Wyoming Law Review

Volume 12 | Number 1 Article 4

January 2012

Getting away with Murder - Abolition of the Eagan Rule in Wyoming Domestic Violence/Murder Cases

Stewart M. Young

WYOMING LAW REVIEW

VOLUME 12 *2012* NUMBER 1

GETTING AWAY WITH MURDER? ABOLITION OF THE *EAGAN* RULE IN WYOMING DOMESTIC VIOLENCE/MURDER CASES

*Stewart M. Young**

ABSTRACT

This article argues that specific Wyoming jury instructions arising from the Wyoming Supreme Court's decision in *Eagan v. State* are inappropriate because they force the jury to accept a defendant's testimony. Specifically, defense counsel often request such instructions in murder cases (and, more importantly, domestic violence murder cases) when the defendant is the sole witness testifying about the events of the alleged murder. The *Eagan* rule requires the jury to "accept as true" the events testified to by the defendant if the defendant is the only witness to the crime and if the testimony is not impeached or found improbable.

Such an instruction, essentially removing a key determination by the jury, is surprising. This article examines the genesis of the instruction and the historical limitations the Wyoming Supreme Court placed on the instruction, while still keeping it on the books to this day. Further this article contends that, considering that other states do not use this type of instruction and given that the pattern instructions are much more useful, the *Eagan* rule should be abolished in Wyoming. Finally, this article argues the instruction is inconsistent with U.S. Supreme Court jurisprudence, as well as jurisprudence of the states upon which the Wyoming Supreme Court relied when it installed the *Eagan* rule in the first place. Following this article is an appendix discussing each case in Wyoming that has dealt with the *Eagan* rule.

* Assistant Professor of Law and Director, Prosecution Assistance Program, University of Wyoming College of Law. A.B., Princeton University, M.A., Waseda University, J.D., Stanford Law School. I appreciate the terrific assistance and editing of the *Wyoming Law Review* Editorial Board. The idea for this article arose out of my argument in *Benjamin v. State* before the Wyoming Supreme Court in April 2011. 264 P.3d 1 (Wyo. 2011). I appreciate the generous support of the Dyekman Law Faculty Research Fund in the writing of this article.

TABLE OF CONTENTS

I. INTRODUCTION

Over the past fifty years, the Wyoming Supreme Court developed a surprising rule regarding the testimony of a defendant accused of committing murder. The *Eagan* rule, as set forth in *Eagan v. State*,[1] is a jury instruction that *requires* the jury to accept the defendant's version of testimony if that testimony is not impeached or shown to be improbable. Such a rule wholly invades the province of the jury, whose task it is to determine how much weight to give the testimony of each witness. The *Eagan* rule thus requires the jury to accept a defendant's testimony as true, regardless of motive, manner of testifying, or other factors. Such a rule is not the norm in other states, nor does the rule appear to have a sound basis in Wyoming precedent. This article argues that the *Eagan* rule should not be the rule in Wyoming and specifically calls upon the legislature and the Wyoming Supreme Court to abolish this rule because it is an improper jury instruction.

II. *EAGAN V. STATE*: THE GENESIS OF THE *EAGAN* RULE

On December 11, 1940, Dan Eagan killed his wife, Catherine, in a basement apartment owned by his mother in Casper, Wyoming.[2] While the county prosecutor charged Eagan with committing first-degree murder, Eagan claimed that he killed Catherine in an "accidental shooting" and a jury subsequently

[1] 128 P.2d 215 (Wyo. 1942).

[2] *Id.* at 216.

convicted him of the lesser charge of second-degree murder.[3] Eagan appealed his conviction, claiming that the jury should have credited his defense.

The case hinged on Eagan's statements regarding the night he killed his wife. The Wyoming Supreme Court noted initially that Eagan was a practicing attorney in Casper.[4] Eagan testified that on December 11, 1940, he worked at the office during the day and then left to the Elks Club for about a half an hour.[5] There, he met his mother, took her to a nearby hotel, and then returned to the Elks Club.[6] While at the club, his wife called and asked him to bring home some beer, which he did (along with a pint of whiskey).[7] Once at home, he had dinner with his wife, his daughter, and the maid, and then "went to his work-shop in the basement to work on a gun-stock."[8] Specifically, he owned ten or fifteen firearms, and he had a familiarity with these firearms given that he often repaired and cared for them.[9]

At this point, Eagan's testimony turned to the shooting. After finishing the dishes, his wife "came into the work-room, sat on a bench, and talked with him for a time in an apparently amiable conversation."[10] His wife left to take care of their daughter and then returned several times to chat with Eagan.[11] Finally, Eagan went to their bedroom (after consuming the pint of whiskey with his wife) and brought a revolver and three shells with him[12] because:

> [T]he gun had not been working properly and I had figured all summer that I would fix it, and then, due to one thing and another, I had not gotten around to it, and I had just started on my winter's work, and I picked it up along with the shells, with the idea of seeing if I could find out what was wrong with it.[13]

Once in the bedroom, Eagan loaded the gun as he sat down in an easy chair.[14] His wife then came into the room, and while they talked, he examined the gun, "manipulating its mechanism" as she lay down by the fireplace.[15] She soon moved

---

[3] *Id.* at 217.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 218.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

to an ottoman in front of Eagan, facing away from him and towards the radio in the room.[16] Eagan continued to handle the gun "to see how it was centering . . . [and] see down there to see the shine of that cap to see if it was on center . . . and as I worked to bring it around here in the light, it went off."[17] It did not just go "off," however. Eagan explained: "When I cocked the gun, I pulled the hammer back, and at the same time I did so I pulled the trigger back . . . . I don't know how the gun happened to fire. It all happened so quickly, and, like any accident, it just went off."[18]

Testimony at trial demonstrated the bullet struck Catherine in the neck, lacerating her spinal cord and emerging out the right side.[19] After being shot, Catherine "toppled over."[20] She was still alive when the doctor arrived, but died shortly thereafter.[21] Officers testified that Eagan told them "the damn thing . . . got away from him."[22]

The prosecutor charged Eagan with first-degree murder; and one might ask why, given that up to this point there did not seem to be any evidence of premeditation or planning.[23] Such testimony came in later, as the State introduced evidence "to show the conduct of the defendant toward the deceased" on other occasions.[24] The State introduced testimony demonstrating that Eagan had on a previous occasion "struck his wife on the head with his hand, and later kicked the back of [her] seat of the car several times . . . so that it knocked her against the windshield and the dashboard."[25] On another occasion, Eagan purportedly kicked Catherine in the shin, poured beer on her, and even "put his hands on the neck of the deceased, as to choke her, and shook her."[26] He also threatened to knock her down on two other occasions while asking her: "How would you like a nice fresh divorce for Christmas?"[27] The Eagan's maid also testified, stating that the husband and wife were not on speaking terms for two or three weeks at one point and that there were numerous arguments and fights.[28]

---

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* at 219.

[20] *Id.* at 218.

[21] *Id.*

[22] *Id.* at 219.

[23] "Whoever purposefully and with premeditated malice . . . kills any human being is guilty of murder in the first degree." WYO. STAT. ANN. § 6-2-101 (1940). The elements for first degree murder have not changed materially between the decision in *Eagan* and the present.

[24] *Eagan*, 128 P.2d at 219.

[25] *Id.*

[26] *Id.* at 220.

[27] *Id.*

[28] *Id.*

The evidence against Eagan was not all bad, however. For instance, when the doctor arrived to tend to Catherine, Eagan "was kneeling beside the deceased and begg[ing] her to open her eyes."[29] The coroner who also arrived shortly after the shooting testified that Eagan "was greatly shocked."[30] Further, Eagan then tried to kill himself, but police officers and the coroner prevented him from doing so.[31] After calming down, he answered questions for the officers (that varied slightly to the questions posed by the prosecuting attorney on that same night), but the gist was that "'the damn thing' (the gun) got away from him."[32]

After his conviction, Eagan requested the Wyoming Supreme Court overturn his conviction arguing that the State failed to demonstrate malice.[33] Citing a number of out-of-state cases,[34] the court held that the jury should accept a defendant's testimony as true, as long as the facts and circumstances (and the defendant's testimony) met certain caveats.[35] Hence, the *Eagan* rule, as outlined in this case, required:

> Where an accused is the sole witness of a transaction charged as a crime, as in the case at bar, his testimony cannot be arbitrarily rejected, and if his credibility has not been impeached, and his testimony is not improbable, and is not inconsistent with the facts and circumstances shown, but is reasonably consistent therewith, then his testimony should be accepted.[36]

After citing a number of cases, the court discussed eight of them in detail.[37] The cases cited by the court do not necessarily lead to the development of the

---

[29] *Id.* at 218.

[30] *Id.* at 219.

[31] *Id.*

[32] *Id.* (quotations in original).

[33] *Id.* at 225.

[34] McHugh v. State, 3 So. 2d 572 (Ala. 1941); McDowell v. State, 191 So. 894 (Ala. 1939); Russell v. State, 107 So. 922 (Fl. 1926); Holton v. State, 99 So. 244 (Fl. 1924); Miller v. State, 191 S.E. 115 (Ga. 1937); Surles v. State, 97 S.E. 538 (Ga. 1918); Green v. State, 52 S.E. 431 (Ga. 1905); Owens v. State, 48 S.E. 21 (Ga. 1904); Futch v. State, 16 S.E. 102 (Ga. 1892); Wall v. State, 63 S.E. 27 (Ga. Ct. App. 1908); Frazier v. Comm., 114 S.W. 268 (Ky. Ct. App. 1908); Bowen v. State, 144 So. 230 (Miss. 1932); Martin v. State, 106 So. 270 (Miss. 1925); Patty v. State, 88 So. 498 (Miss. 1921); Houston v. State, 78 So. 182 (Miss. 1918); Fairfax v. Comm., 13 S.E. 2d 315 (Va. 1941); Thomason v. Comm., 17 S.E. 2d 374 (Va. 1941); Hawkins v. Comm., 169 S.E. 558 (Va. 1933); Spratley v. Comm., 152 S.E. 362 (Va. 1930); State v. Hurst, 116 S.E. 248 (W.Va. 1923); State v. Galford, 105 S.E. 237 (W.Va. 1920); Miller v. State, 211 N.W. 278 (Wisc. 1926). The Court also cites two Philippine cases (as federal cases), *United States v. Salamat*, 36 Philippine 842 and *United States v. Dinola*, 37 Philippine 797. My research has not uncovered these two federal cases.

[35] *Eagan*, 128 P.2d at 225–26.

[36] *Id.* at 226.

[37] These eight cases include: *Patty*, *Bowen*, *Spratley*, *Houston*, *Dinola*, *McDowell*, *Martin*, and *Miller*. *See supra* note 34 for citations.

Eagan rule. For instance, in *Spratley v. Commonwealth*, the Virginia Supreme Court specifically acknowledged that the jury is required to determine the credibility of the witnesses and assess the weight it may give to testimony.[38] That court mentioned, however, that the jury "may not arbitrarily or without any justification therefor [sic] give no weight to material evidence . . . or refuse to credit the uncontradicted testimony of a witness . . . ."[39] Such a statement is a far cry from *Eagan*'s announcement that the testimony "should be accepted."[40]

In *Houston v. State*, the Mississippi Supreme Court acknowledged "'the jury is under no compulsion to implicitly believe all the statements of a party' . . . [but] testimony, unless materially contradicted by the physical facts, should not be utterly ignored."[41] Again, there is a material difference between ensuring that the jury does not *utterly ignore* testimony by a defendant, and forcing the jury to *accept* the testimony as true.

