

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
November 15, 2022 Session

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| <b>FILED</b><br>01/26/2023<br>Clerk of the<br>Appellate Courts |
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**STATE OF TENNESSEE v. SHANNON LEIGH SMITH**

**Appeal from the Circuit Court for Union County  
No. 5347 E. Shayne Sexton, Judge**

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**No. E2021-00821-CCA-R3-CD**

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The defendant, Shannon Leigh Smith, appeals her Union County Circuit Court jury conviction of second degree murder, arguing that the State improperly withheld favorable and material evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Because the withheld evidence was not material to the outcome of the case, we affirm.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed**

JAMES CURWOOD WITT, JR., P.J., delivered the opinion of the court, in which TIMOTHY L. EASTER, and JOHN W. CAMPBELL, SR., JJ., joined.

T. Scott Jones and Gena Lewis (on appeal), and Robert L. Jolley and Emma Steel (at trial), Knoxville, Tennessee for the appellant, Shannon Leigh Smith.

Herbert H. Slatery III, Attorney General and Reporter; Courtney N. Orr, Assistant Attorney General; Jared R. Effler, District Attorney General; and Tyler Hurst and Ron Laffitte, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

In August 2017, the Union County Grand Jury charged the defendant with one count of the second degree murder of her husband, Tim Smith.

*Trial Evidence*

At the March 2019 trial, the evidence showed that in the summer of 2017, the defendant and the victim lived in a camper in Maynardville on the property on which they were building a house together. At that time, the victim worked in Knoxville for a concrete company. Sometime within the year preceding the victim's death, the victim and the defendant hit a rough patch in their marriage, and the victim stayed at a hotel on at least

three occasions. One of the victim's coworkers testified that the defendant believed that the victim was cheating on her, and another coworker, William Anderson, testified that the victim "kept a bag of clothes" under his desk at work "for the nights he couldn't go home" and stayed at a hotel. The "Saturday night before [the victim] was shot," the defendant and the victim attended a cookout at Mr. Anderson's home. Mr. Anderson said that the defendant and victim interacted with each other only once that evening and described the defendant as behaving "odd[ly]." He explained that while the men were in the basement talking, the defendant came downstairs and sat next to the victim on the couch, "crossed her legs . . . and turned and faced the side of [the victim] for a good, long time, just never said nothing never." The defendant and the victim left the cookout between 11:30 p.m. and 12:00 a.m. Mr. Anderson learned the next day that the victim had been shot.

Other evidence showed that the defendant believed that the victim was having an affair. Teresa Smith testified that she was Facebook friends with the victim and that on one occasion, she accidentally messaged the victim instead of another Facebook friend asking him to call her. The defendant called Ms. Smith "thinking I was trying to get in touch with her husband, which I wasn't." Ms. Smith said that the defendant seemed upset about her messaging the victim. Connie Combs testified that she had gone to school with the victim and, other than their being Facebook friends, did not keep in touch with him. She said that the defendant called her in the fall of 2016 and accused her "of having an affair with [the victim]." Ms. Combs said that she had posted on Facebook "about this guy I talked to that had blue eyes," and the defendant believed she was talking about the victim because "that was supposed to have been [the victim's] nickname." Ms. Combs said, "I had to swear on my grandson's life" to convince the defendant that she was not having an affair with the victim. Later that same day, the defendant called Ms. Combs again and "told me that she knowed I was having an affair with [the victim], that she knew it was true," and "accused me of sending [the victim] messages on [Facebook] Messenger."

Additionally, evidence extracted from the defendant's cellular telephone showed that the defendant suspected the victim of having an affair. The defendant had written several notes in an application on her cell phone, the first of which, dated May 8, 2017, read:

It's over.. I know why you're always getting up in the middle of the night.. why you tripped out thinking I was tracking your phone.. why you took so long going to Ace Hardware that day me and Stacy was waiting on you that, you made up you all needed something that wasn't needed until everything was done... I know you wasn't at work that day you took me to the ER and many other days... I know why you always put your phone on silent... I know why you left me both times...

