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DEPOSITION OF SHERRY SMITH  
TAKEN ON BEHALF OF THE DEFENDANTS  
IN OKLAHOMA CITY, OKLAHOMA  
ON MARCH 19, 2021

REPORTED BY: KAREN B. JOHNSON, CSR

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

SHERRY ELLIS, et al., )  
 )  
 Plaintiffs, )  
 ) No.  
 vs. ) CIV-16-0019-HE  
 )  
 DANIEL HOLTZCLAW, et al., )  
 )  
 Defendants. )

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 TABATHA BARNES, et al., )  
 )  
 Plaintiffs, ) No.  
 vs. ) CIV-16-0184-HE  
 )  
 CITY OF OKLAHOMA CITY, et al., )  
 )  
 Defendants. )

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 ADAIRA GARDNER, )  
 )  
 Plaintiff, )  
 ) No.  
 vs. ) CIV-16-0349-HE  
 )  
 DANIEL HOLTZCLAW, et al., )  
 )  
 Defendants. )

-----  
 ROSETTA GRATE, )  
 )  
 Plaintiff, )  
 ) No.  
 vs. ) CIV-16-0412-HE  
 )  
 CITY OF OKLAHOMA CITY, et al., )  
 )  
 Defendants. )

1                   SHERRY LOUISE MICHELLE SMITH,  
2 after having been first duly sworn at 1:01 p.m.  
3 deposes and says in reply to the questions  
4 propounded as follows, to wit:

5                   DIRECT EXAMINATION

6 BY MR. HANKINS:

7           Q       Will you state your full, legal name?

8           A       Sherry Louise Michelle Smith.

9           Q       And, Ms. Smith, my name's Jim Hankins and  
10 I'm a lawyer and I represent Daniel Holtzclaw in  
11 this civil case, and I'll be deposing you today,  
12 asking you questions about it. The -- in the  
13 legal papers here, there's a person who's suing  
14 Mr. Holtzclaw and the city identified as Sherry  
15 Ellis, are you that person?

16          A       Yes.

17          Q       Have you gone by Ellis in the past?

18          A       Yes.

19          Q       Okay. Just for -- just for clarity of the  
20 record, the plaintiff Sherry Ellis is now  
21 Ms. Smith, you just changed your name because of  
22 marriage; right?

23          A       Yes.

24          Q       Very good. And what is your current  
25 address?

1 when you were contacted by police about it?

2 A I don't remember that, I don't remember  
3 what day or what --

4 Q Just generally, was it several months  
5 later, years later?

6 A It was a couple of months.

7 Q Couple months later?

8 A Yeah, I think so, yes, sir.

9 Q And who contacted you, if you recall?

10 A Kim Davis.

11 Q Detective Davis?

12 A Yes.

13 Q And where did she -- did she call you on  
14 the phone or did she meet you in person?

15 A She called me on the phone.

16 Q And what did you tell her on the phone?

17 A She asked me if I had any -- any -- she  
18 asked me if I had any -- had had any problems with  
19 the police, with a police officer, and I told her  
20 yes.

21 Q Were you surprised that she knew about  
22 this?

23 A Yeah, I did because --

24 Q Did she say how she knew to contact you  
25 about that?

1 A No, she did not.

2 Q Did you ask her?

3 A No, I did not.

4 Q What -- and did you meet her in person  
5 after the phone call?

6 A Yes, sir.

7 Q Where did that meeting take place?

8 A The D.A.'s, in that building next to the  
9 courthouse.

10 Q Okay. The county office building, the  
11 prosecutor's office here in Oklahoma County?

12 A Yeah.

13 Q All right. Was anyone else present  
14 with -- with Detective Davis?

15 A Not when she was questioning me.

16 Q And how tall are you?

17 A 5'11."

18 Q 5'11." And do you recall explaining to  
19 Ms. Davis how tall this officer was that assaulted  
20 you?

21 A Yes, sir, I do.

22 Q Okay.

23 (Defendant's Exhibit Number 4 marked for  
24 identification and made part of the  
25 record)

1 Q (By Mr. Hankins) Now, I'm going to hand  
2 you another exhibit, we marked it as Exhibit  
3 Number 4. That's a video still of you explaining  
4 to the officer how tall the person was that  
5 assaulted you. Do you recognize yourself in that  
6 image?