McDowell v. State, another case remarked upon by the Wyoming Supreme Court in *Eagan*, clearly demonstrates the same distinction and demonstrates the wide gulf between *Eagan*'s pronouncement and the out-of-state cases *Eagan* cites. In *McDowell*, the Alabama Supreme Court stated the law permitting a defendant and his wife to testify on his behalf "is a recognition of the fact that their testimony can not be capriciously disregarded because of interest in the result."[42] Clearly, the *Eagan* court went too far, declaring that the jury *should accept* rather than just not *capriciously disregard* testimony as the *McDowell* court acknowledged.

In justifying the *Eagan* rule, the Wyoming Supreme Court failed to look at its own precedent, and used out-of-state cases that in actuality did not comport with the pronouncements of the *Eagan* rule. Whereas *Eagan* requires a jury to accept a defendant's statement as true, the out-of-state cases discussed above merely require that the jury not ignore a defendant's testimony or discredit it because a defendant has an interest in the outcome of the case. Thus, the Wyoming Supreme Court used these out-of-state cases to justify a rule that does not appear to have a sound basis in the precedent discussed in the *Eagan* opinion.

III. SUBSEQUENT CASES APPLYING THE *EAGAN* RULE IN WYOMING

After *Eagan*, the Wyoming Supreme Court applied the *Eagan* rule to only a handful of cases.[43] The court first applied the *Eagan* rule twelve years later in *State*

---

[38] *Spratley*, 152 S.E. at 365.

[39] *Id.*

[40] *Eagan*, 128 P.2d at 226.

[41] 78 So. 182, 183 (Miss. 1918) (quoting Wingo v. State, 45 So. 862, 863 (Miss. 1907)).

[42] 191 So. 894, 898 (Ala. 1939).

[43] By my calculation, there appear to be five cases, not including *Eagan*. They are, in chronological order: *State v. Helton*, 276 P.2d 434 (Wyo. 1954); *State v. Lindsay*, 317 P.2d 506

v. Helton in 1954.[44] After *Helton*, the court applied the *Eagan* rule only four more times: once in 1957, once in 1959, once in 1963, and finally for the last reported time in 1977.[45]

A. State v. Helton

After the court decided *Eagan*, it took the court another twelve years before it finally allowed application of the *Eagan* rule to a defendant in *State v. Helton*. Like *Eagan*, *Helton* was another case of domestic violence. Helton killed her husband in their kitchen by shooting him five times with a Smith & Wesson .38 caliber revolver.[46] Although the State charged her with first-degree murder, the jury convicted her of murder in the second degree.[47] The State introduced photographs of the scene, transcript of testimony by Helton before her arrest at the coroner's inquest, along with thirty-two witnesses and thirty-eight exhibits.[48]

In *Helton*, the issue came down to whether the State could prove malice.[49] Of course, the issue of malice, express or implied, is and must be relevant to the homicide. As the court noted in *Eagan*: "If the facts and circumstances of the homicide appear, malice is inferred, not from the use of a deadly weapon alone, but from all of the facts and circumstances so shown."[50] Applying the *Eagan* rule to the defendant's testimony, the court held that "the jury had no right to convict her of a greater crime than that of voluntary manslaughter" given her testimony.[51]

B. Martinez v. State

After a jury convicted Martinez of first-degree murder, the Wyoming Supreme Court examined Martinez' confession and applied the *Eagan* rule. First, the court noted the correct platitude that exculpatory portions of a defendant's confession do not always merit belief by the jury.[52] It then noted that the jury

---

(Wyo. 1957); *Martinez v. State*, 342 P.2d 227 (Wyo. 1959); *Nunez v. State*, 383 P.2d 726 (Wyo. 1963); and *Smith v. State*, 564 P.2d 1194 (Wyo. 1977). *See infra* Appendix A, *supra* notes 129–67. After 1977, defendants often requested the *Eagan* Rule, but the Wyoming Supreme Court had instituted more strict standards for allowing such a jury instruction. *See infra* Appendix B, *supra* notes 168–310.

[44] 276 P.2d 434 (Wyo. 1954).

[45] *See supra* note 43.

[46] *Helton*, 276 P.2d at 435.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 441.

[50] *Id.* at 441–42 (citing Eagan v. State, 128 P.2d 215 (Wyo. 1942)).

[51] *Id.* at 443.

[52] Martinez v. State, 342 P.2d 227, 338 (Wyo. 1959).

should consider any admission of homicide along with mitigating or exculpatory evidence.[53] Finding evidence of premeditation lacking, the court ordered the trial court to resentence Martinez to second-degree murder based on application of the *Eagan* rule.[54]

These cases demonstrate that the Wyoming Supreme Court actually sought to further develop, and in the case of *Martinez*, even extend the *Eagan* rule. It is surprising that a court would *require* a jury to accept self-serving evidence, and the Wyoming Supreme Court's statement that a "jury has no right to convict" a defendant based on that defendant's testimony flies in the face of normal confrontation jurisprudence. The court rightly narrowed the *Eagan* rule in subsequent cases, but failed to eliminate it altogether.

IV. A LOOK AT THE STRUCTURE AND NARROWING OF THE *EAGAN* RULE IN WYOMING

While the court applied the *Eagan* rule in several instances, the Wyoming Supreme Court also provided a number of cases that narrowed the application of the *Eagan* rule. This section addresses the structure of the *Eagan* rule and how the court narrowed it over time.

A. Searles v. State

In *Searles v. State*, the county prosecutor charged Searles with second-degree murder in the shooting of a tenant, upon which the jury convicted Searles of manslaughter.[55] The tenant-victim, Ralph Cardwell, rented an apartment from Searles' family and began forcing himself on Searles, even torturing her on several occasions.[56] After Searles' husband gave the tenant-victim notice to move out of the apartment, Searles bought a gun.[57] Several days later Searles shot the victim while she and another person attempted to change a light bulb outside of the tenant-victim's apartment.[58] As the crime took place, several witnesses either watched the shooting or were nearby the area.[59]

The Wyoming Supreme Court noted: "[I]n order to justify the so-called Eagan instruction, the defendant must be the Sole witness to the events formulating a complete offense, and the defendant's testimony must not be inconsistent with

---

[53] *Id.*

[54] *Id.* at 339.

[55] 589 P.2d 386, 388 (Wyo. 1979).

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.* at 388–89.

other facts and circumstances shown."[60] Accordingly, because the defendant was not the only witness and several other witnesses testified about certain aspects of what happened, the court held it was not error for the trial court to refuse giving the *Eagan* instruction to the jury.[61] Thus, the first caveat to applying the *Eagan* rule to a defendant's testimony is that the defendant must be the only person who can testify to the events in question.

B. Cullin v. State

The Wyoming Supreme Court further curtailed the scope of the *Eagan* rule, as evidenced by its holding in *Cullin v. State*.[62] The court sought to limit the use of the *Eagan* instruction unless the defendant fulfilled certain parameters.[63] In *Cullin*, the defendant's testimony was inconsistent with the facts and circumstances of the murder, and the defendant was not the only witness of the crime.[64] Indeed, according to the court, there "were many witnesses to the bits and pieces forming a complete offense the foundation of the circumstantial evidence case."[65] Thus, the court held that the *Eagan* rule would not have been a proper instruction, especially given the facts and circumstances surrounding the murder did not mesh with the defendant's testimony. *Cullin,* therefore, demonstrated that inconsistencies compared with the testimony of a defendant negate the defendant's ability to request and receive the *Eagan* rule.

C. Doe v. State

In *Doe v. State*, the Wyoming Supreme Court declined to apply the *Eagan* rule to negate the jury's finding of intent and malice.[66] Rather, according to the court, the State provided "other evidence tending to discredit [Doe's] story, which, in combination with the entrance-wound location, would be sufficient to give rise to such inference [of malice]."[67] The court noted that medical testimony regarding the victim's body countered Doe's own testimony and therefore impeached her.[68] Such medical testimony clearly contradicted Doe's claim that she shot the victim while he was facing her, but instead demonstrated that the victim turned his head as she shot him and that he then fell backwards out of the door.[69] Another witness

---

[60] *Id.* at 390 (citing Cullin v. State, 565 P.2d 4445, 452–53 (Wyo. 1977)).

[61] *Id.*

[62] 565 P.2d 445, 452 (Wyo. 1977).

[63] *Id.* (citing Raigosa v. State, 562 P.2d 1009 (Wyo. 1977)).

[64] *Id.*

[65] *Id.* at 453.

[66] 569 P.2d 1276, 1280 (Wyo. 1977).

[67] *Id.* at 1279–80.

[68] *Id.* at 1280.

[69] *Id.* at 1278.

testified that he saw the victim "come out of the door face-forward and fall behind another car."[70] Additionally, the court noted evidence of Doe's lack of remorse regarding the shooting, as well as evidence of her "propensity to react violently in a retaliatory fashion."[71]

Thus, the medical testimony and physical observations by other witnesses clearly demonstrated problems with Doe's story and properly led to the court excluding the *Eagan* rule from consideration by the jury. Accordingly, the court found that the medical testimony and other witnesses had impeached Doe's version of the shooting, and therefore, the jury could infer malice from the facts provided by the State.[72] For that reason, the Wyoming Supreme Court held the *Eagan* rule did not apply in this case, and the trial court appropriately denied Doe's request for the rule.

V. DISCUSSION

Based on the cases discussed above, application of the *Eagan* rule is rather straightforward in the event that the court finds the rule applies to a defendant's testimony. According to the Wyoming Supreme Court, when the trial court applies the rule, the jury should accept the defendant's version of a homicide, or the trial court should accept that version despite the jury's clear verdict against the defendant.[73] There are caveats to proper application of the *Eagan* rule at trial, however. The Wyoming Supreme Court also requires the trial court to mine the record to ensure that the *Eagan* rule is only applied in the strictest of circumstances.[74] And, when "the conditions of the *Eagan* instruction are not met, there is no mandatory requirement that the defendant's statements be accepted."[75] The Wyoming Supreme Court has also held the *Eagan* instruction is allowed in cases wherein other evidence does not contradict the defendant's explanation, either in a direct or inferential manner.[76] If the defendant's testimony is uncontradicted, the jury is required to accept the defendant's self-serving statement as a disclosure of the true facts of the case.[77] Ultimately, "*Eagan* states that upon the fulfillment of certain conditions the jury is limited in its role as sole judge of a witness's credibility and the accused's testimony must be accepted."[78]

---

[70] *Id.*

[71] *Id.* at 1280.

[72] *Id.*

[73] *Id.* at 1279.

[74] *Id.*

[75] Smith v. State, 564 P.2d 1194, 1202 (Wyo. 1977).

[76] Cullin v. State, 565 P.2d 445, 453 (Wyo. 1977).

[77] *Id.*

[78] Raigosa v. State, 562 P.2d 1009, 1016 (Wyo. 1977).

A defendant's testimony is something unique to the criminal justice system, given that a bedrock principle of the criminal system is: "No person . . . shall be compelled in any criminal case to be a witness against himself."[79] While this presumption against compelled testimony is grounded in the Bill of Rights, earlier English courts had a different view of defendant testimony. As such, in English common law, "the criminal courts of the period lacked the authority to require a defendant to take an oath, and defendants were not even permitted to testify."[80] Dressler and Thomas, experts in the field of criminal procedure, note further: "The common law disability of defendants to testify was a rule of evidence based on the presumed bias of the defendant . . . ."[81] Finally, in 1892, that common-law disability of not allowing a defendant to testify on his own behalf was removed by statute in federal courts and by almost all state courts.[82]

Jeffrey Bellin, an expert in criminal justice, argues that the criminal justice system should incentivize defendants to testify, and that there is no clear incentive to the system to have defendants not testify.[83] In his article, Bellin notes, "the standard instructions with respect to a defendant's testimony undercut the default position of the testifying defendant."[84] He describes certain instructions that specifically discuss the defendant's deep personal interest and that such instructions mention that this interest has the potential to create a motive for false testimony.[85] While this instruction appears to be in the minority, he explains that other courts "support an alternative instruction that a proper consideration in evaluating the defendant's testimony, like that of any witness, is the defendant's interest, bias, or prejudice."[86]

It is clear that historically, the court presumed and recognized the bias of a defendant. Indeed, given this bias, scholars such as Bellin have sought to change the structure or parameters of trial in order to incentivize the defendant to testify (in order to improve the truth-seeking function of the trial courts). What is also clear, however, is that the *Eagan* rule is an alteration of the normal rules that apply for all witnesses. A close look at the criminal pattern jury instructions, U.S. Supreme Court precedent, and even the Wyoming Supreme Court's own precedent, stress the point that all witness credibility must be judged and decided by the jury.

