



IN THE THIRTY-EIGHTH JUDICIAL CIRCUIT OF ALABAMA
JACKSON COUNTY CIRCUIT COURT

STATE OF ALABAMA)	
)	
V)	
)	CASE NO.: CC-2018-323
BRITTANY JOYCE SMITH,)	
)	
Defendant)	

ORDER

This case was tried *ore tenus* on January 14 and 15, 2020, on the defendant’s motion to dismiss the indictment returned against her for the murder of Todd Smith. The defendant appeared with her attorneys, James Mick and Ron Smith. The District Attorney, Jason Pierce, and Assistant District Attorney, Krystina Jackson, appeared for the State.

The defendant claims that she acted in self-defense or the defense of a third person and is immune from criminal prosecution under §13A-3-23(d) of the Code of Alabama, 1975.

Ala. Code 13A-3-23 states: Use of force in defense of a person.

(a)A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense or in the defense of a third person if the person reasonably believes that another person is:

- (1) Using or about to use unlawful deadly physical force.
- (2) Using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling.

(3) Committing or about to commit a kidnapping in any degree, assault in the first or second degree, burglary in any degree, robbery in any degree, forcible rape, or forcible sodomy.

...

(b) A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground.

...

(d)(1) A person who uses force, including deadly physical force, as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful.

(2) Prior to the commencement of a trial in a case in which a defense is claimed under this section, the court having jurisdiction over the case, upon motion of the defendant, shall conduct a pretrial hearing to determine whether force, including deadly force, used by the defendant was justified or whether it was unlawful under this section. During any pretrial hearing to determine immunity, the defendant must show by a preponderance of the evidence that he or she is immune from criminal prosecution.

The court has carefully considered the evidence, including *ore tenus* testimony by the defendant and witnesses, and the exhibits admitted as evidence during the hearing.

The court finds that the factors of whether the defendant was in a place where she has a right to be and whether the defendant was engaged in an unlawful activity are not at issue.

The court does find issue with whether the defendant was justified in using deadly physical force in self-defense or defense of a third person. The question is whether the defendant reasonably believed that Joshua Todd Smith, the deceased, (hereinafter referred to as Todd) was using or about to use deadly physical force, committing or about to commit assault in the first or second degree, committing or about to commit burglary, committing or about to commit forcible rape, or committing or about to commit forcible sodomy.

The defendant testified at the hearing to the following events that led to the shooting of Todd.

The defendant testified that she and her husband, Christopher Thomas Smith, separated in December, a few weeks before the events of January 16, 2018. Other than a friend, Jeremy McKinney, who stayed with the defendant “every now and then,” the defendant lived alone at 211 Sharon Drive in Stevenson, Alabama.

She testified that she met Todd on one occasion during her teenage years and didn’t know him very well. She testified that she had heard of Todd being violent “back in the day” but that was years ago.

A couple of weeks before the shooting, the defendant contacted Todd about the purchase of a puppy. She purchased the puppy from Todd on January 14, 2018. The

following day, Todd called her from a park in South Pittsburg, Tennessee, stating that he needed a ride. The defendant did not have a vehicle but convinced her brother, Chris McCallie, (hereinafter referred to as Chris) to take her to pick up Todd because it was snowing and cold. They picked up Todd and defendant agreed for Todd to stay at her house for the night. The defendant testified that Todd had a beer in his hand when they picked him up but that he didn't seem drunk. She testified, "Well, I was -- I didn't know that he was actually still on drugs at the time." Chris dropped off the defendant and Todd at defendant's house.

Defendant testified that, once inside her home, she and Todd discussed drug issues. She said he talked about wanting to straighten up and get his daughter back. The defendant testified that she was trying to give him advice. She said she told him how far she had come from addiction and that she was working on regaining custody of her children who were removed from her home in July of 2016. During the conversation, she said Todd became angry and he said that she thought she was better than him. The defendant testified that he was screaming at her and headbutted her. She said he chased her to the bedroom where he tackled her on the bed and threatened to kill her. She said she woke up naked and in her own urine. She said Todd threatened to kill her if she said anything. She said that he tried to break her neck off the side of the bed because she tried to fight him. The defendant said, "I was trying to scratch him where ever I could "maybe his face, maybe his -- I don't know, his chest, his arm." She said she scratched him until her fingernails came off. She said they ended up on the floor and he strangled her again until she was unconscious. She testified, "I

had to lay there and let him finish. So I had to – he finished having sex with me, he was raping me.” She said his penis was inside her. The defendant testified that what she meant by “finished having sex with her” is that he ejaculated. She testified, “And then he got up and he acted like absolutely nothing was wrong and wanted a cigarette.” She said that he allowed her to call her mother at around 11:00 p.m. She told her mother that she needed cigarettes and to please come get her and take her to the store.

