally well – I wouldn't want the raw OA tapes to be released, let alone to have someone videotape me doing my job for two weeks in a row

-Rittenhouse is a way better witness than I expected. I think he's overcoached, and I think the prosecution shows that, but he's smart, he's very well-coached, he instinctively does the kinds of things you as a lawyer want your witness to do.

Something I changed my mind on.

-man it's good for Kyle Rittenhouse that he fired Lin Wood

Pinch-to-zoom

-showed the whole video

-didn't zoom but so what

Predictions

-no mistrial

-lesser included offenses

Direct

-note that this is the way you do it, open-ended questions, means you can get away with the occasional leading – 7:15 (“You were with Dominick Black at the time?”). And the reason isn't necessarily that the prosecutor sucks or is sleeping, you just don't want to be seen as an asshole with “objection, leading,” and then the defense attorney rephrases as “Sorry, Were you with Dominick Black at the time?” (28:00 “You had first aid training right?”)

Hobbies

-certified lifeguard

(lifesaving training)

Cleaning graffiti

Buying the rifle slings (7:30)

-shows just how bad the facts are

Narratively so far, this is a good witness. He screws up his face, he tries to remember details, he's obviously been well-coached but it would be very hard for a jury to detect that. Has the right level of "I think it was X but I can't be sure," "I'm not an expert at that," "Oh, I'm sorry, I got that wrong, it was X." **The way you know it's coached is that he never asks his lawyer to rephrase the question, he's never confused about the subject matter – he's only ever apparently hesitant about his answer.**

My evaluation: they always planned to call Rittenhouse – I did think this was an audible, clearly not. The audible would have been the other way – not calling him if they thought they were crushing it.

Exhibit 30

Photo of all of them

"Were they happy to have you there?"

The plan was to render first aid

21:00 Rosenbaum

-threatened my life twice

29:00 Yellow Pants

"I did" was a

32:30 – practiced getting choked up

36:00 – obviously fake crying – but you have to be watching. If you just get the edited bit (which we did), or you've looked away, it *sounds* plausible.

39:17 – KEY self-defense testimony – play the first two minutes to 41:18

<https://youtu.be/BEbcLqBE-ts?t=2357>

"get him and kill him," then he throws a bag

41:19 – why didn't you just keep running? – play one minute to 42:27

<https://youtu.be/BEbcLqBE-ts?t=2479>

-no room to run

-jury is going to check his demeanor – why was he bawling earlier but he's calm now?

42:57 – did you feel you were safe? – play one minute to 43:43

<https://youtu.be/BEbcLqBE-ts?t=2577>

-did you feel you were safe?

-I thought the safest thing to do was to go turn myself in to law enforcement

-says a contradictory sentence here – it's not the first time – I was terrified and trying to turn myself in to law enforcement... but yes, I stopped to chat with another guy (Lakowski). So you hear the carefully coached words, "for a brief second"... and then you hear him say "not a crowd, a mob." **I doubt the jury noticed this.**

44:29 – do you remember talking to Grosskreutz? – play 30 seconds to 45:03

<https://youtu.be/BEbcLqBE-ts?t=2669>

this is the key reason the prosecution gets to introduce the video, and it's a key reason I think he'll get convicted – the prosecution ably shows that this is a lie, he did in fact point his gun at Grosskreutz. And that's the problem with the super-confident, over-coached narrative... if there's any contradictory evidence, it all falls apart.

46:30 – 'Jumping Kick Guy'

I fired two shots

51-52 – Grosskreutz

Says G was bringing his pistol down and that's why he shot him once

53:23 – as you go towards the police line, what happens? – play one minute to 54:24

Again you hear all the carefully coached asides, and the deliberate, "a sedan, a car, you know, I don't know what they're called."

58:00 – CROSS-EXAMINATION

This is why you generally don't put the defendant on the stand

<https://youtu.be/BEbcLqBE-ts?t=3480>

play for 1:18 – get all the elements of the crime

59:20 – trying to get at improper silence

<https://youtu.be/BEbcLqBE-ts?t=3560>

don't go here

play two minutes

you hear the objection sustained

valid point ("he's tailoring his testimony to what he heard the witnesses say") but it's trumped by the prejudice of implying there's something wrong with post-arrest silence.