---

[79] U.S. CONST. amend. V.

[80] JOSHUA DRESSLER & GEORGE C. THOMAS III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERSPECTIVES 575 (4th ed., West 2010).

[81] *Id.*

[82] *Id.* at 576.

[83] Jeffrey Bellin, *Improving the Reliability of Criminal Trials Through Legal Rules that Encourage Defendants to Testify*, 76 U. CIN. L. REV. 851, 853 (2008).

[84] *Id.* at 876.

[85] *Id.* at 877.

[86] *Id.* (quotations omitted).

A. Criminal Pattern Jury Instructions

The criminal pattern jury instructions for a number of jurisdictions make clear the jury is to determine the credibility of the defendant's testimony in a similar manner to all of the other witnesses at trial. For instance, the *Wyoming Criminal Pattern Jury Instructions* does not even include the *Eagan* rule. Instead, it includes only instructions on the credibility of witnesses generally and credibility of the defendant if he or she testifies.[87] Instruction No. 1.02 informs the jury:

> [I]t is the exclusive province of the jury to weigh and consider all evidence which is presented to it; to determine the credibility of all witnesses and evidence, to determine the issues of fact.
>
> . . . .
>
> The jury is the sole judge of the credibility of witnesses and of the weight to be given their testimony. In so doing, you may take into consideration all the facts and circumstances in the case, and give to each such weight as in the light of your experience and knowledge of human affairs you think it entitled.
>
> In judging the credibility of the witnesses in this case, you should take into consideration their demeanor upon the witness stand, their apparent degree of intelligence, their means of knowledge of the facts testified to, their interest, if any, in the outcome of this trial, and their revealed motives or prejudice or feelings of revenge, if any have been shown by the evidence in this case.
>
> [Y]ou may consider the evidence presented to you and the reasonable inferences and conclusions that may be drawn there from in the light of your knowledge, observation and experience in the affairs of life.[88]

Additionally, Instruction No. 1.04A on "When the Defendant Testifies" states:

> The jury is instructed that one accused and on trial charged with the commission of a crime may testify or not, as he pleases. When a Defendant does testify, you have no right to disregard his

---

[87] WYO. CRIM. PATTERN JURY INSTR., Instr. Nos. 1.02, 1.02A, and 1.04A (2009).

[88] *Id.* at No. 1.02. Instruction No. 1.02A is quite similar to No. 1.02 for the purpose of this analysis.

> testimony merely because he is accused of a crime; that when he does testify, his credibility is to be tested by and subjected to the same test and scrutiny as are legally applied to any other witness.[89]

Thus, the *Wyoming Criminal Pattern Instructions* clearly demonstrate that credibility of the defendant is subject to the same "test and scrutiny" as other witnesses. While Instruction No. 1.04A notes that the jury should not immediately disregard the testimony of the defendant just because the witness is the defendant, the instruction still requests the jury apply the same standards the jury applies to any other witness. Such an instruction is appropriate: the standards the jury sets for each witness should apply to each witness, no more and no less.

The *Federal Jury Practice and Instructions* also follows this same pattern for determination of the credibility of the defendant when he or she deems it necessary to testify. Those instructions generally outline the usual "Credibility of Witnesses" jury instruction.[90] The instruction reads, in relevant part:

> You, as jurors, are the sole and exclusive judges of the credibility of each of the witnesses called to testify in this case and only you determine the importance or the weight, if any, that their testimony deserves. After making your assessment concerning the credibility of a witness, you may decide to believe all of that witness' testimony, only a portion of it, or none of it.[91]

Indeed, the instruction continues by charging the jury to "[c]onsider each witness's intelligence, motive to falsify, state of mind, and appearance and manner while on the witness stand."[92] Furthermore, the instruction calls upon the jury to consider "the manner in which each witness might be affected by your verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case."[93] Finally, the general instruction calls upon the

---

[89] *Id.* at No. 1.04A. The Use Note (2009) explains: "This instruction should be given only upon the request of the defendant. If the defendant requests the instruction, it must be given." *Id.*

[90] KEVIN F. O'MALLEY ET AL., 1A FED. JURY PRAC. & INSTR. § 15:01 (6th ed. 2011).

[91] *Id.*

[92] *Id.*

[93] *Id.* As a former prosecutor from San Diego, I am partial to the Ninth Circuit's pattern instruction on the credibility of witnesses, which allows the jury to "take into account . . . the witness's interest in the outcome of the case and any bias or prejudice;" as well as "the reasonableness of the witness's testimony in light of all the evidence; and . . . any other factors that bear on believability." MANUAL OF MODEL CRIM. JURY INSTR. FOR THE DIST. COURTS OF THE NINTH CIR., INSTR. NO. 1.8 (2011), *available at* http://archive.ca9.uscourts.gov/web/sdocuments.nsf/dcf4f914455891d4882564b40001f6dc/e48de3cb42964d4e882564b4000378f5?OpenDocument (last visited Nov. 11, 2011).

jury to "attach such importance or weight to that testimony, if any, that [the jury] feel[s] it deserves," after the jury has "ma[de] [its] own judgment or assessment concerning the believability of a witness."[94]

The Tenth Circuit also follows the general thrust of the *Federal Jury Practice & Instructions*, but offers a more colloquial instruction on credibility of witnesses:

> CREDIBILITY OF WITNESSES
>
> I remind you that it is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.
>
> You are the sole judges of the credibility or "believability" of each witness and the weight to be given to the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses [including the defendant] who testified in this case. You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he/she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? When weighing the conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. And you should keep in mind that innocent misrecollection—like failure of recollection—is not uncommon.
>
> The testimony of the defendant should be weighed and his credibility evaluated in the same way as that of any other witness.

---

[94] KEVIN F. O'MALLEY ET AL., *supra* note 90, § 15:01. This instruction makes clear that "[t]he testimony of a defendant should be judged in the same manner as the testimony of any other witness." *Id.* This includes the consideration of "intelligence, motive to falsify, state of mind," as well as "the manner in which [the defendant] might be affected by [the] verdict." *Id.*

> In reaching a conclusion on particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.[95]

All three types of pattern instructions demonstrate that the jury must assess the credibility of the witness (including the defendant), as well as the motive and weight of the testimony of the defendant, in the same manner as any other witness at trial. The *Eagan* rule clearly does not comport with these instructions. Rather, if the defendant's testimony is not impeached or improbable, and the defendant's credibility is intact, the court requires the jury, through the *Eagan* rule, to *accept* the defendant's version of events as *true*. Such a requirement directly contradicts the statements in each of these pattern instructions, as well as relevant case law in virtually every other jurisdiction.

B. The United States Supreme Court

The U.S. Supreme Court agrees with the assessment noted above, remarking on the "longstanding rule that when a defendant takes the stand, 'his credibility may be impeached and his testimony assailed like that of any other witness.'"[96] Indeed, "when [a defendant] assumes the role of a witness, the rules that generally apply to other witnesses-rules that serve the truth-seeking function of the trial-are generally applicable to him as well."[97] In *Portuondo v. Agard*, a habeas case, the respondent tried to argue to the U.S. Supreme Court that the prosecution could not impugn a defendant's credibility by remarking that the defendant had already heard testimony at trial before testifying himself.[98] However, the Court denied that assertion, stating: "With respect to issues of credibility, [] no such special treatment [of a defendant's testimony] has been accorded."[99] The Court further stated: "Once a defendant takes the stand, he is 'subject to cross-examination impeaching his credibility just like any other witness.'"[100] Based on *Portunado*

---

[95] PATTERN JURY INSTR. FOR THE TENTH CIR., CRIM. INSTR. NO. 1.08, at 16–17 (2011), *available at* http://www.ca10.uscourts.gov/downloads/pji10-cir-crim.pdf. The Comment to this Instruction notes that it is "consistent with *United States v. Arias-Santos*." *Id.* (citing United States v. Arias-Santos, 39 F.3d 1070, 1074 (10th Cir. 1994) and United States v. Coleman, 7 F.3d 1500, 1505–06 (10th Cir. 1993)).

[96] Portuondo v. Agard, 529 U.S. 61, 69 (2000) (quoting Brown v. United States, 356 U.S. 148, 154 (1958)).

[97] Peery v. Leeke, 488 U.S. 272, 282 (1989).

[98] 529 U.S. at 65–66. Portuondo argued that a prosecutor's comments about his presence and "ability to fabricate" his testimony unlawfully burdened his Sixth Amendment right to attend trial and confront witnesses. *Id.*

[99] *Id.* at 69 (citing Jenkins v. Anderson, 447 U.S. 231 (1980)).

[100] *Id.* at 70 (quoting *Jenkins*, 447 U.S. at 235–36 (quoting Grunewald v. United States, 353 U.S. 391, 420 (1957) (internal quotations omitted))).

alone, the U.S. Supreme Court does not accord defendants special rights based on their testimony, nor does it demonstrate that a defendant's testimony must be accepted as true.

As to the credibility determination of defendants, the U.S. Supreme Court had spoken previously, in *Brooks v. Tennessee*.[101] Tennessee had a rule requiring defendants testify at the outset of the defense case-in-chief, or forgo the opportunity to testify at trial permanently.[102] The U.S. Supreme Court declared this rule unconstitutional; it determined that this rule required a defendant to decide whether testifying was in his or her best interest before presenting (at least part of) his or her defense.[103] While the Court acknowledged the ability of a defendant to engage in "tailoring"—the practice of a defendant to use his presence in the courtroom during trial to his advantage to tailor his testimony to fit that of other witnesses—it felt that such a concern did not trump the right to present a defense.[104] Despite the possibility of "tailoring," the Court determined that a rule eliminating some decision-making power by the defendant was not the appropriate remedy. But the Court did suggest that "arguing credibility [of a defendant's testimony] to the jury . . . is the preferred means of counteracting tailoring of the defendant's testimony."[105] Indeed, as noted in *Portuondo*: "The adversary system surely envisions-indeed, it requires-that the prosecutor be allowed to bring to the jury's attention the danger [of tailoring testimony]" and thereby implicitly bring doubt upon the credibility of the defendant on the stand.[106]

Additionally, in 1895, the United States Supreme Court decided *Reagan v. United States*, which dealt with a jury instruction specifically about credibility of the defendant.[107] In that case, the trial court provided an instruction regarding the defendant's interest:

> You should especially look to the interest which the respective witnesses have in the suit, or in its result. Where the witness has a direct personal interest in the result of the suit, the temptation is strong to color, pervert, or withhold the facts. The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privilege. His testimony is before you, and you must determine how far it is credible. The deep personal interest which he may have in the

---

[101] 406 U.S. 605 (1972).

[102] *Id.* at 610–11.

[103] *Id.* at 610.

[104] *Id.*

[105] *Portuondo*, 529 U.S. at 70–71.

[106] *Id.* at 70.

[107] 157 U.S. 301, 304–05 (1895).