The defendant’s brother, Chris, showed up instead and took the defendant and Todd to Mapco in Stevenson. The defendant went inside the store leaving Chris and Todd in the car. Chris was in the driver’s seat. The defendant said she knew Chris carried a pistol in the glove compartment of the vehicle. Todd was in the back seat on the driver’s side of the vehicle. There was a uniformed officer in Mapco but defendant did not say anything to him. She said she was afraid because Todd had threatened her and told her not to involve the police. The defendant approached the cashier, Paige Painter, who was talking to another lady. The defendant told them to keep talking and act normal. She asked Paige for a piece of paper and wrote down phone numbers for her mom, and two friends, Paige and Jeremy. She told Paige, the cashier, “... if I’m dead in the morning this is who did it” and wrote down Todd’s name and address. The defendant purchased cigarettes and returned to the car. The defendant testified that she, Chris, and Todd, returned to defendant’s house. When they arrived, she said Todd got out of the back seat of the car. She said she was in the front seat, and leaned over to Chris, once Todd was out of the car, and told him, “Oh, Paige wanted to talk to you up at the store. Go back and talk to Paige.” She said she exited the car, Chris

drove off, and she and Todd walked into the house.

She testified that she was in the living room and Todd was in the kitchen when Chris returned. She said she didn't see Chris enter the house because he entered through the kitchen door. She testified, "I hear a gunshot, arguing, fighting, and I run into the kitchen." She testified that she heard Chris say, "You tried to kill my sister, you need to get the fuck out. Get your shit and get out." She said she heard Todd tell Chris that he was going to kill him and they started fighting. She testified that she ran into the kitchen and that Todd was crazy. She testified, "He beat the hell out of my brother." She said that Todd and Chris were fighting behind the kitchen counter in a small area of the kitchen where the stovetop is located. (Defendant's Exhibit 8 is a picture of the kitchen that was taken the night of the shooting.) She said Todd threatened to kill her, her brother, and himself. She said that they were punching each other and they were landing punches. She said, "Yeah, they're hitting each other in the head." She said that she was standing slightly outside of the area that is between the refrigerator and counter. She testified that when they started moving closer to her, she picked up Chris's .22 caliber revolver that was sitting on the counter above the trash. She said Todd had Chris in a chokehold and he couldn't breathe. She said she shouted for Todd to stop, let him go, and leave. She said that Chris couldn't get himself separated from Todd. She testified she shot the gun and nothing happened. She said she shot the gun again and nothing happened. She said that the third time she shot the gun, they both fell. She testified that she thought that she had shot her brother. She testified that Chris jumped up and ran to her. She said that he grabbed her and took the gun and set it on the counter. She

said that he told her, "Sissy, I'm okay. And he said, We're okay, we're okay." The defendant testified that she called 911 on speakerphone. She said she was on the phone with 911 for over twenty minutes and that she and Chris did CPR on Todd until the police arrived. She testified that she went outside to flag down the police and that Chris stayed inside to continue CPR. When the police ordered Chris to come out, he did so.

Other evidence was admitted during the hearing, including the audio tape and transcript of the 911 call, the defendant's statements to law enforcement, the defendant's statements to the Sexual Assault Nurse Examiner (SANE), the defendant's statements to Paige Painter, the Mapco cashier, the expert testimony of the sexual assault nurse examiner and the forensic examiner from the Department of Forensic Sciences, and the testimony of other witnesses.

