

**IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DIVISION**

STATE OF KANSAS,)
)
 Plaintiff,)
)
 vs.) Case No. 18CR703
)
 DEXTER BETTS,)
)
 Defendant.)
 _____)

ORDER

Now, on this 7th day of November, 2019, this matter comes before the court for a ruling on defendant's Motion to Dismiss on the Basis of Statutory Immunity filed July 27, 2018. The State appears by District Attorney Marc Bennett. Defendant appears by Jess Hoeme, counsel for defendant. The motion is granted.

Testimony presented at evidentiary hearings and/or stipulations of the parties provided the following information: On December 30, 2017, defendant Betts, Officer Corliss & other Wichita Police Department (WPD) officers were dispatched to a residence on a report of domestic violence. Officers were advised that the "male" had a gun. Information provided to law enforcement included that the man had a gun; the man had threatened suicide; the man had put the gun in his mouth; the man had choked a dog. The officers were notified that the actions of the man were committed in front of children. Officers were informed that the children were in

the house screaming. WPD officers were responding to a volatile and potentially dangerous situation.

Officers Betts and Corliss contacted a male outside the home upon arrival. The man was unarmed. The officers saw children standing inside the front door of the residence. WPD Sgt. Crouch arrived and instructed officers Betts and Corliss to enter the residence to check the safety of the occupants. As officers Betts and Corliss approached the door or shortly after their entry into the residence, Sgt. Crouch informed the officers that the gun was inside the residence under a pillow in a bedroom.

When the officers entered the residence, two (2) boys were in front of the television in the living room of the small home. A girl was on the floor in front of a sectional couch. At least one child was sobbing and whimpering. Officer Corliss entered the home and went to his left into the master bedroom and located a gun under a pillow. Officer Betts acknowledged the children and entered a hallway. Officer Betts, consistent with WPD department policy and/or procedures, had his weapon drawn. A flashlight was affixed to Officer Betts's firearm and provided illumination. Officer Betts noticed what he believed to be a pit bull in one of the rooms off of the hallway.

Officer Corliss yelled out that he found a gun. Officer Betts acknowledged Corliss and said "we have a dog in here." Officer Betts returned to the living room. The dog that Officer Betts had noticed had advanced down the hallway and was approaching Officer Betts. Officer Betts said "whoa, whoa" and fired twice at the advancing dog. The girl mentioned earlier can be

seen on the floor in front of the couch near the advancing dog. The dog was barking as it approached the officer and appears to be lunging toward Officer Betts when the shots are fired. The shots missed the dog and struck the floor. Bullet fragments struck the girl above the eye and on a toe.

Officer Betts's AXON camera recorded the incident. According to the AXON video, all of the above transpired within approximately thirty (30) seconds of the officers' entry into the home.

Betts was charged with one count of aggravated battery, a severity level 8 person felony contrary to KSA 21-5413(b)(2)(B). The State alleged that Betts acted recklessly in causing bodily harm to the child in a manner whereby great bodily harm disfigurement or death could have been inflicted. Specifically, the State alleged that Betts acted recklessly by firing a handgun at a dog while a child was in the room.

In a previous ruling, the court resolved the question of whether a claim of self-defense can be asserted against an animal. A brief explanation of the court's ruling follows: KSA 21-5222 states that a person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person against such other's imminent use of unlawful force. KSA 21-5222 would certainly suggest that a claim of self-defense can only be asserted against another person's unlawful force and an animal cannot act unlawfully. KSA 21-5221(a)(1), however, defines "use of force" as the application of physical force, including by a weapon directed at or upon another

person or *thing*. The legislature included the word *thing* in the statute and the court concluded that an animal, in this case a dog, was a thing as contemplated by the statute.

A person's use of force to defend against an animal attack is normally not controversial and rarely, if ever, is alleged to rise to the level of criminal behavior. The unique circumstances of this case required the court to consider the question of whether a claim of self-defense can be asserted against an animal and the court answered in the affirmative based upon the definition of use of force.

The court also previously ruled that a claim of self-defense can be asserted against a charge of criminal recklessness. The court's rationale for that decision is on the record and need not, for the purposes of the court's decision on the motion at issue, be addressed any further.

A review of the Kansas Supreme Court decision in State v. Hardy, 305 Kan. 1001 (2017) focused the court's attention on the issue and the proper scope of the inquiry. The court's ruling on the question of whether self-defense can be asserted against a criminal charge alleging reckless behavior may have been unnecessary and beside the point based upon the plain language of K.S.A. 21-5231. K.S.A. 21-5231, as the Supreme Court strongly stated in Hardy, is a true immunity statute.