> result of the suit should be considered by the jury in weighing his evidence, and in determining how far, or to what extent, if at all, it is worthy of credit.[108]

The Court noted: "The jury [may] properly consider his manner of testifying, the inherent probabilities of his story, the amount and character of the contradictory testimony, the nature and extent of his interest in the result of the trial, and the impeaching evidence, in determining how much credence he is entitled to."[109] It further noted that because the defendant was testifying he was not "unworthy of belief, but at the same time it creates an interest greater than that of any other witness, and to that extent affects the question of credibility. It is therefore a matter properly to be suggested by the court to the jury."[110] After discussing numerous state authorities on the matter, the Court explained that,

> The import of these authorities is that the court is not at liberty to charge the jury, directly or indirectly, that the defendant is to be disbelieved because he is a defendant, for that would practically take away the benefit which the law grants when it give[s] him the privilege of being a witness. On the other hand, the court may, and sometimes ought, to remind the jury that interest creates a motive for false testimony; that the greater the interest the stronger is the temptation, and that the interest of the defendant in the result of the trial is of a character possessed by no other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony.[111]

It ultimately found "nothing of which complaint can reasonably be made" as to the instruction provided by the trial court.[112]

These cases demonstrate that the United States Supreme Court deemed a defendant's testimony as something important for the jury to examine and analyze, just like any other witness' testimony at trial. The Court believed the jury's province to include credibility determinations and motives of the defendant, holding such province of the jury to be inviolate. Thus, U.S. Supreme Court precedent before the institution of the *Eagan* rule (and after the development of

---

[108] *Id.* at 304. In 1878, Congress passed 20 Stat. 30 (March 16, 1878), which stated a "defendant in a criminal case may, at his own request but not otherwise, be a competent witness." *Id.* (quotations omitted).

[109] *Id.* at 305.

[110] *Id.*

[111] *Id.* at 310. The authorities included state opinions from California, Iowa, Missouri, Michigan, Illinois, New York, Indiana, and even Wyoming, specifically *Haines v. Territory*, 13 P. 8 (Wyo. 1887). *Id.*

[112] *Id.* at 311.

that rule) demonstrates that the defendant's testimony need not be "accepted as true," but rather analyzed in accordance with the analysis of all other witnesses at trial.

C. The Wyoming Supreme Court

In 1887, the Supreme Court of the Territory of Wyoming also agreed with the standard proposition regarding the jury's analysis of a defendant's credibility.[113] In *Haines v. Territory*, dealing with a prosecution for obtaining property on false pretenses, "Haines and Others" claimed that the trial court erred in providing the jury an instruction regarding their credibility.[114] The trial court read the following instruction:

> The court instructs the jury that, although the law makes the defendants in this case competent witnesses, still the jury are the judges of the weight which ought to be attached to their testimony; and, in considering what weight should be given it, the jury should take into consideration all the facts and circumstances surrounding the case, as disclosed by the evidence, and give the defendants' testimony such weight as they believe it entitled to in view of all the facts and circumstances proved in the trial; that, although defendant have a right to be sworn and give testimony in their behalf, still their credibility, and the weight to be attached to such testimony, are matters exclusively for the jury, and their interest in the result of the trial is a matter proper to be taken into consideration by the jury in determining what weight ought to be given to their testimony.[115]

With very little analysis, the court stated that the defendant "conceded that the above instruction contains nothing but sound legal propositions, and the only complaint made is that defendants were singled out by the court from the body of the witnesses for comment."[116] The court ultimately held that the trial court did not err, based on authorities from California, Missouri, and other states.[117]

---

[113] Haines v. Territory, 13 P. 8 (Wyo. 1887) (cited and quoted with approval by the Supreme Court of Washington in *State v. Melvern*, 72 P. 489 (Wash. 1903)).

[114] *Id.* at 15.

[115] *Id.*

[116] *Id.*

[117] *Id.*; *see* Younger v. State, 73 P. 551, 553–54 (Wyo. 1903) (applying the *Haines* case and noting a number of other authorities regarding the defendant testimony instruction allowing the jury to "consider his interest in the result of the trial, in addition to noticing his manner and taking into consideration the probability of his statements in connecting with the other evidence in the cause").

The Wyoming Supreme Court has also held that "generally, . . . a defendant who testifies in a criminal case may be cross-examined regarding his credibility, just like any other witness."[118] Indeed, the court has held that "when a defendant in a criminal action takes the witness stand in his own defense, his credibility becomes an issue."[119] Accordingly, as pointed out by the court: "Credibility of witnesses is always a question of fact for the trier of fact to determine."[120] Thus, at least according to its own precedent, the Wyoming Supreme Court considers credibility determinations by the jury, of the defendant who testifies, paramount. And, prior to *Eagan*, the Wyoming Supreme Court never decided to eliminate credibility determinations by the jury merely because a defendant decided to testify.

Based on the cases discussed above, the *Eagan* court failed to look at its own precedent before introducing the *Eagan* rule into the annals of Wyoming case law. In *Mortimer v. State*, the Wyoming Supreme Court dealt with a very similar issue to *Eagan* and *Helton*.[121] The State charged Mortimer with first-degree murder for killing his father, and the jury ultimately convicted him of manslaughter.[122] Mortimer confessed to the killing, but "sought to justify or excuse the homicide as an act in defense of the defendant's brother . . . who was being violently assaulted by the father."[123] Mortimer admitted that he shot his father, but noted the exculpatory nature of his crime by claiming he "felt kind of scared that he would kill my brother."[124] The court explicitly discussed the fact that the statements were "the only direct evidence that the [kill] shot was fired by [Mortimer]," much like the court's later discussions in both *Eagan* and *Helton*.[125]

---

[118] Jensen v. State, 116 P.3d 1088, 1095 (Wyo. 2005) (citing Gist v. State, 766 P.2d 1149, 1152–53 (Wyo. 1988)); MacLaird v. State, 718 P.2d 41, 47 (Wyo. 1986); Porter v. State, 440 P.2d 249, 250 (Wyo. 1968)). Of course, it is clearly improper for a prosecutor to question the defendant's credibility by asking whether *other* witnesses are "lying" or "mistaken." *See* Schreibvogel v. State, 228 P.3d 874 (Wyo. 2010); *Jensen*, 116 P.3d at 1095–96; Barnes v. State, 858 P.2d 522 (Wyo. 1993).

[119] Phillip v. State, 225 P.3d 504, 511 (Wyo. 2010) (quoting Montez v. State, 670 P.2d 694, 696 (Wyo. 1983)).

[120] *Phillip*, 225 P.3d at 511 (quoting Barnes v. State, 858 P.2d 522, 534 (Wyo. 1993)).

[121] 161 P. 766 (Wyo. 1916).

[122] *Id.* at 767.

[123] *Id.*

[124] *Id.* at 768.

[125] *Compare id.* at 769 (noting the rule that, "in a case like this, that a statement, admitting participation in the homicide which, standing alone, would be a confession, is not changed in character by exculpatory statements at the same time excusing or justifying it. This is implied by the well-settled principle that when a confession is offered and admitted, the defendant is entitled to have all that was said at the time introduced into evidence, including exculpatory statements, and that a statement directly involving guilt does not lose its character as a confession from the fact that it was accompanied by statements of an exculpatory nature . . .") *with* Eagan v. State, 128 P.2d 215, 226 (Wyo. 1942) ("In such case the admission of the homicide must be considered in connection with any mitigating or exculpatory statements made in connection therewith."), *and* State v. Helton, 276 P.2d 434, 441–42 (Wyo. 1954) (observing that the State "elect[ed] to rely upon the testimony of the defendant to prove necessary elements of its charge . . .").

Unlike *Eagan*, the *Mortimer* court reached the right decision on the issue of jury credibility determination of a defendant's testimony. After finding the statements were voluntary, the court concluded that the exculpatory nature of those statements did not render them inadmissible to the jury. "The jury may believe the inculpatory statement and disbelieve what the defendant said on the same occasion in his own favor, and that, it seems, is what the jury did in finding the defendant guilty of manslaughter."[126] Such a statement is directly contradictory to the *Eagan* rule—it demonstrates the province of the jury is to accept (or disbelieve) the statements made by the defendant—and there is no talk about "improbable" or "impeached" testimony.

Generally, *Mortimer* is cited as a self-defense case, or a character-of-victim case, rather than a domestic violence case resembling *Eagan* or *Helton*.[127] One wonders whether the court may not have noticed *Mortimer*.[128] The *Mortimer* case is directly on point with *Eagan* and *Helton* and demonstrates that the jury is not required to accept a defendant's statement as true even if the prosecution uses the defendant's statement to prove its case. But rather than cite *Mortimer*, the Wyoming Supreme Court relied on out-of-state cases (that did not even bolster its argument) to development the *Eagan* rule. This further demonstrates that *Eagan* does not follow the Wyoming Supreme Court's own precedent, however, and that *Eagan* was improperly decided.

VI. CONCLUSION

The *Eagan* rule is improper, does not comport with current case law, and clearly does not mesh with U.S. or Wyoming Supreme Court precedent. The *Eagan* rule essentially eliminates the normal jury consideration of a defendant's testimony. It does not comport with any of the standard pattern criminal jury instructions currently used in Wyoming, Federal Practice, or the Tenth Circuit. Additionally, it contradicts prior case law announced in both Wyoming and

---

[126] *Mortimer*, 161 P. at 768.

[127] *See* Holloman v. State, 106 P.3d 879, 883–84 (Wyo. 2005) (recognizing the relevance of the character of victim); Edwards v. State, 973 P.2d 41, 46–47 (Wyo. 1999) (acknowledging the principal of offering evidence of the character of victim to explain a defendant's conduct); Jahnke v. State, 682 P.2d 991, 1005–06 (Wyo. 1984) (distinguishing *Mortimer* on the grounds that there had been no showing of self-defense in this case), *overruled in part on other grounds by* Vaughn v. State, 962 P.2d 149 (Wyo. 1998); Jahnke v. State, 692 P.2d 911, 923 (Wyo. 1984) (considering the admissibility of custodial statements by minors); Buhrle v. State, 627 P.2d 1374, 1380–81 (Wyo. 1981) (allowing the jury to hear evidence of the character of victim); State v. Velsir, 159 P.2d 371, 374–75 (Wyo. 1945) (characterizing *Mortimer* as a self-defense case).

[128] It is surprising that the Wyoming Supreme Court (or its clerks) found so many out-of-state cases to support the *Eagan* Rule (*see supra* note 34), and yet the court failed to find *Mortimer* or *Haines*, both directly supporting the normal credibility determination jury instruction on facts *very* similar to *Eagan*.

the U.S. Supreme Court without acknowledging the contradiction. While the Wyoming Supreme Court has rightly continued to limit the scope of the *Eagan* rule over time, the rule is both bad public policy and not sound. The court should announce the *Eagan* rule's demise, as it does not serve any necessary purpose nor is it an appropriate jury instruction in this day of confrontation and elimination of self-serving hearsay.

APPENDIX A: CASES APPLYING THE *EAGAN* RULE

1. *Eagan v. State*, 128 P.2d 215 (Wyo. 1942)

This is case zero. A jury convicted Dan Eagan of second-degree murder for killing his wife while he cleaned his loaded gun in the living room. The State provided evidence of acrimony between the husband and wife, and Eagan testified on his behalf, claiming that the gun went off accidentally. The crux of the case dealt with the malice issue, and the Wyoming Supreme Court deemed it necessary to introduce the *Eagan* rule because the State "relie[d], as in the case at bar, on the statement or evidence of the defendant to establish one of the necessary elements of the crime charged."[129] The court ruled that "where the [S]tate must rely upon the defendant's admission alone for essential elements of its case," the rule of verbal segregation of a defendant's statements does not apply.[130] In other words, the Wyoming Supreme Court introduced this new rule that, if the State needs the defendant's statement to prove essential elements of the crime, the statement must be accepted as true facts.