-judge just says "you're on thin ice" which you are

1:30:00 – prosecutor definitely fucked up

Go to 2:03:52 play for 3 minutes to 2:07

<https://youtu.be/BEbcLqBE-ts?t=7432>

Prosecutor's defense – I wasn't talking about postarrest in custody statement

-first the judge does press ("what if he's talking about swimming") – prosecutor says "yeah, this is about the case," and the judge says "oh, well, that could be a full waiver then."

DID YOU HEAR ANY OF THIS IN TWITTER SOUNDBITES??

Ultimately: "when you say you were acting in good faith on the prior acts, I don't believe you." And you know what? I don't believe him either.

Bits on his credibility – feigning ignorance of the ammunition

1:56:36 for a minute

<https://youtu.be/BEbcLqBE-ts?t=6998>

what's your understanding of what a hollow-point (which he was armed with) would do

and you get word salad of coaching

“a bullet's a bullet, I don't really know much about ammo”

2:26:13 – 2:28:25

<https://youtu.be/BEbcLqBE-ts?t=8773>

again, this is workmanlike stuff but it's important

Rosenbaum never threatened him physically

2:38:11 “no friction” – impeachment – play for 7 minutes to 2:45

<https://youtu.be/BEbcLqBE-ts?t=9491>

-see how well he's coached with “what do you mean by friction”

-see an experience attorney dive around it “those are your words, sir”

-another excuse to play the video

-come on, there's friction, isn't there?

And this is how you impeach the credibility of a witness – it's cumulative stuff so that the jurors get back there and go, yeah, it seems like he was coached to tell a story

2:57:41 “friendlies” – look at how well the prosecutor dismantles the “they're throwing rocks at us” and gets in the “you seem to be looking at your attorney a lot”- that's through to 2:59:09

<https://youtu.be/BEbcLqBE-ts?t=10661>

3:19:40 “you didn't want to be alone in this crowd” – through to 3:20:20

<https://youtu.be/BEbcLqBE-ts?t=11980>

3:37:00 drone video (exhibit 73)

Defense bamboozling – I had to deal with this on a bad email – we were 60 emails in, routinely agreed that documents were authentic and then all of a sudden we had objections based on lack of date and we got all of this “you can't prove he sent it, when he sent it”.. it was a shitstorm of nonsense just like this.

3:53 – it gets admitted. You didn't hear that on Twitter, either.

Did they just decide to lose the zoom? Yeah.

Rittenhouse: “I can't see it”

4:20:52 – 4:21:45 – “why did you shoot them?”

<https://youtu.be/BEbcLqBE-ts?t=15652>

admits to lying saying “he had a gun”

the cumulative effect of this, I think, is damning

4:33:28 to 4:34:28 (1 minute) - Grosskreitz

<https://youtu.be/BEbcLqBE-ts?t=16408>

4:42:19 to 4:44:30

-no one ever fired a shot at you, did they? (he pushed back previously)

-you never once offered to help anyone as a medic after you shot them, did you?

-**you just decide to get out of there as fast as you can. Answer: yes**

This is a hard thing to do as a lawyer – you got a great answer, you’ve got another page left in your notes, do you just sit down? I will confess to going on a few questions too long too 😊

JURY INSTRUCTIONS

https://www.youtube.com/watch?v=IN9vwdEq0t0&ab_channel=PBSNewsHour

5 victims

939.50

<https://docs.legis.wisconsin.gov/statutes/statutes/939/iv/50>

A through I – 9 categories

I: fine not to exceed \$10,000; imprisonment not to exceed 3.5 years

H: same \$10,000 fine; imprisonment not to exceed 6 years

F vs G: \$25,000 and either 12.5 years or 10 years

B: imprisonment not to exceed 60 years

Penalties for felonies are as follows:

(a) For a Class A felony, life imprisonment.

(b) For a Class B felony, imprisonment not to exceed 60 years.

(c) For a Class C felony, a fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both.

(d) For a Class D felony, a fine not to exceed \$100,000 or imprisonment not to exceed 25 years, or both.

(e) For a Class E felony, a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.

(f) For a Class F felony, a fine not to exceed \$25,000 or imprisonment not to exceed 12.5 years, or both.

(g) For a Class G felony, a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both.

(h) For a Class H felony, a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.

(i) For a Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.

Standard: Is there evidence to acquit on the greater but convict on the lesser

Each count has a kicker – extra 5 years on top for the use of a deadly weapon

also grossly misreported – NO INDEPENDENT GUN CRIME

-Joseph Rosenbaum

First Degree reckless homicide (Count 1) – NO LIO

NO LIO

940.02

Whoever recklessly causes the death of another human being under circumstances which show utter disregard for human life is guilty of a Class B felony.