Upon consideration of all the evidence, the court finds that the defendant has given inconsistent accounts of the events surrounding Todd's death, beginning with the 911 call on January 16, 2018, and has attempted to alter or destroy evidence. The court further finds that the defendant's testimony about material facts was significantly at odds with the physical evidence, exhibits, and other witness testimony. The following recitation of evidence reflects some of the inconsistencies, deceptions, and contradictions.

The defendant gave her first statement of the events to the Jackson County 911 operator at 1:37 a.m. The defendant told the 911 operator that it was her brother who shot Todd. She also tells the operator that Todd did not rape her. The telephone call begins as follows:

911 OPERATOR: Jackson County 911.

BRITTANY SMITH: Someone just got shot at 211 Sharon Drive.

911 OPERATOR: 211 Sharon?

BRITTANY SMITH; He's shot. He – he tried to kill me and –

911 OPERATOR; Okay. Who shot him?

BRITTANY SMITH: My – my brother came here and tried to – tried to stop, like, get him off of me.

911 OPERATOR: Is he breathing?

BRITTANY SMITH: He is breathing but –

911 OPERATOR: Where is he?

BRITTANY SMITH: -- there – there needs to be an ambulance called.

911 OPERATOR: Yes, we're getting them on the way.

BRITTANY SMITH: (Unintelligible).

911 OPERATOR: Listen to me.

BRITTANY SMITH: Yes, ma'am.

911 OPERATOR: We're getting them on the way.

BRITTANY SMITH: I was --

911 OPERATOR: Where was he shot at?

BRITTANY SMITH: -- when I went to get – when I went to get cigarettes, that if I died tonight and I gave them the address of who did it and –

911 OPERATOR: Where --

BRITTANY SMITH: And –

911 OPERATOR: Where was he shot at and where is the person --

BRITTANY SMITH: At 211 Sharon Drive –

911 OPERATOR: What part of his body?

BRITTANY SMITH: I don't know.

911 OPERATOR: Okay. Where is the person that shot him?

BRITTANY SMITH: He's right here with me. He's my brother. He's not going to jail, like, he – he's – like, he was trying to protect me.

At some point in the call, the 911 operator asked:

911 OPERATOR: So he did rape you?

BRITTANY SMITH: No, he did not rape me. He was trying to and he choked me out. And I was, like, seeing black and my brother came in. And they got into an argument. And my brother has his pistol permit. And, they were fighting. And then --

911 OPERATOR: Okay. Where --

BRITTANY SMITH: -- he got shot.

During the 911 call, the defendant and Chris administered CPR to Chris. Chris performed chest compressions and the defendant performed mouth-to-mouth resuscitation. The defendant can be heard talking to Todd. She made statements like: "Please, I'm so sorry. Please, come back to me. I'm so sorry, Todd." And, "Todd, please come back, baby."

Later in the 911 call, the operator instructed the defendant to tell Chris to unload the gun and put it by the front door. The defendant testified that she gave Chris this instruction.

On January 17, 2018, one day after the shooting, the defendant signed a written statement to law enforcement admitting that she was the one who shot Todd, not Chris. She also admitted that she told Chris to “wipe the gun down” before putting it by the front door.

In her statement to the sexual assault nurse examiner on January 16, 2018, at 6:45 a.m., the defendant said, “I got raped and a man died in my kitchen.”

The defendant gave a signed written statement to Lieutenant Tony Baker of the Jackson County Sheriff’s Department at 9:59 a.m. on January 16, 2018, wherein she claims that Chris was the shooter. The defendant told Lieutenant Baker that Todd choked her and she passed out. She said when she woke up she was naked and had peed on herself. She said that Todd threatened to kill her if she said anything and that he “...started trying to break my neck on the side of the bed. We fell into the floor and he choked me again until I blacked out. When I woke up he was still on me. He had his hand over my mouth and he was actually inside me. He told me if you even breath wrong I’m gonna kill you. I just laid there while he had sex with me. Then he just changed back to like he was my friend. That’s when I asked if I could call someone to come take me to get some cigarettes.”

Later in the written statement, the defendant described the encounter with the cashier, Paige. She said she told Paige that she was not okay and left her the note as she had described in her testimony. In this written statement, however, the defendant said, “I was texting people on my way back home that this guy was trying to kill me.” She said, “I don’t know how my brother found out what happened unless someone I was texting had let him know.”