2. *State v. Helton*, 276 P.2d 434 (Wyo. 1954)

A jury convicted Helton of second-degree murder for killing her husband by shooting him with five shots from a revolver. She claimed the deceased threatened to kill her, forced her to write a suicide note, and she got the gun to scare him. The court applied the *Eagan* rule:

> We are satisfied that the prosecution failed to successfully impeach the credibility of the defendant. It failed to prove its asserted motive. It failed to substantiate its claim that the scene of the shooting was altered. It did, however, elect to rely upon the testimony of the defendant to prove necessary elements of its charge and, under the law of this state, . . . the defendant being the sole witness to the transaction charged as a crime, her

[129] Eagan v. State, 128 P.2d 215, 225 (Wyo. 1942).

[130] *Id.*

> testimony must be accepted as true, as it . . . is not improbable, and is not inconsistent with the facts and circumstances shown, but it reasonably consistent therewith . . . ."[131]

The court then fairly stated:

> [T]he defendant, being the sole living witness to the shooting, her testimony, including that portion describing her condition and the antecedent reasons for it, all tending to show that she was in a highly upset, frightened, and confused emotional and impassioned condition, should not have been rejected by the jury. Her . . . story was not shown to be improbable nor inconsistent with the facts and circumstances shown, but was in fact shown to be reasonably consistent with such facts and circumstances and, therefore, the jury had no right to convict her of a greater crime than that of voluntary manslaughter.[132]

3. *State v. Lindsay*, 317 P.2d 506 (Wyo. 1957)

A jury convicted Lindsay of first-degree murder for a killing while he tried to pilfer gas from what he thought was an abandoned truck on the side of the road.[133] Lindsay approached the rear of a truck with a pistol in his hand, surprised the victim who yelled and swung at him, and Lindsay then shot him.[134] Lindsay and his accomplice "after some conversation, then determined to take the truck, hide the body, and cover up the crime."[135] Lindsay requested an *Eagan*-type instruction, described as:

> You are instructed that uncontroverted evidence should ordinarily be taken as true and uncontroverted evidence which is not improbable or unreasonable cannot be disregarded, even if it comes from an interested witness, and unless shown to be untrustworthy, is conclusive.[136]

---

[131] State v. Helton, 276 P.2d 434, 442 (Wyo. 1954) (quoting *Eagan*, 128 P.2d at 226).

[132] *Id.* at 443. The court also contended:

> [If] the defendant is guilty of murder, we ought to be able to find a motive, although motive is not essential. The absence of motive should have considerable influence in determining the degree of guilt. The complete failure of the prosecution to offer even a scintilla of evidence to bear out its claim that the defendant killed for money, deflates even the state's theory of malice.

Id.

[133] State v. Lindsay, 317 P.2d 506, 507 (Wyo. 1957).

[134] *Id.*

[135] *Id.*

[136] *Id.* at 508. (quoting Instruction D-3, which Lindsay complained the trial court failed to provide to the jury).

The Wyoming Supreme Court noted that such an instruction was not justified under *Eagan*.[137] The court noted:

> A careful reading of [*Eagan*] with emphasis on the statement quoted by the defendant discloses a modification of the general rule that the jury are the sole judges of the credibility of witnesses. Nevertheless, such statement is much more comprehensive than the instruction offered by the defendant; and no reason has been suggested why the rule stated in the *Eagan* case should be altered.[138]

Lindsay also requested an instruction that did not fulfill the *Eagan* rule requirements, but the court still considered it improper.[139] The court found this instruction's "wording . . . conflicting and confusing" and also noted "the record clearly shows that [D]efendant was the only person present as an eyewitness at the time of the shooting."[140] The court then noted that "Instruction 23 given by the court without objection . . . states more clearly . . . the gist of the requirements set out in the *Eagan* case and repeated in *State v. Helton*."[141] That instruction read:

> You are instructed that in this case the accused, Ernest Lindsay, is the sole witness to the killing of the deceased. If from the evidence you find that his testimony is not improbable and is not inconsistent with the facts and circumstances shown, but is reasonably consistent therewith, and his credibility has not been impeached, then his testimony should be accepted.[142]

Despite receiving an *Eagan* instruction, the jury still convicted Lindsay of first-degree murder.

4. *Martinez v. State*, 342 P.2d 227 (Wyo. 1959)

A jury convicted Martinez of first-degree murder and sentenced him to die in the gas chamber for killing a fellow employee on a ranch in Fremont County.

---

[137] *Id.* ("The required instruction while containing some of the wording use in the *Eagan* case would tend to preclude the jury from evaluating the testimony of the witnesses.").

[138] *Id.*

[139] *Id.* at 509. The instruction was:

> You are instructed that in this case the accused and . . . his accomplice, are the sole witnesses to the crime charged. If, from the evidence, you find that their testimony is not improbable, and is not inconsistent with the facts and circumstances shown, but is reasonably consistent therewith, and their credibility has not been impeached, then their testimony should be accepted.

Id.

[140] *Id.*

[141] *Id.*

[142] *Id.*

Martinez and the deceased went out "drinking and carousing" in Lander and drank to excess.[143] At first, Martinez claimed that they "had a fight with some Indians" who followed them to the ranch and shot the deceased.[144] Martinez then changed his story after authorities found his fingerprints on the .22 rifle murder weapon. He then claimed that the deceased had used mean words with him and challenged him to a fight; after they returned home, the deceased again called him an "old son of a bitch" before Martinez went to sleep.[145] At that point, Martinez believed that the deceased would cut his throat while he slept, so he went out to the yard, retrieved the rifle, and shot the deceased in the head.[146]

The court stated it was "fully cognizant of the rule that the exculpatory part of a confession need not be believed."[147] It then noted, however, that "we think that if any essential element must be supported by other evidence before there can be a valid conviction" and that "the admission of homicide must be considered in connection with any mitigating or exculpatory statements made in connection therewith."[148] The court then found four statements wherein there "was no evidence produced by the State which contradicted these statements of defendant."[149] Finding that "[e]vidence of premeditation, other than the confession, was entirely lacking; and the confession introduced uncontradicted factors which negatived [sic] premeditated malice," the court ordered the district court to sentence the defendant to second-degree, rather than first-degree, murder.[150]

In this case, the Wyoming Supreme Court appeared to pick and choose factors to apply the *Eagan* rule to, rather than looking at the testimony from a holistic standpoint—clearly the testimony by Martinez was not credible and had been impeached, and yet the court still allowed the *Eagan* rule in this case.

5. *Nunez v. State*, 383 P.2d 726 (Wyo. 1963)

A jury convicted Nunez of second-degree murder for a savage bar fight and killing.[151] Nunez testified that the victim did not want to quit fighting, that he continually stated, "have you got enough?" and "let's quit," and he "told the bartender and another man to, 'Go make sure that man is all right.'"[152] The

---

[143] Martinez v. State, 342 P.2d 227, 228 (Wyo. 1959).

[144] *Id.*

[145] *Id.* at 229.

[146] *Id.* at 229, 231.

[147] *Id.* at 231 (citing, *inter alia*, Mortiner v. State, 161 P. 766 (Wyo. 1916)).

[148] *Id.* (quoting Eagan v. State, 128 P.2d 215, 225 (Wyo. 1942)).

[149] *Id.*

[150] *Id.*

[151] Nunez v. State, 383 P.2d 726, 726–28 (Wyo. 1963). Blood was found all over the ground where the victim lay, "and up on the wall a distance of 5 feet 8 inches. [The victim's] face and right eye were said to have been badly damaged. . . . Nunez had no serious injuries." *Id.* at 728.

[152] *Id.* at 727–29.

court noted that, as to the elements of malice and purposefulness, "[n]one of this testimony was contradicted. If true, it would refute the idea that Nunez deliberately or intentionally tried to kill his opponent."[153] Applying the *Eagan* rule, the court found that the "[S]tate therefore failed to prove that the killing of [the victim] was purposely done by Nunez" and deemed "it unnecessary to be precise in determining whether the [S]tate has sufficiently met its burden of proving a malicious killing."[154] Accordingly, the Wyoming Supreme Court held that the murder conviction should be reduced to manslaughter under *Eagan*.[155] Having looked at all of the cases requesting the *Eagan* rule, I believe that this may be the only case wherein application of that rule was actually warranted and had merit. Given the facts and circumstances, however, I am surprised that the prosecutor chose to pursue a murder case in the first place, as manslaughter appears much more appropriate.

6. *Smith v. State*, 564 P.2d 1194 (Wyo. 1977)

A jury convicted Smith of second-degree murder for the killing of her husband's paramour.[156] According to her own testimony, after she found her husband's and his mistress' cars parked at a bowling alley lane at 3:30 a.m., she returned home and retrieved a loaded handgun and returned to wait outside a nearby motel.[157] After receiving the motel room number from a clerk in the morning, Smith accosted her husband outside the room and demanded to speak to him and the mistress.[158] She then saw the mistress driving away and Smith began to return to her house by car; at some point she saw the mistress again on the road, she followed her to her house, motioned to her to come and talk to her at the car, and shot her through the thigh and back with a hollow-point bullet.[159] Smith "admitted having shot the deceased and that the death occurred as a result. . . . The sole argument asserted at trial by defendant was that she was guilty of manslaughter and not second degree murder, as charged."[160]

The court first held that the "circumstances here were clearly sufficient to allow such an inference" that her use of deadly weapon denoted intent and "possibly even premeditation."[161] The trial court allowed the *Eagan* rule to apply and provided the *Eagan* instruction to the jury. Smith requested an instruction reading:

---

[153] *Id.* at 729.

[154] *Id.*

[155] *Id.* at 729–30.

[156] Smith v. State, 564 P.2d 1194, 1196–97 (Wyo. 1977).

[157] *Id.* at 1197.

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] *Id.* at 1198.

> Defendant's refused Instruction A:
>
> You are hereby instructed that the Defendant in this case has made a statement to the State and has taken the stand in her own behalf, under such circumstances where the State must rely upon the statements of Defendant alone for the proof of intent for the commission of the of the crime of second degree murder, and other parts of her statement are consistent with her admission of guilt of the crime of manslaughter, you cannot accept such evidence in support of the charge of second degree murder and disregard the same as evidence of guilt of manslaughter.[162]

The court noted, "[w]hile hinted at, the principles contained in defendant's rejected instruction did not correctly paraphrase the *Eagan* principle. The trial judge gave the instruction exactly announced in *Eagan*."[163] That instruction read:

> Instruction 8:
>
> A defendant who wishes to testify, is a competent witness. A defendant's testimony is to be judged in the same way as that of any other witness.
>
> If a defendant is a sole witness of the transaction charged as a crime, her testimony cannot be arbitrarily rejected. If her credibility has not been impeached, and her testimony is not improbable, and is not inconsistent with the facts and circumstances shown but is reasonably consistent therewith, then her testimony should be accepted.[164]

Despite receiving the *Eagan* instruction, the jury still convicted Smith of second-degree murder. The court stated:

> [T]he State did not rely upon the statements and testimony of the defendant [sic] but independently proved intent by the circumstances of defendant [sic] returning to her home to pick up a loaded handgun, pursuing her husband to the motel, her tracking down of the deceased victim, accosting and shooting her with a weapon likely to cause serious bodily injury or death.[165]

---

[162] *Id.* at 1201 n.4 (internal quotations omitted).

[163] *Id.* at 1201.

[164] *Id.* at 1201 n.5.

[165] *Id.* at 1201–02.