I know why you won't have anything to do with me on Facebook anymore.... why you won't take pics with me anymore.... I know the Cialis was yours, come to find out for years.. I know you've been keeping money from me... I know you bought a drone.... I KNOW YOU WERE SHOE SHOPPING!!!!!!!!!!!!!!!!!!!!!!”

A second note, dated May 23, 2017, read:

You said you want things to be like the old days. I do too. Back when you proved your love for me. When you seemed like you was proud to be with me. . . . Now it's like you won't even look at me. . . . It's like your [sic] trying to push me away. It's like even on Facebook you hide being with me. You hide your pics. Hide Melindas riding pics she tagged you in we were in. You won't post any pics of us. Any I tagged us in you won't like. Just the house pics. You walked out on us!! Not only once, but twice!! Something that no matter what. I would have never entered my mind. Especially if the roles were reversed. Instead of proving your innocent and love. You showed me nothing but hate and anger and no I'm sorry or nothing. You had been trying to do it way before all that happened. At least since the house burnt. You had been making comments we had mi[ght] as well just give it up or this house is going to be the end of us. Just out of the blue. I never knew where all that was coming from. . . .

A third note, dated June 22, 2017, read:

I know what you've done. I know what you're doing. I know I'm not the one you want to be with. You've walked out on me. To be with someone else, twice. You've told me you can't stand me. You've told me you hate me. I've tried to do what I thought you wanted. Only then to be told, not with YOU... when it was something I absolutely did not want to do! So you want it to be with her!! Do all these crazy things with her!!! I know you still haven't stopped. I guess I stayed around thinking/hoping you would break down and feel bad and admit what was going on and say how sorry you were and swear to never do it again. You sure don't treat me nothing like you use to. You sure don't feel for me like you use to. I

know you've tried to make me look like the bad one to make it all look like my fault. I haven't done one thing. I didn't even know anything was wrong or anything was even going on. This has been going on for a long time. I just don't understand. Why?!?!?! I guess the shoe shopping is the last straw with me.....don't say you wasn't cause YOU WAS!!!!!!!!!!!!!!!

It will be over soon. You won't have to do this much longer... sorry you think you have to!!! You can be with her!! I think you just use me as an excuse to sneak around with her... so you don't have to be with her ALL the time! You don't want me but you don't want her ALL the time. I do believe you'd pick her over me.... well cause you have!! When you've walked out on US!! I can't and won't get over it!! I can't get over buying things for someone else. Ray Ban... Drone. Shoes!! When you had that paper for MONTHS to order that bathroom faucet and things and your mind was somewhere else and couldn't do that. Your mind somewhere else you can't go look at house stuff.. flooring and stuff. When you did and walked around so pissy and hating it who could even look. Then getting unknown calls and crap. Then looking around and seeing couples enjoying looking and buying for their houses all happy. Like we USE to be. You only wishing you were somewhere else!! With someone else!! GO ON!!! ADMIT IT!! MAN UP AND ADMIT IT!!!!!! That's all I want is for you to man up and admit what is going on!!!! . . .

Tennessee Bureau of Investigation (“TBI”) Agent Nick Brown testified that he found evidence on the defendant’s telephone that she was tracking the victim’s location through the “[f]ind my iPhone” feature. He said that the defendant collected multiple screenshots “that depicted [the victim’s] cell phone location.” A summary of those screenshots showed that the defendant took multiple screenshots of the victim’s location per day during July 2017, including: 12 on July 6; six on July 7; 8 on July 14; two on July 15; four on July 17; nine on July 18; 22 on July 19; 14 on July 20; and 13 on July 21. Agent Brown also reviewed the defendant’s Facebook account and found that the defendant had searched for the victim’s Facebook page 127 times between January 14 and July 20, 2017, and had searched for Ms. Combs’s Facebook page numerous times from April 20 to July 21, 2017, including two times on April 20; six times on April 21; three times on April 24; 19 times on July 12; nine times on July 20; and five times on July 21. The defendant also took 30 screenshots of Ms. Combs’ Facebook page in January 2017. Agent Brown

discovered that on July 22, 2017, “just prior to the death” of the victim, the defendant posted a series of 25 memes in 35 minutes to her Facebook page, all of which related to cheating, lying, breakups, and heartbreak.

