

FILED IN DISTRICT COURT
CREEK COUNTY SAPULPA OK

IN THE DISTRICT COURT OF CREEK COUNTY
STATE OF OKLAHOMA

JUN 01 2021

TIME 10:22am
Amanda VanOrsdol, COURT CLERK

THE STATE OF OKLAHOMA,)
Plaintiff,)
)
vs.)
)
KENNETH RAY SMITH)
Defendant(s).)

Case No. CF-2020-199

ORDER DENYING DEFENDANT’S MOTION TO DISMISS

On September 7, 2020, the defendant Kenneth Ray Smith shot and killed Tyris Boyd. The State filed a single charge of Murder in the First Degree against Smith on September 14, 2020. A preliminary hearing was held on February 3, 2021, and Smith was bound over for trial. Thereafter, Smith filed his Motion for Stand Your Ground Hearing. An evidentiary hearing was held on April 19, 2021, with the defendant calling five witnesses and offering a number of exhibits. The State introduced the transcript of the preliminary hearing with the attached exhibits. The crime scene investigation report was also admitted by stipulation. Following the hearing, the Court gave both sides an opportunity to brief the issues and then allowed them to present further argument to the Court.

The Court, after confronting and weighing factual disputes as presented, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Boyd was living in a home in Creek County with his girlfriend and her mother and stepfather, Kenneth Ray Smith.
2. The couple had a tumultuous relationship.

3. On September 7, 2020, they had some sort of altercation, and the girlfriend asked Boyd to leave.
4. Boyd's mother was summoned to the home by the girlfriend who had texted that "my moms boyfriend is getting his gun", presumably referring to Smith. She never makes any mention of Boyd having a weapon.
5. In the interim, the girlfriend left the home with her own mother.
6. When Boyd's mother arrived, she and Boyd began loading his belongings into her car and she testified that her car was fully packed by the time they had finished.
7. While they were loading the car, additional men arrived at the home. Boyd's mother did not know who the men were and she began to feel afraid. She texted her brother the address and asked the girlfriend via text to have her mom instruct Smith not to say anything crazy. She mentioned in the text messages that she was afraid for her life. The mom told the girlfriend, via text message, that her son was calm but that she was afraid essentially because of the group of men who were congregating outside the home.
8. After packing the car, and telling the daughter that they were leaving, Boyd's mother got into her car. She started the car and her son was standing near her.
9. The trunk was closed as testified to by the mother, and as depicted in the crime scene photograph, and as described in the crime scene narrative. The car was still running with the trunk closed when the crime scene investigator arrived lending credence to the mother's description of events.
10. It is apparent from her description and from the crime scene narrative that Boyd was shot on the driver's side of the vehicle in close enough proximity to the driver's door that he was able to reach his mother after being shot multiple times. There were indications of

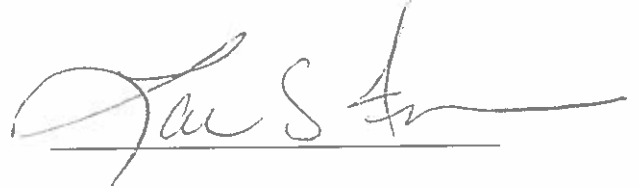
blood on the driver's door and in the driver's floorboard. There were spent shell casings and bullet defects on the driver's side hubcap.

11. While a number of witnesses claimed that Boyd had a gun and had placed it in the trunk, no gun was ever recovered. The text messages submitted by the defendant never mention that Boyd was in possession of any weapon.
12. The witnesses for the defendant, consisting of his relatives and a close friend, had strikingly inconsistent details of the events leading up to the shooting and of the shooting itself. Many of the details are inconsistent with the crime scene narrative and are inconsistent with the text messages created prior to the shooting.
13. Even if you believe the witnesses' varying accounts of the events leading up to the shooting, the only conclusion to be reached is that no one was actually afraid that Boyd would act on any of his threats. Some of the witnesses claimed that prior to the shooting, Boyd pointed and "cocked" a gun at an infant and witness Tamara Wooding. Notably, Smith's brother testified that Boyd didn't use his own gun, but rather he had taken the gun from Smith's hip and threatened the woman with Smith's gun. However, no one took any action against Boyd at that time and no one sought any help to protect the occupants of the home from Boyd. Conversely, there was testimony that Smith, who was known to always carry a gun on his hip, subsequently disarmed himself so as not to escalate the situation. This description is simply incongruous with the picture being painted by Smith. Why would Smith disarm himself a short time after Boyd had pointed a gun and threatened to shoot a woman and her infant child?

CONCLUSIONS OF LAW

“The immunity created in section 1289.25 is a conditional immunity meaning that it applies only if certain factual elements are established.” *McNealy v. State*, (citing *People v. Guenther*, 740 P.2d 971, 977 (Colo. 1987) (finding Colorado's equivalent Stand Your Ground law provides “conditional immunity” that requires the adjudicatory role of the court to determine if a sufficient factual predicate exists for application of the statute). The pivotal determination of whether Stand Your Ground applies to any given scenario requires judicial application of the law to the specific facts at hand. The defendant, being in the best position to know of any facts that exist which would entitle him to the conditional immunity, has the burden of proving those facts by a preponderance of the evidence. *See People v. Guenther*, 740 P.2d 971, 977 (Colo. 1987)

Here, the witnesses all agreed that Boyd was unarmed at the moment of the shooting and the clear weight of the evidence shows he had no immediate-if any-access to a weapon. For this reason, Smith's use of force is not protected or immunized by the statute. Smith has failed to meet his burden of proof by a preponderance of the evidence that he reasonably perceived that Boyd presented a threat that could have resulted in great bodily harm or death to him or another person. DEFENDANT'S MOTION TO DISMISS IS DENIED.

A handwritten signature in black ink, appearing to read 'Jae S. Smith', written over a horizontal line.

ASSOCIATE DISTRICT JUDGE