Accordingly, the Wyoming Supreme Court questioned whether the *Eagan* rule should have applied in this case at all.[166] The court reaffirmed the proposition that "[w]hen the conditions of the *Eagan* instruction are not met, there is no mandatory requirement that the defendant's statements be accepted."[167]

APPENDIX B: CASES WHERE A DEFENDANT'S REQUEST FOR THE *EAGAN* RULE IS DENIED

1. *State v. Goettina*, 158 P.2d 865 (Wyo. 1945)

The jury convicted defendant of manslaughter for shooting his ex-wife in a hotel bar owned by Goettina. He claimed that his ex-wife constantly harassed him and threatened him, sought to take ownership of his hotel, and tried to get her new boyfriend to kill him. The victim came to his hotel bar the night of her death and would not leave; Goettina claimed that she attacked him with a knife and he killed her with her firearm. His defense counsel, on appeal, sought application of the *Eagan* rule, "in connection with the point of credit to be given to the testimony of [Goettina]."[168] The court found no parallels between *Eagan* and this case, the defendant's statements were inconsistent, and the physical evidence did not seem to corroborate Goettina's testimony. As a result, the court denied defendant's request to apply the *Eagan* rule.

In *Goettina*, the Wyoming Supreme Court highlighted the fact that the trial court provided two credibility instructions to the jury—one for "regular" witnesses and one for the defendant. In addition to the instruction on credibility of witnesses generally, the trial court read "Instruction No. 16":

> The court instructs the jury that under the law the defendant has the right to testify in his own behalf, but the credibility and weight to be given to his testimony are matters exclusively for the jury. In weighing the testimony of the defendant in this case, you have the right to take into consideration his manner of testifying, the reasonableness or unreasonableness of his account of the transaction and his interest in the result of the verdict as affecting his credibility. You are not required to receive blindly the testimony of the accused as true, but you are to consider whether it is true and made in good faith, or only for the purpose of avoiding conviction.[169]

---

[166] *Id.* at 1202.

[167] *Id.* (citing Raigosa v. State, 562 P.2d 1009 (Wyo. 1977)).

[168] State v. Goettina, 158 P.2d 865, 879 (Wyo. 1945).

[169] *Id.*

The court did not find the giving of two separate instructions to be error, but noted its distaste for two such instructions.[170] Furthermore, the author of the opinion, Chief Justice Fred H. Blume, announced his belief that, "generally speaking, it would be better and fairer not to single out the defendant in an instruction such as here mentioned, unless special circumstances should require it, or unless the defendant should ask for an instruction as to his competency and credibility as a witness."[171]

2. *State v. Alexander*, 324 P.2d 831 (Wyo. 1958)

A jury convicted Alexander of second-degree murder for killing his second wife and burying her body under concrete in his basement.[172] Alexander brought his soon-to-be second wife into his household with his first wife (and their collective four kids) before the murder.[173] He then divorced his first wife and continued to live with all seven together (and shortly thereafter added another child for a total of eight persons living in the same house).[174] Upon his second wife's complaint, he moved his now ex-wife out of her hometown, and then back to Casper in one of his trailers.[175] Alexander continued to visit his ex-wife in his trailer, upon which his current wife quarreled with him and threatened to leave.[176] On the night that his wife disappeared, persons heard "both male and female voices and a commotion were heard coming from [Alexander]'s home, after which a car resembling [Alexander]'s automobile was see[n] leaving [his] back yard going fast around the house and down the alley."[177] Afterwards, Alexander "kept the basement door nailed shut," brought his ex-wife back to live with him at the home, and then "proceeded to lay a concrete floor in the basement of his home."[178] Alexander then began making comments that his wife was dead, she was stepping out on him, that she threatened suicide, that he saw her on the street, and that he felt close to her when he slept in the basement.[179] Finally, after exhaustive investigation, the ex-wife gave police permission to tear up the basement floor, and police found the wife's body with serious fractures on her head.[180] The Wyoming Supreme Court noted that Alexander's "several testimonies" were

---

[170] *Id.* at 879–80. The Wyoming Supreme Court held that giving the instruction was not prejudicial error, but discussed the "strong minority" that "takes the opposite view." *Id.* at 880.

[171] *Id.* at 880.

[172] State v. Alexander, 324 P.2d 831, 833–34 (Wyo. 1958).

[173] *Id.* at 833.

[174] *Id.* at 833–34.

[175] *Id.* at 834.

[176] *Id.*

[177] *Id.*

[178] *Id.*

[179] *Id.* Alexander finally reported her missing to police approximately eight months after she "disappeared." *Id.*

[180] *Id.* at 835–36.

> . . . so fraught with discrepancies and inconsistencies that the jury would have been justified in discrediting those portions, which, if believed, would have been favorable to defendant, and in concluding that the defendant was attempting to conceal the fact that he knew [the victim] had been killed and interred in his basement.[181]

Alexander offered a jury instruction close to the *Eagan* rule, which the trial court denied.[182] The court noted, however, that "the [S]tate's evidence in the case at bar was opposed to the testimony of the witness who was claiming to have witnessed the death of [the victim]. The offered instruction was, therefore, completely misleading, did not state the law, and was properly refused."[183]

3. *Dickey v. State*, 444 P.2d 373 (Wyo. 1968)

A jury convicted Dickey of first-degree murder of a married woman he was courting (while he, himself, was also married).[184] Dickey testified that he took his married victim to "a secluded spot and had made advances toward her after which she suggested she might tell [his] wife and might call police."[185] She then walked away in a snowstorm, his visibility was impaired, and "he accidentally struck and killed her with his automobile."[186] At that point, he panicked, put her body in the car's trunk, stopped at a gas station to fill his car and a gas can, and burned the body out in the country.[187] A gas station attendant testified, however, that the victim was "lying in the back seat of Dickey's car and that he saw scratches on her face from which blood was oozing, and saw her breathe."[188] Dickey argued that the *Eagan* rule applied, "since [his] credibility was not impeached and his testimony was not improbable and not inconsistent with the facts shown, [so] the jury was bound to accept his testimony and find for him on his defense of accidental killing."[189] The court declined to impose this instruction, given that Dickey's "credibility was impeached and put in doubt by the evidence" and because "the testimony of defendant was contradicted by evidence on behalf of the State, which the jury had a right to believe."[190] The court noted "ample evidence for

---

[181] *Id.* at 836.

[182] *Id.* at 841.

[183] *Id.*

[184] Dickey v. State, 444 P.2d 373, 374–75 (Wyo. 1968).

[185] *Id.*

[186] *Id.* at 375.

[187] *Id.*

[188] *Id.*

[189] *Id.* at 374 (citing Eagan v. State, 128 P.2d 215, 226 (Wyo. 1942)).

[190] *Id.*

[the jury] to believe the running down was deliberate and intentional" and that it did "not consider [Dickey's] story so probable and likely that the jury could not disbelieve the part about the killing being accidental."[191]

4. *Buckles v. State*, 500 P.2d 518 (Wyo. 1972)

Buckles shot and killed the man that had just raped his wife that same evening, and the State prosecuted him for first-degree murder.[192] He claimed that, after his wife told him she had been raped, Buckles got a .30-06 rifle, drove to the deceased's house, and confronted him outside of his truck. He believed that the deceased had a gun and, when he told the deceased he was going to take him to the police, the deceased appeared to reach inside of his truck. Buckles testified that at that point,

> I grabbed the gun and I threw a shell in it and I just shot at him . . . . I didn't mean to kill him, because it has a scope sight on it and I just threw the shell in there and I shot at him. Maybe shake him up and maybe get him away from his pickup.[193]

Buckles argued that under *Eagan* and *Helton*, his statement failed to demonstrate malice or premeditation.[194] The court found, however, that the prosecution adequately demonstrated premeditation and malice based on the facts and circumstances surrounding the killing.[195] While Buckles claimed that *Helton* modified *Eagan*, the court found them "completely consistent" and further found "[s]trong motive present here."[196]

5. *Raigosa v. State*, 562 P.2d 1009 (Wyo. 1977)

A jury convicted Raigosa of second-degree murder after killing a six-year old girl.[197] Cheyenne police arrived at a gruesome scene wherein the "child's body was badly bruised (torso, legs, arms), cut and her head had been shaved. There were blood stains on the walls and carpet and fecal matter on the floor."[198] Raigosa first told police that the girl had been in Denver and was injured between two cars, but then recanted and at the station indicated he "had begun spanking the deceased

---

[191] *Id.* at 375.

[192] Buckles v. State, 500 P.2d 518, 519–21 (Wyo. 1972).

[193] *Id.* at 520.

[194] *Id.* at 521.

[195] *Id.*

[196] *Id.*

[197] Raigosa v. State, 562 P.2d 1009, 1011–12 (Wyo. 1977).

[198] *Id.* at 1012.

and lost his temper."[199] Raigosa claimed he should have received the *Eagan* instruction, but the Wyoming Supreme Court noted, "not only were some of the required *Eagan* conditions not fulfilled, but the jury was adequately informed as to its role on witness credibility and limitations therefore by numerous other jury instructions."[200] Raigosa failed to testify, but "expected the jury to accept statements favorable to him, without question, excerpted from the statements he had given the police."[201] Indeed, the court implied that "the instruction would damage the defendant because his explanations were so improbable and so inconsistent with the facts and circumstances that it would only draw additional attention of the jury to the implausibility of his position."[202]

6. *Cullin v. State*, 565 P.2d 445 (Wyo. 1977)

A jury convicted Cullin of second-degree murder for the killing of her common law husband when he attempted to register a motel room for him and another woman.[203] Cullin claimed that she shot the victim between the eyes when he came into her car, and "started choking her until her tongue was hanging out, her breath was almost gone and her eyes were hurting."[204] Other testimony established, however, that she had made threats to kill both the victim and his mistress that night, she returned to her mobile home and picked up a handgun, and then began cruising to find the victim during his tryst.[205] Additionally, forensic evidence demonstrated that there was no evidence of gunpowder burns near the wound, the "conclusion being that the weapon, when fired, was over [four feet] from its target."[206] Furthermore, testimony from the motel manager contradicted specific testimony by Cullin when she claimed that she went into the motel office and talked with the victim and told him to enjoy himself as she left the motel office.[207] The court found "defendant's testimony was not consistent with the facts and circumstances shown," and noted numerous "inconsistencies" and "inconsistent evidence" with Cullin's testimony.[208] Furthermore, "[D]efendant

---

[199] *Id.* He also stated that the girl's head was shaved "as a disciplinary measure," and an officer testified that the fecal matter "resulted from the child's fear and not a dog." *Id.* at 1014.

[200] *Id.* at 1016.

[201] *Id.*

[202] *Id.* at 1016–17. It actually seems paradoxical that the Wyoming Supreme Court sought to look out for the defendant's best interests by *not* allowing the *Eagan* Rule in this case.

[203] Cullin v. State, 565 P.2d 445, 448–50 (Wyo. 1977).

[204] *Id.* at 450.

[205] *Id.* at 448–50.

[206] *Id.* at 450. Additionally, medical evidence demonstrated that she had no marks, bruises or scratches "whatsoever" from the victim's choking episode of Cullin. *Id.* at 453.

[207] *Id.* at 449–50.

[208] *Id.* at 452–53.

was not the sole witness to the crime. There were many witnesses to the bits and pieces forming . . . the foundation of the circumstantial evidence case."[209] Indeed, the "jury was adequately instructed that it was its duty to determine the credibility of witnesses, that they were the exclusive judges of the facts and that a presumption of innocence was with the defendant throughout the trial."[210]

7. *Doe v. State*, 569 P.2d 1276 (Wyo. 1977)

A jury convicted Doe of second-degree murder of her former husband after Doe did not deny the homicide.[211] The court noted, "whenever the State attempts to rely on a defendant's testimony to prove an element of the alleged offense, another principle must be considered," specifically referring to the *Eagan* rule.[212] However, the court then explained that the *Eagan* rule is "applicable only where the defendant's explanation remains uncontradicted, either directly or by fair inference from the testimony and evidence."[213] "First," the court noted, "there was medical testimony that the deceased would have dropped immediately upon entry of the fatal bullet."[214] Such medical testimony clearly contradicted Doe's claim that she shot the victim while he was facing her, but that he turned his head as she shot him and that he then fell backwards out of the door.[215] In addition, another witness testified that he saw the victim "come out of the door face-forward and fall behind another car."[216] And the court noted evidence of Doe's lack of remorse regarding the shooting, as well as evidence of her "propensity to react violently in a retaliatory fashion."[217] Thus, the medical testimony and physical observations by other witnesses clearly demonstrated problems with Doe's story and her availing to the *Eagan* rule. As a matter of course, the court could not say as "a matter of law that appellant's version of the shooting remained reasonably unimpeached. There were facts, therefore, from which the jury might fairly have drawn an inference of malice."[218]

8. *Leitel v. State*, 579 P.2d 421 (Wyo. 1978)

A jury convicted Leitel of second-degree murder for the killing of the male friend of his former common-law wife.[219] Leitel arrived at the house of his former common-law wife, saw his wife and her friend in the kitchen, and "[g]rabbed his

---

[209] *Id.* at 453.

