

IN THE DISTRICT COURT OF THE 24th JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR CREEK COUNTY

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

FILED IN DISTRICT COURT
CREEK COUNTY SAPULPA OK

Case No. CF-2020-199 MAY 10 2021

TIME 2:25 pm
Amanda VanOrsdol, COURT CLERK

**RESPONSE TO DEFENDANT'S
MOTION TO DISMISS AND BRIEF IN SUPPORT**

Comes now the State of Oklahoma, by and through District Attorney Max Cook and Assistant District Attorney Steve Rouse and hereby requests that the Court overrule Defendant's Motion to Dismiss. The Defendant claims his case should be dismissed under 21 §1289.25. Defendant's Motion should be overruled.

Brief Statement of the Case

The victim, Tyris Boyd lived with his girlfriend at the home of Defendant, Kenneth Smith. On or about September 7th, 2020 Mr. Boyd was asked to leave the residence. Mr. Boyd's mother, Theresa Williams, arrived at the Smith residence to assist him. As they had or nearly completed moving the victim's belongings into his mom's car, he was shot several times by Mr. Smith. Ms. Williams testified at Preliminary Hearing. Several witnesses were called by the Defendant at the hearing held April 19th, 2021. All could be characterized as friends or family members of the Defendant. Mr. Smith did not testify at the hearing. Ms. Williams testified that Mr. Smith shot her son (Boyd) several times and once while Boyd

was on the ground languishing from a gunshot wound inflicted earlier by the defendant. . The witnesses called by the Defense talked about events that occurred earlier in the day. Significantly, none of the witnesses saw a gun in the hand of the victim when the defendant shot him.

Argument and Authorities

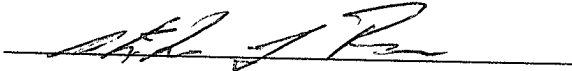
The Defendant has not demonstrated he is entitled to the relief requested. In Oklahoma, “ A person who is not engaged in illegal activity and is attacked by in any other place where he has a right to be has the right to stand his ground and meet force with deadly force if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another or prevent the commission of a forcible felony.” 21 O.S. § 1289.25 D.

Mr. Smith does not meet the requirements of the Stand Your Ground test. The evidence shows that Mr. Smith was not attacked by the victim at the time of the shooting. No one could say the victim had a gun when the Defendant shot him. Evidence was presented that Mr. Smith had a gun earlier and put it in his truck then later possessed again (before he shot the victim).

The State also contests the Defendant’s claim he “was engaged in the lawful activity of expelling a trespasser at the time he shot the victim”. At the time of the shooting Mr. Boyd was living at the Defendant’s house. The Defendant’s reliance on 21 O.S.§ 1835(A) is not controlling in the case at hand as Mr. Smith’s house is not a grove which is “posted”. There was also no showing that the victim entered with malicious intent but was actually trying to leave as requested.

CERTIFICATION OF MAILING

I hereby do certify that a true and correct copy of the above State's Response was emailed/faxed /mailed/hand delivered to Ben Fu, Attorney for the defendant on this 10th day of May, 2021.

A handwritten signature in black ink, appearing to be "A. J. R.", is written over a horizontal line.

Further, the State rejects the Defendant's conclusion that the "victim was reaching for a gun" when the defendant shot him. Again, no one said the victim had a gun at the time. The statements of the defendant's witnesses are in contrast to that of Ms. Williams who testified that the victim did not reach in the trunk and was attempting to merely get to the passenger door (and leave) when he was shot.

Further, the State agrees the Defendant has the burden to show he is entitled to relief. The victim's mom previously testified at Preliminary Hearing and was subject to cross examination. Any testimony would have been duplicitous. Regardless of the testimony of Ms. Williams, the Defendant's witnesses failed to show sufficient evidence that Mr. Smith is entitled to the relief requested. Mr. Smith did not testify as to what his state of mind was at the time he shot the victim. The State contends that his "reasonable beliefs" cannot be determined without him testifying. Also, no one indicated the Defendant was under attack when he shot the victim or that the victim had a gun in his hand.

CONCLUSION

The Defendant's argument is unsupported by the facts and the law. WHEREFORE, premises considered, the State asks this Court to overrule the Motion of the Defendant and find in favor of the State.

Max Cook
District Attorney

By: 
Assistant District Attorney