

**SYNOPSIS OF THE CASE****2011 MT 278, DA 10-0291: STATE OF MONTANA v. LARRY B. DANIELS.**<sup>1</sup>

Larry Daniels, his adult son Buddy, his teenage son Logan, and Buddy's teenage son Hagen lived together on a ten-acre property in Fromberg, Montana. After an argument, Daniels shot and killed Buddy on May 21, 2009. Daniels was charged with deliberate homicide, and alternatively, mitigated deliberate homicide. Daniels pled not guilty to the charges and asserted the defense of justifiable use of force. After a jury trial, Daniels was convicted of deliberate homicide.

On appeal, Daniels' arguments pertained to the 2009 legislative changes to the justifiable use of force statutes. House Bill 228 enacted § 46-16-131, MCA (2009), which provides that "when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified." The Montana Supreme Court held that justifiable use of force is still an affirmative defense, and the defendant still has the initial burden of providing evidence to raise the defense, and then the burden of proof shifts to the State. The Court held that the District Court correctly disallowed cross-examination concerning specific instances of the victim's violent acts under M. R. Evid. 405(a). Additionally, the Court held that proper foundation was necessary before the victim's character evidence could be admitted, and under the facts of this case, the District Court correctly required Daniels to lay a proper foundation by testifying.

Daniels' constitutional arguments were not properly preserved for appeal, and the Supreme Court refused to invoke plain error review of Daniels' due process claim.

Further, the Supreme Court determined that the District Court correctly refused Daniels' proposed jury instructions—on justifiable use of force in defense of an occupied structure and burglary as a forcible felony—because Buddy's entry into Daniels' house was lawful. The District Court was affirmed.

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<sup>1</sup> This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.