A nearly-one-hour-long audio recording recovered from the defendant’s telephone indicated that in the early morning hours of July 23, 2017, immediately before the shooting, the victim and defendant argued. After much back and forth, the victim said, “The next time I see you I want it to be in court.” Later, a rustling sound could be heard, which Agent Brown described as sounding like the opening of a trash bag. The couple continued to argue back and forth, with the victim telling the defendant to stop pushing him and touching him, the defendant repeatedly asking the victim why he was mad, the victim repeatedly telling the defendant to “get out of the way,” and the defendant repeatedly telling the victim to stop. Eventually, the victim said, “How many times do I have to f\*\*\*\*\* tell you?” The defendant cried out in pain amidst a crashing sound, and the victim said, “Now get off of me” and “I hope you die.” The defendant can be heard whimpering. Other than the sound of a door opening and closing, the recording is silent for a short period followed by the sound of a single gunshot and the defendant’s whimpering and hyperventilating. After shooting the victim, the defendant called 9-1-1 and told the dispatcher that she shot the victim because he had hit her and knocked her down. The dispatcher told the defendant to put the gun down and move away from it, and she complied. An autopsy revealed that the victim died from “a single gunshot wound to the right side of his face,” had no defensive wounds, and was shot from an “intermediate range of fire which is between one foot to two to three feet.”

Timothy Johnson, who worked for the Union County Sheriff’s Office (“UCSO”) at the time of the shooting, was one of the first officers to respond to the 9-1-1 call. When he arrived at the scene, he found the defendant “sitting on the ground,” “crying . . . [with] her hands over her face,” a gun on the ground near the defendant, and the victim’s body lying on the ground outside the open driver’s door of a white pickup truck. The defendant had “a bruise . . . under her eyes” and was bleeding from “a cut on her right side, . . . somewhere above her eye” and told Officer Johnson “that her and her husband was in a fight and she was trying to leave and he grabbed her when she was getting in the truck. He grabbed her and when she turned around that her gun went off.” The victim held a set of keys to the white pickup truck and a cellular telephone charger in his hand. UCSO Detective Randy Summers was the lead investigator on the case and together with Agent Brown processed and photographed the scene and collected evidence, including “a Glock model 30 semiautomatic .45 caliber pistol” and a “spent .45 casing.” Officers recovered “at least two trash bags . . . that were full of men’s clothing, men’s shoes and also [the victim’s] medication” from the back seat of the white pickup truck. Agent Brown described seeing “numerous what I would refer to as blood droplets . . . in kind of a common area between the kitchen and dining room” of the camper. He also saw and

collected swabs of what he believed to be blood around the camper, on the camper's doorjamb, on the gravel between the camper and the white pickup truck, and on and in the white pickup itself. Laboratory testing revealed that all the blood collected from inside and outside the camper and in and on the white truck belonged to the defendant.

TBI Agent Jessica Hudson, an expert in firearms identification, testified that the Glock pistol recovered from the scene was "in a normal operating condition and the safety features were functioning" and that the gun's "drop safety" feature would prevent it from firing if dropped on the floor or hit. She concluded that the spent cartridge casing recovered from the scene had been fired from the Glock pistol.

Kim Cook, the victim's sister, testified that at the victim's graveside service on July 28, 2017, the defendant "had her head on my shoulder" and said, "I wasn't going to let him leave again." Ms. Cook acknowledged that she did not disclose the defendant's statement to Agent Brown or to the prosecutor until after she had filed a complaint about the prosecutor's handling of the case. Ms. Cook's daughter, Amanda Atchley, similarly testified that while seated next to the defendant during visitation before the victim's funeral service, the defendant sat next to her and "kind of leaned over and put her head on my shoulder and said, I wasn't going to let him leave again." Ms. Atchley acknowledged that she did not disclose the defendant's statement until September 13, 2018, when she told Agent Brown what the defendant had said.