In this signed written statement to Lieutenant Baker, she also gave a different version of what happened once they arrived at her house. She said that the three of them returned to her home and all went inside. She said that she went to the living room and that Todd and Chris went to the kitchen. She stated, "I heard Chris say, "You raped my sister." Todd started cussing and they started fighting. As I was going to the kitchen I heard a gunshot. I thought my brother was shot. Then I heard a couple more gunshots and saw Todd hit the floor. We called 911, I did."

Sometime after midnight on January 17, 2018, the defendant, accompanied by her mother and another lady, went back to Mapco. Paige Painter, who was working, asked the defendant what had happened the night before. Paige stated that the defendant told her that Chris came to talk to Todd but Chris brought a gun just in case Todd freaked. The defendant said she heard them fighting and heard a gunshot. She said that when she went in there Chris was doing CPR.

On January 17, 2018, the defendant gave a statement to Investigator Eric Woodall that was recorded by video and documented by a signed written statement. The defendant told him that she had told her brother's attorney that "My brother's in jail for something that I did to try to protect me."

She said that she and Todd were talking and he started going crazy. She said, "I should have ran out the door, but I was just panicked. So I ran down the hall to the bedroom."

The defendant states that Todd choked her to unconsciousness twice. She said he threatened to kill her each time that she awoke from unconsciousness. She said, "And then, like, all of the sudden, his facial expression changed and it was the Todd that I knew, you know. And I said – I waited for a minute, just to see. And then it's like, Todd, we're friends. Let's just go smoke a cigarette and, you know, calm down and talk. And he said, No cops, and I said, Okay. And I said, Just get my – let me get my phone and we'll go get a pack of cigarettes."

Of the encounter in the kitchen, the defendant said that Todd and Chris were beating the hell out of each other and that Todd had Chris in a headlock. She said she grabbed the gun. She said, "And so when I got a clean shot, I shot him." She said that she thinks she shot him just once. Later, she said that she shot once more because the first shot didn't stop him from attacking her brother. She said, "And then he – fell backwards; that's how he ended up."

Investigator Woodall and the defendant had an exchange during the interview that reads as follows:

Q. Your brother's saying he came in firing the first shot, him and Todd wrestled (sic) around some, he pushes Todd to the ground. And you get the gun and shoot two or three times while Todd's on the ground and shoot him?

A. No, no, no. They were still tied up.

Q. Well, either way –

A. I was just trying to say Chris – y'all – Todd, separate, separate. And I couldn't get

them separated. So as soon as Chris, like, he didn't get – Well, actually, yes, he did get Todd to the ground. But like Todd was still, you know, having – and I just took a shot.

Q. And so he was actually on the ground when you shot him?

A. Yes, yes.

Investigator Woodall told the defendant that her brother said that she told him to wipe the gun off and the defendant admitted that she did tell him to wipe the gun off.

The defendant stated that she shot the gun once and then said twice, pulling the hammer back before each shot. She said that Chris shot the gun in the air once before setting it on the counter. The evidence indicates that a total of five shots were fired from the revolver. Five bullets were recovered. Three were recovered from Todd's body. One was recovered in a top kitchen cabinet and one was recovered in the floor next to Todd's body.

The defendant testified that Todd physically assaulted her and raped her until he ejaculated in her vagina. She testified that she stated on a podcast that Todd sodomized her. She said she used the term to mean she was raped in the anus.

The evidence from the forensic evaluation is consistent with a physical assault in that the defendant had bruising on her neck, breast, and body consistent with bite marks and forcible contact. The defendant had a broken artificial nail and her nail was bleeding. Paige Painter stated that when she saw the defendant on January 16, 2018, between 1:00 and 2:00 a.m., the defendant was very nervous and edgy. She described her as bouncing around. She stated that defendant's artificial nail on her pinky finger was off and the real nail was bleeding and that defendant's neck was real red.

The physical evidence is inconsistent with the defendant's statements about a sexual assault. The SANE nurse testified that her examination of the defendant revealed no genital trauma. She testified that the rectal examination revealed no assault in the defendant's anus. The SANE nurse submitted six swabs from the defendant, including ones from her vagina and anus, to the Department of Forensic Sciences for analysis. She offered the defendant a urine screen for drugs and sexually transmitted infections but the defendant declined.