In Hardy, the district judge recognized that "a conflict in the evidence exists, and it's inherent," but "if this is just an exercise in determining whether there are conflicts in the

evidence ... this statute is meaningless.” The judge ultimately ruled that Hardy was immune from prosecution.

K.S.A. 21-5231 is an immunity statute not a self-defense statute. The Supreme Court, in Hardy, quoted Judge Karen Arnold-Burger’s dissent in the Court of Appeals decision that overturned the district court. Judge Arnold-Burger wrote, “self-defense and immunity are clearly distinct concepts. If immunity were the same as self-defense, there would be no need to adopt a specific immunity statute because K.S.A. 21-5222 would have sufficed. Perhaps most importantly, because KSA 21-5231 grants immunity from arrest and prosecution rather than a mere defense to liability, ‘it is effectively lost if a case is erroneously permitted to go to trial.’”

The Supreme Court, in Hardy, stated, “we need look no further than the plain language and ordinary meaning of the word ‘immune,’ ... to conclude that taking the case from the jury is precisely what the legislature’s use of the term signifies. A true immunity – and we are convinced by the language used by the legislature in K.S.A. 21-5231 that the statute does confer a true immunity – carries with it the necessity of a procedural gatekeeping function, typically exercised by a detached magistrate, who will prevent certain cases from ever getting to a trial and a jury.”

This is one such case. The plain and simple language of the statute and the facts and circumstances of this case require the “taking of the case from the jury.” Unlike Hardy, there is no conflict in the evidence in this case. Neither party disputes that Officer Betts was, in fact, defending himself. The “dispute” in this case is whether Officer Betts should have fired his

weapon in defense of himself under the circumstances not whether he was or was not justified in defending himself. Arguably, if the shots had met their mark, Officer Betts would not have been charged with a crime.

The relevant portion of the immunity statute, K.S.A. 21-5231, provides as follows:

(a) A person who uses force which, subject to the provisions of K.S.A. 2017 Supp. 21-5226, and amendments thereto, is justified pursuant to K.S.A. 2017 Supp. 21-5222, 21-5223 or 21-5225, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force,

In applying the evidence to the statute, the court first concludes that Officer Betts was lawfully present in the home and had no duty to retreat under the law. Officer Betts was not the aggressor as contemplated by K.S.A. 21-5226.

K.S.A. 21-5222 states,

(a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force.(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

The evidence establishes and neither party disputes that Betts reasonably believed that the use of force was necessary to defend himself from the dog's attack. The court finds that a reasonable person and/or a reasonable law enforcement officer would have believed that the use of force in self-defense was necessary under the circumstances.

K.S.A. 21-5223 and K.S.A. 21-5225 are not relevant to the analysis in this case.

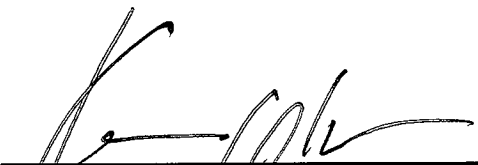
K.S.A. 21-5231 does not distinguish between intentional, knowing, or reckless criminal acts. The statute grants immunity from criminal prosecution whether the State claims intentional, knowing, or reckless behavior. Betts used force to defend himself and that fact is not in dispute. The immunity statute would be meaningless if the State could avoid the statute by claiming that justifiable use of force to defend oneself is nonetheless criminally reckless based on the circumstances of the use of such force or the environment in which the force was exercised.

The decision in this case may be an unintended consequence not envisioned by the legislature but the plain and clear language of the statute demands the result. The decision in this case is based solely upon the facts and circumstances of the case and applies only to this case. The decision does not preclude prosecution of a law enforcement officer for a reckless aggravated battery under different circumstances. The court can contemplate factual situations where the State could meet its burden to demonstrate probable cause that use of force by an officer was not justified. This is simply not one of those cases because the dispute in this case is not whether Betts was defending himself. The State is alleging that Betts should not have done so under the circumstances. An argument can be made that Officer Betts could have and/or should have allowed the dog to attack him and suffer possible injury to his person. The argument regarding whether Betts should have used force to defend himself under the circumstances is a philosophical argument subject to varied opinions. The analysis the court

conducts is confined to the parameters of the statute and neither party disputes and the evidence establishes that Betts was justified in the use of force in defending himself. The statute grants immunity from criminal prosecution. No exception exists for the criminal prosecution of alleged reckless behavior.

The injuries to the little girl as a result of the actions of Officer Betts were certainly unfortunate and regrettable. However, the court finds that the State has failed to meet its burden to demonstrate that the defendant's use of force was not justified. Defendant is entitled to statutory immunity from criminal prosecution and civil action as a matter of law.

IT IS SO ORDERED.



Kevin O'Connor
Judge of the District Court, Division 13