On this evidence, the jury convicted the defendant as charged of second degree murder, and, after a sentencing hearing, the trial court sentenced her as a Range I offender to 17 years' incarceration.

#### *Motion for New Trial*

The defendant filed a timely motion for new trial, raising numerous issues. The defendant filed an amended motion for new trial, further fleshing out her claims. In a second amended motion for new trial, the defendant alleged that the State failed to disclose evidence related to a sexual relationship between Detective Summers and Ms. Atchley. Appended to the motion were affidavits from the defendant's daughters stating that Ms. Atchley had told them of the affair and an affidavit of trial counsel stating that the State had not disclosed the information. The defendant filed two more amended motions for new trial appending new evidence to each, including transcripts of the TBI interviews of Ms. Atchley, Detective Summers, and Detective Eddie Simpson, additional affidavits, and a copy of Detective Summers' termination letter from the Tennessee Beverage and Alcohol Commission ("TABC"). The trial court held a hearing on the motions.

At the April 2021 hearing, UCSO Detective Randy Summers testified that he arrived at the crime scene between 6:00 and 7:00 a.m. and that other officers were already there. He said that he took all the crime scene photographs and collected the firearm, a shell casing, and cellular telephones. He acknowledged that he had received ethics training and that his ethical obligations included “[t]o protect the integrity of the evidence, to protect the integrity of the investigation, to protect the innocent and to hold those accountable for actions that have been deemed as criminal.” He acknowledged that he also had an obligation to provide the information that he gathered in a case to the district attorney’s office.

Detective Summers said that he previously worked for the TABC and that he was terminated from that position on January 30, 2015. He acknowledged that he had received a letter on that date from the TABC director, which letter explained that he was being terminated because the TABC director had determined that his conduct and failure to be truthful with the TABC had “caused [his] credibility to be in question and as such, [his] credibility if called to testify in a criminal case is hampered if not destroyed.” Detective Summers said that he made the Union County Sheriff and the District Attorney “aware of the situation” regarding his termination from TABC but acknowledged that he did not provide them with a copy of the termination letter. Sometime “prior to the trial” in this case, Detective Summers told the prosecutors of the circumstances of his termination because “I felt like that they needed to know on the front end in case there was an issue raised.” He said that the allegations that led to his termination from TABC “was about smoking [m]arijuana or observing [Meagan Sisson] smoking [m]arijuana.” He acknowledged that he had a sexual relationship with Ms. Sisson and explained that he did not disclose the relationship during the TABC investigation of his conduct because he was being investigated only for smoking marijuana. He said that he later disclosed the relationship when asked about it. He asserted that “the reason and the language” in the termination letter were “false.”

Detective Summers denied that he ever had a sexual relationship with Ms. Atchley, a state witness at the defendant’s trial. He said that he met Ms. Atchley “[s]ometime during the late spring, summer of 2018” while visiting his friend, UCSO Detective Eddie Simpson, who lived in a guest house on the same property as Ms. Atchley’s father. He said that he had known Ms. Atchley’s father “pretty much my whole life.” While at the property where Ms. Atchley’s father lived, Ms. Atchley introduced herself to him, and they formed a friendly relationship over a “short period of time.” Detective Summers said that he “only saw her maybe three times” when Ms. Atchley came to Detective Simpson’s house while he was there. He acknowledged that the trio would drink beer while together. He said that the only time that he was alone with Ms. Atchley was when she introduced herself outside of her father’s home but then acknowledged that he and Ms. Atchley took one “side by side ride” together to a marina. He acknowledged

that he did not disclose to the prosecutors that he had spent social time with Ms. Atchley.

He said that Detective Simpson told him that Ms. Atchley was “blowing up” his telephone and acknowledged using Detective Simpson’s telephone to contact Ms. Atchley on one occasion. He denied that Ms. Atchley sent him photographs. He denied that he discussed the defendant’s case with Ms. Atchley despite Ms. Atchley’s “ask[ing] me questions.” He acknowledged that he served Ms. Atchley with the subpoena to appear at the defendant’s trial.