[210] *Id.*

[211] Doe v. State, 569 P.2d 1276, 1277 (Wyo. 1977).

[212] *Id.* at 1279 (citing State v. Helton, 276 P.2d 434, 442 (Wyo. 1954)).

[213] *Id.*

[214] *Id.* at 1280.

[215] *Id.* at 1278.

[216] *Id.*

[217] *Id.* at 1280.

[218] *Id.*

[219] Leitel v. State, 579 P.2d 421, 422–23 (Wyo. 1978).

rifle and ran to the door."[220] He threatened to kill them and himself, and "as [his wife] turned to go to the bathroom, [Leitel] pulled the trigger, fatally wounding [the victim]."[221]

Leitel testified that he lacked the intent to kill the victim. Specifically, he testified: "I just though, well, I will get the hell out of here. . . . I backed up and [the victim] was coming toward me. . . . I backed over in this thing and sometime in here the gun went off."[222] He further testified that, "as he was backing out of the kitchen, he stumbled over a small ledge on the floor, slammed against the wall, and accidentally discharged the gun."[223] In this case, Leitel received the *Eagan* rule as one of the jury instructions, and still requested the court to "employ the *Eagan* Rule to negate the jury's finding of intent and malice."[224] The court found that "there was other and sufficient evidence of malice and intent, and therefore the jury did not 'arbitrarily reject' the defendant's testimony."[225] The court noted that the evidence "with the proof of other material and relevant circumstances surrounding the incident," did not create the "condition precedent to a reversal under the *Eagan* Rule."[226]

9. *Searles v. State*, 589 P.2d 386 (Wyo. 1979)

A jury convicted Searles of manslaughter after she shot and killed a man living in her development as a maintenance man.[227] According to Searles, the victim "forced himself upon the defendant on several occasions, apparently resulting in sexual relations between them. . . . [The victim] threatened her and her family, and . . . he tortured the defendant on numerous occasions."[228] When a light bulb went off near one of the apartments, Searles went to ask another tenant to change the light bulb (which was across from the victim's residence).[229] When the victim opened the door, he came towards her asking what she was doing and "then grabbed her between the legs just as the hallway became completely dark. The defendant groaned and then reached into her coat pocket, pulled out a revolver, and pulled the trigger until her hands went limp."[230] Other

---

[220] *Id.* at 423.

[221] *Id.*

[222] *Id.*

[223] *Id.*

[224] *Id.* at 424.

[225] *Id.* at 425.

[226] *Id.*

[227] Searles v. State, 589 P.2d 386, 388 (Wyo. 1979).

[228] *Id.*

[229] *Id.*

[230] *Id.*

witnesses testified that the victim "pleasantly asked" what was going on, and then immediately got shot as the victim moved to close the door.[231] Searles argued that, as the sole witness, the *Eagan* instruction should have been given and that the trial court erred by refusing to give that instruction, over her objection.[232] The Wyoming Supreme Court found that the "defendant was not the sole witness to the events immediately surrounding the shooting of [the victim]."[233] And other witnesses "testified with respect to certain parts of the entire occurrence, and to an extent, presented evidence at variance with portions of the defendant's version of the shooting."[234]

10. *Leeper v. State*, 589 P.2d 379 (Wyo. 1979)

A jury convicted Leeper of second-degree murder after she shot a man attacking her husband in a bar fight.[235] She claimed "self-defense, or defense of another" and stated that she "was deathly afraid of [the victim], and when he turned towards her, she feared he would 'finish off' [her husband], then assault her."[236] She argued that the trial court erred by not instructing the jury on the *Eagan* rule, claiming that she "was the sole witness to the event" and that her testimony was not improbable nor inconsistent with the facts and her credibility was not impeached.[237] Based on plain error review, the court could not "find that the *Eagan* rule should have been applied, and [was] unwilling to extend *Eagan* to cover the facts of this case."[238] In accordance with *Raigosa*, the court noted that the "*Eagan* rule is not to be applied unless all of the conditions are fulfilled."[239] Because the husband and other bar patrons testified about events surrounding the shooting, Leeper "was not the sole witness" and the court declined to apply the *Eagan* rule to her situation.[240]

---

[231] *Id.* at 388–89. A pathologist testified that the victim was shot three times in the back and twice in the front, while a forensic scientist testified that all the shots were from four feet and beyond. *Id.*

[232] *Id.* at 390.

[233] *Id.*

[234] *Id.*

[235] Leeper v. State, 589 P.2d 379, 381 (Wyo. 1979).

[236] *Id.* at 381–82.

[237] *Id.* at 382.

[238] *Id.* (citing Cullin v. State, 565 P.2d 445 (Wyo. 1977) and Nunez v. State, 383 P.2d 726 (Wyo. 1963)).

[239] *Id.* (citing Raigosa v. State, 562 P.2d 1009 (Wyo. 1977)).

[240] *Id.*

11. *Gore v. State*, 627 P.2d 1384 (Wyo. 1981)

A jury convicted Gore of manslaughter for the death of his wife. She was shot through her jaw and out the back of her head with a .44 magnum pistol.[241] At trial, Gore told police that he could not remember what happened, whereupon he had told officers a few hours after the incident that his wife brought the pistol from their bedroom and that he tried to take it from her when it fired.[242] The court noted that while Gore "is the only witness to the events, his testimony is inconsistent not only with the circumstantial evidence but also with the various versions of the story he told."[243] The court noted that the *Eagan* rule could not apply when the witness' testimony was contradicted: "If it did, this would be tantamount to holding that the jury must accept any story offered by the defendant that would exonerate him."[244] Furthermore, the court noted that even if the jury had accepted his first version, the jury might still not have found him innocent, given that either disarming his wife or playing with a pistol would still be evidence of manslaughter.[245]

12. *Cutbirth v. State*, 663 P.2d 888 (Wyo. 1983)

A jury convicted Cutbirth of second-degree murder after he "got his gun from a cabinet and removed it from its holster. The gun discharged; the bullet struck his wife in the head [right between the eyes] and killed her."[246] Cutbirth relied on *Eagan* to claim "the State failed to prove beyond a reasonable doubt that the killing was done purposely and maliciously."[247] The court indicated that *Eagan* "has limitations; it does not help [Cutbirth] under the facts of this case."[248] Cutbirth failed to testify, and, "[c]onsidering [Cutbirth's] various and conflicting accounts of the circumstances surrounding the shooting, the jury could reasonably conclude that [Cutbirth's] credibility had been impeached, that his stories were inconsistent and that the exculpatory portions were improbable."[249] After citing

---

[241] Gore v. State, 627 P.2d 1384, 1385–86 (Wyo. 1981).

[242] *Id.* at 1386. He later "told another officer that he and the victim were 'playing' with the gun in the bedroom and that the victim grabbed the gun which he said he was holding when it discarged." *Id.*

[243] *Id.* at 1387.

[244] *Id.*

[245] *Id.* Gore's "repeated use of the terminology 'playing with' and 'messing with' when referring to the handling of the pistol is enough to cause legitimate doubts as to whether he appreciates the level of care that a reasonable person is required to use when handling a loaded weapon." *Id.*

[246] Cutbirth v. State, 663 P.2d 888, 889–90 (Wyo. 1983). Cutbirth "pointed the gun toward his wife before its discharge" and it discharged within two feet of the victim's forehead. *Id.* Additionally, he used a .357 magnum revolver, which he then threw outside following the shooting. *Id.*

[247] *Id.* at 890.

[248] *Id.*

[249] *Id.*

Doe v. State, the court specifically noted that under *Eagan*, the "jury is at liberty to accept portions of appellant's testimony that it deems to be reasonable and reject the other portions."[250]

13. *Cheatham v. State*, 719 P.2d 612 (Wyo. 1986)

A jury convicted Cheatham of involuntary manslaughter for the beating and killing of his wife during an argument.[251] While some witnesses testified as to the victim's fall at a local Evanston dance club and arguments between her and Cheatham, Cheatham himself alleged that "his wife fell down some stairs at the house . . . they then engaged in a struggle. He said that at one point he pushed his wife causing her to fall against a door and then to the floor."[252] Post-conviction, Cheatham argued, "the jury was required to accept his version of the incident in the home in accordance with [*Eagan*] and, given that requirement, the [S]tate has no evidence of the other elements of the crime of involuntary manslaughter."[253] The court found "Cheatham's reliance on these propositions is misplaced" because he failed to testify and that "the testimony of the accused was inconsistent not only with the circumstantial evidence but also internally inconsistent because of various versions of the story that he related."[254]

14. *Dangel v. State*, 724 P.2d 1145 (Wyo. 1986)

In 1986, the Wyoming Supreme Court finally seemed to be on the verge of doing something about the *Eagan* rule in *Dangel v. State*.[255] The State charged Dangel with three counts of vehicular homicide for his role in a fatal accident near Worland, Wyoming.[256] At an intersection, Dangel failed to stop at a stop sign and swerved to avoid a tractor-trailer, collided with a pickup, and killed three victims.[257] Dangel argued that "the brakes failed suddenly and that the deaths of the victims were due to an accident which occurred without criminal negligence."[258] Dangel testified about his familiarity with the intersection. He also testified that he road-tested his brakes prior to leaving to pick up waste water and that the

---

[250] *Id.*

[251] Cheatham v. State, 719 P.2d 612, 615–16 (Wyo. 1986).

[252] *Id.* at 615.

[253] *Id.* at 622.

[254] *Id.* at 623 Cheatham also "told one witness that he had killed his wife and stated to another that he had vigorously assaulted her. Given these circumstances Cheatham is foreclosed from reliance upon the application of *Eagan*." *Id.*

[255] 724 P.2d 1145 (Wyo. 1986).

[256] *Id.* at 1146. The State charged Dangel with violating WYO. STAT. ANN. § 6-2-106(a) (1977).

[257] *Id.*

[258] *Id.* at 1147.

brakes seemed "'a little soft, but I was able to stop the truck, no problem.'"[259] The State elicited other testimony about the truck's brakes, including that they were replaced three months before the incident and that the braking efficiency was 100 percent.[260]

The crux of the case against Dangel required the jury to conclude that "Dangel knew that the brakes on the truck were not operating effectively" and that Dangel's failure to remedy the brake situation "was criminally negligent conduct."[261] Alternatively, it required the jury to "disbelieve[] Dangel and his expert witness with respect to the brake failure [and find] that the brakes were functioning properly but that Dangel failed to apply the brakes in order to stop at the intersection."[262]

Dangel argued for application of the *Eagan* rule, stating that "even though there might be sufficient evidence to support the jury's verdicts he still is entitled to a reversal based upon the language of the court in *Eagan*."[263] Judge Urbigkit, in a special concurrence, noted that, as of 1986, the court had "examined the [*Eagan*] Rule in . . . 17 cases, but . . . applied it in only two."[264] At that point, the court only found the rule applicable in *Helton* and *Nunez*.[265] He further noted that, from *Helton*, *Leitel*, and *Doe*, whether the court should apply the *Eagan* rule is a matter of law.[266] Justice Urbigkit further stated, "It is the trial court, and in the appropriate instance the appellate court, which determines whether *Eagan* applies. This remains true whether or not any jury instruction incorporating *Eagan* is offered at trial."[267]

---

[259] *Id.*

[260] *Id.*

[261] *Id.* at 1148.

