

Man free on bail, days after Oklahoma woman kills alleged intruder's accomplice - CNN.com

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2012-01-05T05:31:24Z

CNN.com



(CNN) -- A man who allegedly tried to break into the home of a recently widowed Oklahoma woman -- who shot and killed his alleged fellow intruder after calling 911 -- was freed Thursday on bail despite a first-degree murder charge, a court clerk said.

Although he did not fire the fatal shot, 29-year-old Dustin Louis Stewart is charged with first-degree felony murder in the incident because if someone dies during the commission of certain crimes, such as burglary, an alleged accomplice can be charged in the death, prosecutors have said.

A hearing for Stewart was held Thursday in the central Oklahoma city of Chickasha, five days after the incident. During that hearing, Stewart posted the \$50,000 bond and was released, Grady County court clerk Jessica Pickle told CNN.

Prosecutors recommended that \$50,000 be set as the bail amount, according to a court document. Stewart was ordered not to have any contact with the alleged victim -- in this case, Sarah Dawn McKinley, who fired the fatal shot -- and to appear next in court the morning of January 20.

A preliminary hearing in the case is set for May 23, the document signed by Stewart states.

The incident has caught the nation's attention because part of the action was captured during a 911 conversation.



Mom to 911: Is it OK to shoot intruder?

Home alone with her 3-month-old son, McKinley of Blanchard, Oklahoma, said she decided to make a stand when the two

men tried to break into her home on New Year's Eve.

McKinley, who had been widowed less than a week before, placed a



couch in front of one door and went to the bedroom and put a bottle in her baby's mouth before calling 911, she said on HLN's "Dr. Drew" on Wednesday.

A 911 operator calmly spoke with McKinley, who asked if it was permissible to shoot an intruder, officials said.

"I've got two guns in my hand. Is it OK to shoot him if he comes in this door?" asked McKinley, 18.

"Well, you have to do whatever you can do to protect yourself," dispatcher Diane Graham responded. "I can't tell you that you can do that, but you do what you have to do to protect your baby."

In the end, McKinley fired a 12-gauge shotgun and killed Justin Shane Martin after he entered her home, according to a Blanchard Police Department affidavit filed in court Wednesday. Martin was armed with a knife, authorities said.

"You have to make a choice, you or him. I chose my son over him," McKinley said to CNN Oklahoma City affiliate KWTV.

First Assistant District Attorney James Walters told CNN that McKinley will not be charged because she acted in self-defense.

"A person has the right to protect themselves, their family and their property," Walters said.

As for the 911 operator's guidance?

"I would agree with that advice," the prosecutor said.

It's not uncommon for charges to be filed against an alleged accomplice in cases where two people are committing a crime and a death occurs, even that of a co-conspirator, said Trent Baggett, assistant executive coordinator at the Oklahoma District Attorneys Council.

"It's all dependent upon if the situation warrants it and the facts warrant it," he said. "... If in the commission of a qualifying offense, someone gets killed, then yes, (first-degree murder charges) can and probably will be filed upon the person who doesn't die."

Even if they didn't pull the trigger themselves? "Under Oklahoma law, it doesn't matter," Baggett said. And people have been convicted of first-degree murder under such circumstances, he added.

Graham was the first of two 911 operators to speak with McKinley.

The dispatcher told HLN's Jane Velez-Mitchell on Wednesday she learned in training that she could not tell a caller to shoot someone but, "as a mother, I wanted her to protect her baby."

"She did a very good job in keeping her (McKinley) calm," Grady County Sheriff Art Kell said of Graham. "Her job is to make sure the person on the phone is comfortable ... to give them support."

McKinley was on the phone with a second dispatcher when she pulled the trigger.

McKinley's husband died of cancer on Christmas Day, Walters said. Evidence indicates Martin and Stewart may have been looking for painkillers or other drugs taken by McKinley's ill husband, the assistant prosecutor said. Investigators found no such drugs, he told CNN.

Police said Stewart told them Martin knew McKinley's husband had died, according to CNN affiliate KOCO. Martin suspected prescription drugs would be inside the home, the station reported, citing court documents.

McKinley said she believes the men were coming after her, rather than intending to commit a robbery.

According to the affidavit, the men approached McKinley's mobile home Saturday afternoon. Martin had devised a plan to burglarize the residence, police said.

Stewart told investigators he and Martin ingested hydrocodone about 30 minutes before reaching the rural home, the affidavit states.

Martin "aggressively" knocked on the doors of the home and gained entry by hitting one of them with his shoulder, police said. Stewart said "he heard a gunshot after Martin entered the residence," and Stewart then "fled on foot."

McKinley said she had pushed the couch against the door to deter entry.

"When he busted in the door I saw something shimmering in his hand," the mother told HLN. "I thought it was a pistol at first, but it was a 12-inch hunting knife. I didn't know (that) until after I shot and killed him."

Martin, 24, was found between the door and a couch with a knife clutched in his gloved left hand, police said.

CNN's calls to police in Blanchard, about 25 miles south of downtown Oklahoma City, were not immediately returned.

Stewart's attorney, Stephen Buzin, told CNN he would not comment on specifics of the case against his client. "We will let the facts come out at trial and feel comfortable with his innocence," the attorney said.

Martin recently had approached McKinley's home, saying he wanted to introduce himself, Walters said. The man said he worked for the owner of the property on which McKinley lived, she told HLN.

McKinley, who in addition to the shotgun was also armed with a pistol, was on the phone with authorities for 21 minutes, Walters said.

"She remained as calm as one could under the circumstances and had the forethought and called 911, as everyone should," he said.

McKinley was asked on "Dr. Drew" whether she regretted shooting Martin.

"No. We could have been in a whole different situation if I hadn't done it," she replied.

Read more about this story from CNN affiliate KWTW.

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