Angela Fletcher, the forensic biologist with the Alabama Department of Forensic Sciences, testified that she examined the items from the rape kit along with a pillowcase, fitted sheet, and comforter taken from the defendant's bedroom.

The six swabs from the rape kit, including swabs from the defendant's vagina and anus, were all negative for semen and no semen was detected on the pillowcase.

DNA semen was detected on the sheet from two cuttings, labeled Items 3(C) and 3(D).

The genetic traits detected in the sperm fraction of the cutting labeled 3(C) originated from a male individual. Todd was excluded as the source.

The genetic traits detected in the sperm fraction of the cutting labeled 3(D) are a mixture of at least two individuals, at least two of which are male. Todd was excluded as a source.

The genetic traits detected in the major component of the sperm fraction of the cutting labeled 3(D) originated from a male individual. Todd was excluded as a source.

The cutting from the comforter (Item 4) revealed a non-sperm fraction. The genetic

traits detected from Item 4 are a mixture of at least two individuals, at least one of which is male. The DNA profile of the defendant was a match. Todd was excluded as a potential contributor to the mixture of genetic traits detected in Item 4.

Investigator Woodall testified that he collected evidence in the defendant's bedroom, including pillowcases, bedsheet, and comforter. He testified that he saw no wet stains on the sheets and no evidence of urine on the bed or sheets.

The defendant testified that Todd was "beating the hell out of my brother." She said that Todd had Chris in a chokehold. She said they were landing punches and hitting each other in the head. This testimony is contradicted by the picture of Chris taken immediately after his arrest on January 16, 2018. The picture of Chris shows no evidence of injuries. Investigator Eric Woodall testified that he observed Chris on the day of the shooting. He testified that Chris is over 6' 1" tall and weighs over 300 pounds. He testified that he observed no injuries to Chris. He said that Chris had no bruises or abrasions and that he had no marks to his neck. He said that Chris did not complain of any injuries.

The toxicology report from the autopsy shows that Todd had very high amounts of methamphetamines in his system. The defendant has given inconsistent statements about whether Todd was using drugs or drunk and whether she had knowledge of his use of drugs and alcohol. She testified at the hearing, "I didn't know that he was actually still on drugs at the time. I knew—Like, he had a beer the night that I picked him up in his hand, but I didn't know that he was using everything that was in his toxicology report." She testified at the hearing that Todd did not seem drunk. During cross-examination, she stated that she thought

Todd was high when he started cussing at her. She also admitted that on January 14, 2018, she overheard a conversation between Todd and a few girls “and they were actually talking about meth and sex and things like that.” She told the SANE nurse on the day of the shooting that Todd told her he had been using methamphetamines before she picked him up. She gave a signed statement to law enforcement on the day of the shooting that she left Todd’s home quickly on Sunday prior to the shooting “...because he had some friends bring meth over.” She said in the signed statement to Investigator Baker that she could tell that Todd was drunk and high when her brother dropped them off at her house on Monday evening.

Todd was staying the night with the defendant with her consent. The defendant had many opportunities to seek protection from Todd if she was afraid he was going to kill or harm her. She could have alerted the deputy that was in Mapco. She could have called the police. She could have called 911. She could have requested the cashier, her mom, and the gentleman she called from the store to call the police. She could have asked the people she was texting on the way back to her house to call the police. Todd was completely out of the car when the defendant, while sitting in the passenger’s seat of the car, told her brother to go back to the store and talk to Paige. She had an opportunity to leave with her brother but she exited the vehicle and entered the home with Todd.

When the brother returned to the defendant’s home, he came armed with a revolver. Todd was unarmed. The evidence indicates that Chris fired the revolver once and placed it on the kitchen counter. The two men then began to fight or wrestle. This act by Chris is an

indication to the court that he, after assessing the situation and with knowledge of the defendant's claims, did not believe that deadly physical force was necessary to protect his sister or himself.