[262] *Id.*

[263] *Id.*

[264] *Id.* at 1150 (Urbigkit, J., specially concurring). The seventeen cases include: *Cheatham v. State*, 719 P.2d 612 (Wyo. 1986); *Cutbirth v. State*, 663 P.2d 888 (Wyo. 1983); *Gore v. State*, 627 P.2d 1384 (Wyo. 1981); *Leeper v. State*, 589 P.2d 379 (Wyo. 1979); *Searles v. State*, 589 P.2d 386 (Wyo. 1979); *Leitel v. State*, 579 P.2d 421 (Wyo. 1978); *Cullin v. State*, 565 P.2d 445 (Wyo. 1977); *Doe v. State*, 569 P.2d 1276 (Wyo. 1977); *Raigosa v. State*, 562 P.2d 1009 (Wyo. 1977); *Smith v. State*, 564 P.2d 1194 (Wyo. 1977); *Buckles v. State*, 500 P.2d 518, *cert. denied*, 363 U.S. 850 (Wyo. 1972); *Dickey v. State*, 444 P.2d 373 (Wyo. 1968); *Nunez v. State*, 383 P.2d 726 (Wyo. 1963); *State v. Alexander*, 324 P.2d 831, *cert. denied*, 363 U.S. 850 (Wyo. 1958); *State v. Lindsay*, 317 P.2d 506 (Wyo. 1957); *State v. Helton*, 276 P.2d 434 (Wyo. 1954); and *State v. Goettina*, 158 P.2d 865 (Wyo. 1945).

[265] *Dangel*, 724 P.2d at 1150. By my count, however, I count application in five cases, not including *Eagan*: *Helton*, *Lindsay*, *Martinez*, *Nunez*, and *Smith*. *See Appendix A*, *supra* notes 131–67.

[266] *Dangel*, 724 P.2d at 1151.

[267] *Id.*

15. *Griffin v. State*, 749 P.2d 246 (Wyo. 1988)

A jury convicted Griffin of voluntary manslaughter after she killed her estranged husband while in a generally drunken state.[268] Griffin argued that she killed her husband in self-defense and requested a self-defense jury instruction that the jury rejected by convicting Griffin.[269] On appeal, she "relie[d] in part on the *Eagan* [R]ule to advance her contention that the killing was justified by reason of self-defense."[270] While Griffin was the only witness to the shooting, the court noted that "other people witnessed the events leading up to the shooting," including testimony that the victim made a fearful statement after Griffin's first shot and that the victim "was struck from a weapon fired from a distance of more than five feet."[271] Accordingly, the court found "substantial evidence to support the jury's rejection of the self-defense claim and substantial evidence to support its finding" of voluntary manslaughter.[272]

16. *Drieman v. State*, 825 P.2d 758 (Wyo. 1992)

A jury convicted Drieman of burglary after he entered his ex-girlfriend's trailer and stole pictures of her new boyfriend and her kids, letters he had written to her, her auto and trailer keys, and also wrote down her unlisted phone number and social security number.[273] He subsequently returned the keys (and her calendar) after he made copies for himself. [274] During trial, Drieman testified that he entered the trailer without permission, but that he returned the keys and calendar and therefore lacked the "[s]pecific intent to commit larceny" required for his burglary conviction.[275] Accordingly, pursuant to the *Eagan* rule, Drieman argued that the jury should find him guilty of the lesser-included offense of criminal entry because "the prosecution relie[d] on a statement of the defendant to establish one of the necessary elements of the crime charged."[276] Because he believed "his testimony as to his intent was uncontroverted," Drieman could only be found guilty of criminal entry.[277] The court found, however, that Drieman's "testimony was not

---

[268] Griffin v. State, 749 P.2d 246, 248-49 (Wyo. 1988).

[269] *Id.* at 249.

[270] *Id.* at 252.

[271] *Id.*

[272] *Id.*

[273] Drieman v. State, 825 P.2d 758, 761 (Wyo. 1992). Drieman also cut the victim's phone wire. *Id.*

[274] *Id.*

[275] *Id.*

[276] *Id.* at 762.

[277] *Id.*

uncontradicted as claimed, and *Eagan*, therefore, [did] not apply."[278] This was the first of three cases I found wherein the *Eagan* rule was requested when a death had not occurred.

17. *Glazier v. State*, 843 P.2d 1200 (Wyo. 1992)

A jury convicted Glazier of aggravated vehicular homicide following a fatal motorcycle accident with his blood alcohol content listed at 0.17 percent.[279] At the scene of the accident, Glazier claimed that he was driving the bike and that he was afraid to apply the brakes in the loose dirt after they "'were pushed wide in the corner.'"[280] During trial, Glazier testified that, in fact, "after they left the town traffic in Buffalo, [the victim] began driving and was driving when the accident occurred."[281] Glazier criticized the "State's reliance on his admissions [at the time of the accident and to other persons] that he was the driver of the motorcycle, arguing that admissions do not fill a void in the burden of proof." And he argued that *Eagan* stood "for the proposition that if the accused is the sole witness to a crime, his testimony cannot be automatically rejected."[282]

The court recognized Glazier's *Eagan* argument, but found that "appellant's testimony was not automatically rejected, rather his version of the events was presented to the court and weighed along with other evidence presented."[283] The court further noted that Glazier's "credibility was an issue in that the claim that [the victim] was driving was not totally consistent with the facts and circumstances and was impeached on cross-examination."[284] Ultimately, "[g]iven the inconclusive arguments of [Glazier], the contradicting admissions, and physical facts of the incident, there was evidence sufficient for the district court to find that [Glazier] was the driver of the motorcycle at the time of the wreck."[285]

18. *Griswold v. State*, 994 P.2d 920 (Wyo. 1999)

A jury convicted Griswold of ten counts of second-degree sexual assault on his seven-year old foster daughters, receiving five concurrent life terms to serve consecutive with five other concurrent life terms for his actions.[286] Part of the evidence against him relied on the testimony of the minor victims, who testified

---

[278] *Id.*

[279] Glazier v. State, 843 P.2d 1200, 1201–02 (Wyo. 1992).

[280] *Id.* at 1202.

[281] *Id.* at 1203.

[282] *Id.*

[283] *Id.*

[284] *Id.*

[285] *Id.* at 1204.

[286] Griswold v. State, 994 P.2d 920, 924 (Wyo. 1999).

against him. Griswold claimed that *Eagan* "mandates reversal and a remand to the district court with instructions to enter a judgment of acquittal" because one of the victims initially stated "no" when asked "whether Griswold touched her vagina with his penis."[287] The court declined to entertain Griswold's contention, given that the victim was "not the defendant" and the two victims and Griswold "testified and therefore he was not the sole witness."[288] This was the second case I found wherein a death had not occurred and the *Eagan* rule was still requested.

19. *Wilks v. State*, 49 P.3d 975 (Wyo. 2002)

A jury convicted Wilks of second-degree murder for the shooting of a Pizza Hut delivery woman (allegedly over a cheap tip).[289] Wilks claimed in his statement to the police that he planned to commit suicide in a hotel but could not afford the room.[290] He then ordered a pizza as his last meal, and shot the delivery person during an argument about his thrifty tip.[291] Wilks claimed that "the jury should have accepted his version that he did not intend for the events to occur as they did" in accordance with the *Eagan* rule.[292] The court noted *Doe v. State* provided that when the *Eagan* rule applies, "the defendant's version of a homicide must be accepted even in the face of a jury verdict to the contrary."[293] Yet, because Wilks never made an *Eagan* rule request, the court would "not consider a claim of error based upon the *Eagan* rule."[294] Additionally, the court concluded that Wilks' version of events amply supported his second-degree conviction because of his purposeful actions.[295]

20. *Butcher v. State*, 123 P.3d 543 (Wyo. 2005)

A jury convicted Butcher of second-degree murder after he stabbed the victim in a parking lot with a knife.[296] Butcher claimed he stabbed the victim in self-defense, after testimony demonstrated he garnered the knife and asked a friend whether the victim had raped a friend of his.[297] Butcher requested the court apply the *Eagan* rule, but it declined for several reasons.[298] First, Butcher never requested

---

[287] *Id.* at 928.

[288] *Id.*

[289] Wilks v. State, 49 P.3d 975, 980–81 (Wyo. 2002).

[290] *Id.*

[291] *Id.* at 981.

[292] *Id.* at 990.

[293] *Id.* at 990–91 (quoting Doe v. State, 569 P.2d 1276, 1279 (Wyo. 1977)).

[294] *Id.* at 991 (citing Dangel v. State, 724 P.2d 1145, 1149 (Wyo. 1986)).

[295] *Id.*

[296] Butcher v. State, 123 P.3d 543, 546–47 (Wyo. 2005).

[297] *Id.*

[298] *Id.* at 551.

an *Eagan* instruction during trial and second, "other witnesses testified as to the immediate events leading up to the killing, leaving the appellant's credibility far from unscathed and his testimony improbable."[299] The court then noted:

> The purpose of the *Eagan* Rule is to prevent the arbitrary rejection of a defendant's testimony where he or she is the only witness to the crime, where his or her credibility has not been impeached, and where his or her story is reasonably consistent with the known facts and circumstances. Nearly the opposite situation exists here . . . .[300]

21. *Jones v. State*, 228 P.3d 867 (Wyo. 2010)

A jury convicted Jones of second-degree sexual abuse of a child and sentenced him to a five to fifteen year term.[301] Jones argued that the trial court should have applied the *Eagan* rule to his case in "evaluating the adequacy of the State's evidence" upon a motion for judgment of acquittal.[302] The Wyoming Supreme Court rightly concluded that Jones never testified and that one of the prerequisites to the application of the *Eagan* rule is that the defendant must testify.[303] The court noted, "[i]n this case, Jones did not testify and, therefore, there was no testimony given by him that the district court, or for that matter the jury, could accept or reject."[304] Furthermore, the court noted that Jones' defense counsel was not ineffective for failing to request "a jury instruction incorporating the *Eagan* Rule" because "the *Eagan* Rule was not applicable under the facts of the case, and consequently, an *Eagan* instruction would not have been appropriate even if counsel had requested that one be given."[305] This was the third case I found requesting the *Eagan* rule without a death occurring.

22. *Benjamin v. State*, 264 P.3d 1 (Wyo. 2011)

A jury convicted Benjamin of second-degree murder after she shot and killed her husband in her trailer.[306] She claimed that she shot her husband in self-defense, although the evidence contradicted her story.[307] She requested an *Eagan* Instruction, but the trial court declined to provide that instruction.[308]

---

[299] *Id.*

[300] *Id.*

[301] Jones v. State, 228 P.3d 867, 868 (Wyo. 2010).

[302] *Id.* at 870.

[303] *Id.*

[304] *Id.*

[305] *Id.* at 873–74.

[306] Benjamin v. State, 264 P.3d 1, 4–6 (Wyo. 2011)

[307] *Id.* at 5–6.

While Benjamin was the only witness to the crime, the State argued that forensic evidence impeached her testimony, and the Wyoming Supreme Court agreed.[309] Because Benjamin's statements were not consistent with the facts and circumstances surrounding the event, the court held that the *Eagan* rule did not apply to her testimony, and the trial court did not err.[310]

[308] *Id.* at 7–8.

[309] *Id.* at 8–9.

[310] *Id.*