7 A Yes, sir.

8 Q Is that you?

9 A Uh-huh, yes.

10 Q All right. Now, how tall did you tell  
11 the -- was the person that assaulted you?

12 A I don't recall how -- how tall I said he  
13 was, but I -- I did say that he was shorter than I  
14 was.

15 Q Okay. And when you say shorter than you,  
16 by about how much? I mean, in that image it looks  
17 like you're holding your hand up maybe to your  
18 shoulders?

19 A Yeah.

20 Q So he came up to about your shoulders?

21 A Yeah.

22 Q So maybe 5'5," 5'6"?

23 A Yes.

24 Q A shorter man?

25 A Uh-huh, yes, sir.

1 Q And how else would you physically describe  
2 the officer, other than by height?

3 A I -- I said that he was black, he was dark  
4 complected, I think black is what I said.

5 Q I understand that's what you said, but  
6 is -- is that true, is that what --

7 A Is that true?

8 Q Was that your perception? Yes.

9 A It was -- it's dark and that's -- and I  
10 wasn't trying to pay attention, I wasn't trying to  
11 look at him, I wasn't -- I wasn't trying to look  
12 at him, I was just wondering if I was going to die  
13 or if I was going to get hurt or if it was -- what  
14 was the outcome going to come on this because I  
15 didn't know, so I didn't get a good look because  
16 it was really dark.

17 Q Now, did the officer, did he overtly  
18 threaten you or pull his gun with physical  
19 violence at all?

20 A No.

21 Q He just exerted his authority and you  
22 just --

23 A Yes.

24 Q You just did what he said, basically?

25 A Yes.

1 figure out the mute thing here. I have no  
2 questions.

3 MR. HANKINS: Ms. Heckenkemper?

4 MS. HECKENKEMPER: I don't have any  
5 questions.

6 MR. ROBERTS: I brought my own stickers.  
7 Did you use numbers or letters?

8 COURT REPORTER: Numbers. 1 through 4.

9 MR. ROBERTS: Mine aren't specified  
10 plaintiff versus defendant, so I'm going to use  
11 letters for a second distinction.

12 (Plaintiff's Exhibit Number A marked for  
13 identification and made part of the  
14 record)

15 CROSS-EXAMINATION

16 BY MR. ROBERTS:

17 Q I'm marking this Plaintiff's Exhibit A. I  
18 have a copy for you here. Ms. Ellis, do you  
19 recognize this individual?

20 A Yes, I do.

21 Q Okay. How do you recognize that person?

22 A From court.

23 Q Okay. Do you recognize that person from  
24 any other time in your life?

25 A No.



1 Q At the time you were at trial, did you  
2 believe you had seen that individual before?

3 A No. Did I see him during trial? That's  
4 when I seen him.

5 Q Okay. Had you had any previous  
6 interactions with that man, to your knowledge?

7 A Not to my knowledge, besides him.

8 Q What --

9 A Him? Besides, you know, I haven't ever  
10 seen him before trial, that's when I finally seen  
11 who the accused of raping me.

12 Q Okay. Do you understand that that was the  
13 person who, in fact, raped you?

14 MR. HANKINS: Object to the form of the  
15 question.

16 THE WITNESS: Yes.

17 Q (By Mr. Roberts) Okay. At the time of  
18 trial, did you recognize that as being that  
19 individual?

20 A Yes.

21 Q Okay. What characteristics about that  
22 individual led you to make that connection?

23 A His built, his muscular, the way his  
24 muscles -- muscular.

25 Q Okay. Now, this individual is not African