Todd was staying in the defendant's home by permission. In her written statements to law enforcement, the defendant never mentioned that she told Todd to leave her home. In her testimony, the defendant states that she told Todd to leave when he and Chris were fighting in the kitchen. The defendant was armed with a revolver and Todd was unarmed. The defendant was standing between Todd and the exterior door. The way the parties were situated in the small kitchen, Todd had no means of exit.

Paige Painter's statement differs somewhat from the defendant's version of the encounter in Mapco in the early morning hours of January 16, 2018. Paige stated that the defendant did tell her that Todd was trying to kill her, that he had choked her out twice, and that she had peed on herself. Paige stated, however, that the defendant called Jeremy while she was in Mapco and told him to come get her. She said she was telling Jeremy that someone was trying to kill her. She said that the defendant handed her the phone and asked Paige to tell him what she looked like. She said that Jeremy told her that he was at work and to call the police. Paige said that a tall cop was in the store at the time but the defendant told her not to talk loud enough for the officer to hear because it would make it worse. Paige said she asked the defendant to just stay at the store. She said the defendant said, "I can't, it's my house. I can't just not go back to my house." Paige stated that the defendant's mother, Ramona, called her after the defendant left the store. She said Ramona told her that the

defendant wanted her to tell her what was going on. She said that she told Ramona what the defendant had said to her. Paige said that Ramona responded, "Todd's a dick. When Chris comes in there, tell him to come get me and we'll go get Brittany." When Chris returned to the store, Paige stated that she told him what happened and that his mom wanted him to come get her. She said that Chris told her he would go talk to Todd and try to get Brittany. After Chris left the store, the defendant's mother called back and said that she had just talked to Brittany. She said Todd was leaving and everything was okay. Paige stated that she told the defendant's mother that someone should still go over there and check on Brittany.

The defendant testified that when she sent Chris back to the store to talk to Paige, she thought that her mom would be called. She testified that "she is my rock and... I just believed that she could help somehow." She testified that she needed her mom.

One of the more telling pieces of evidence in this case is the text communication between the defendant and her mother, Ramona, that occurred approximately nineteen minutes before the 911 call. The communication shows that the defendant told her mom that Todd had tried to kill her and then instructed her mom to call Mapco and ask for Paige which we know that she did. When her mom tells her that she will be there in a few minutes, the defendant tells her that she is fine and to not come over in the following exchange:

THE DEFENDANT: Mom Todd has tried to kill me literally. Don't act like anything is wrong. Call Mapco and ask for Paige.

MOMMA: Okay. Where is your brother?

THE DEFENDANT: I'm fine. He is leaving

MOMMA: I'll be there in a few minutes. Tell Chris to come get me

THE DEFENDANT: Call Mapco and tell Paige stop no cops he is leaving. Don't come over please.

MOMMA: She's not going to call the cops. I'm going to take him home, not chris

THE DEFENDANT: No DO NOT COME OVER HERE PLEASE STOP I AM FINE

MOMMA: If you would quit this bullshit, your kids would be home in no time.

I'm not calling the police. You call Paige yourself and tell her you're fine before she does... (256437xxxx)

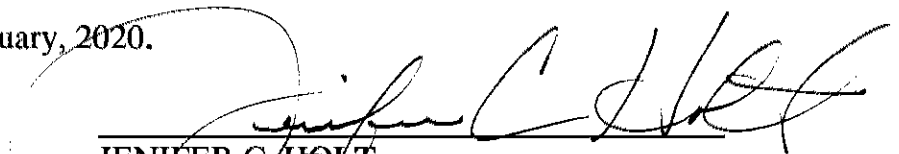
I called her, she's not calling the police. Calm down and go to bed and sleep it off.

Under the laws of the State of Alabama, the defendant bears the burden of showing that she is entitled to immunity by a preponderance of the evidence.

The court has carefully considered all the evidence presented at the hearing and the law. The defendant did not credibly demonstrate that she reasonably believed it was necessary for her to use deadly force in this situation. The court finds that the defendant has failed to prove by a preponderance of the evidence that she was justified in using deadly physical force.

ACCORDINGLY, IT IS ORDERED, ADJUDGED, AND DECREED that the defendant's motion to dismiss and motion for immunity from criminal prosecution is denied.

Done this 3rd day of February, 2020.


JENIFER C. HOLT
Circuit Judge