-Daily Caller reporter Richie McGinniss (Count 2) – likely LIO

First Degree recklessly endangering safety

LIO: Second degree recklessly endangering safety

941.30

FIRST-DEGREE RECKLESSLY ENDANGERING SAFETY. Whoever recklessly endangers another's safety under circumstances which show utter disregard for human life is guilty of a Class F felony.

SECOND-DEGREE RECKLESSLY ENDANGERING SAFETY. Whoever recklessly endangers another's safety is guilty of a Class G felony.

12.5 years max to 10 years max

Zero intent requirement

-"Jump Kick Man" (Count 3) – NO LIO

First degree recklessly endangering safety

NO LIO - Class F felony – 941.30

-Anthony Huber (Count 4) – 2 LIO

First Degree Intentional Homicide

Class A – mandatory life imprisonment, maximum penalty Wisconsin allows

Except as provided in sub. [\(2\)](#), whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

"affirmative defenses" – except that the state bears the burden of proof *beyond a reasonable doubt* that the facts constituting the defense did not exist, otherwise this converts to Second Degree.

-that seems weird to me, but I don't practice criminal law, so maybe it's common elsewhere

-self-defense is still a classic affirmative defense, it's called a privilege under WI law, and the defendant bears the burden of proof by preponderance of the evidence.

(a) Adequate provocation. Death was caused under the influence of adequate provocation as defined in s. [939.44](#).

(b) Unnecessary defensive force. Death was caused because the actor believed he or she or another was in imminent danger of death or great bodily harm and that the force used was necessary to defend the endangered person, if either belief was unreasonable.

(c) Prevention of felony. Death was caused because the actor believed that the force used was necessary in the exercise of the privilege to prevent or terminate the commission of a felony, if that belief was unreasonable.

(d) Coercion; necessity. Death was caused in the exercise of a privilege under s. [939.45 \(1\)](#).

2 LIO

Second Degree intentional homicide

940.05

Whoever causes the death of another human being with intent to kill that person or another is guilty of a Class B felony

First Degree reckless homicide

940.02

Whoever recklessly causes the death of another human being under circumstances which show utter disregard for human life is guilty of a Class B felony.

“with intent to kill” versus “with utter disregard for human life”

-intent to kill is bare mens rea

-Gaige Grosskreutz (Count 5) – 2 LIO

Prosecution is worried here because he does have a pistol

Charge is first-degree homicide

LIO: second degree homicide and first-degree recklessly endangering safety (Class F felony, “under circumstances which show utter disregard for human life”)

-provocation instruction

939.48 – self defense and defense of others

<https://docs.legis.wisconsin.gov/statutes/statutes/939/iii/48>

Basic rule (subsection 1):

A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

HOWEVER (subsection 2):

Provocation affects the privilege of self-defense as follows:

(a) A person who engages in unlawful conduct of a type likely to provoke others to attack him or her and thereby does provoke an attack is not entitled to claim the privilege of self-defense against such attack, except when the attack which ensues is of a type causing the person engaging in the unlawful conduct to reasonably believe that he or she is in imminent danger of death or great bodily harm. In such a case, the person engaging in the unlawful conduct is privileged to act in self-defense, but the person is not privileged to resort to the use of force intended or likely to cause death to the person's assailant unless the person reasonably believes he or she has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm at the hands of his or her assailant.

(b) The privilege lost by provocation may be regained if the actor in good faith withdraws from the fight and gives adequate notice thereof to his or her assailant.

(c) A person who provokes an attack, whether by lawful or unlawful conduct, with intent to use such an attack as an excuse to cause death or great bodily harm to his or her assailant is not entitled to claim the privilege of self-defense.

HUGE WIN FOR THE PROSECUTION TO GET THIS INSTRUCTION

(1) Used every other means to escape from death or great bodily harm

(2) Withdrew from the fight and gave adequate notice of withdrawal to the assailant

Pointing a gun is provocation. There's not a lot of evidence proving that – the best is the drone footage and you saw them lose on the zooming because of technology. They're all blurry & they almost lost – they argued this for over an hour.

Jury can believe or disbelieve that Rittenhouse pointed the gun at Rosenbaum – also there's the defense testimony (uncorroborated) that Rosenbaum threatened Rittenhouse.

Also this really helps the prosecution prepare for closing arguments – they had to refine their presentation to prove he points the gun at Rosenbaum.