Detective Summers acknowledged that he did not disclose everything to TBI Agent O’Keefe during the interview regarding his relationship with Ms. Atchley. He acknowledged that he did not tell Agent O’Keefe that he knew Ms. Atchley was to be a witness at the defendant’s trial or that he had served Ms. Atchley with her subpoena until after he read the transcripts of Ms. Atchley’s and Detective Simpson’s interviews. He also acknowledged that he told Agent O’Keefe that he had never spoken to Ms. Atchley on the telephone but said that he later remembered that he had spoken to her once on the telephone. He said that he told Agent O’Keefe that he could not say for certain whether he had shared his opinion of the defendant’s case with Ms. Atchley because he “was very much caught off guard by the whole situation.”

UCSO Detective Eddie Simpson testified that he had known Detective Summers since 1996 or 1997. He said that he met Ms. Atchley during the summer of 2018 when he “was staying at a lake house, and her father lived in the house across from me on the same property.” During that time, Detective Summers would visit Detective Simpson at his home where they played pool on a regular basis and “[s]ometimes” drank alcohol. Ms. Atchley joined the men at Detective Simpson’s house “two or three times.” He recalled an occasion when he, Detective Summers, and Ms. Atchley rode a side by side vehicle together because Ms. Atchley “wanted to go to the marina” and wanted to see a nearby farm.

Detective Simpson said that he told his then-wife that Detective Summers used his telephone to communicate with Ms. Atchley, which statement he said was true “some of the times.” He said that Ms. Atchley would “text[] me a lot wanting to contact” Detective Summers and estimated that Detective Summers used his telephone “two or three times” to communicate with Ms. Atchley. He thought that Ms. Atchley was “maybe obsessed” with Detective Summers. He also said that Ms. Atchley was “blowing up” his telephone seeking a sexual relationship with him and acknowledged that he texted with Ms. Atchley himself. He said that on one occasion, he was playing drums for a wedding on the property where he lived when Ms. Atchley told him that she was going to go home with him but denied that he had any sexual contact with Ms. Atchley or that any of their text messages were sexual. He acknowledged that Ms. Atchley “texted me a couple times

wanting to come over, but there was nothing vulgar. I mean, she might have used the word hooking up,” which term he understood to mean have sex.

Amanda Atchley testified that she met Detectives Summers and Simpson in the summer of 2018 at the property where her father lived. She said that her father had health problems at the time and that she assisted him. She first met Detective Summers when “[h]e came by” to check on her father “and we spoke briefly.” She refused to answer any questions about whether she had a sexual relationship with Detective Summers but acknowledged that she was truthful in her interview with Agent O’Keefe, and the trial court admitted her recorded interview into evidence.

During the interview with Agent O’Keefe, Ms. Atchley said that she was in contact with Detectives Summers and Simpson during the period between the victim’s death and the defendant’s trial. She said that Detective Simpson lived on the same property as her father and on one occasion, Detective Summers pulled into Detective Simpson’s driveway while she was outside of her father’s house, and they began chatting. Detective Summers gave her his telephone number at that time. She said that Detective Summers and Detective Simpson invited her to hang out with them at Detective Simpson’s house and that the men “were both together the majority of any time that I spent with them.” She said that on one occasion, Detective Simpson suggested that the three of them go for a ride on “[a]n ATV type thing,” and they rode around for approximately 15 to 20 minutes before returning to Detective Simpson’s house. That night, she made dinner for the group at her father’s house, and they “had a couple of beers.” After dinner, Ms. Atchley and the two detectives went to Detective Simpson’s house to play pool. Ms. Atchley said that they “[w]ent over there and played pool. No big deal. It progressed and . . . some things happened.” She said that she had sex with Detective Summers a “couple of times” “over two days.” She said that they had sex once at her father’s house, twice at Detective Simpson’s house, and once at Detective Summers’ house. She said that she was also “interested in” Detective Simpson but denied that she had sex with him.

During the interview, Ms. Atchley acknowledged that she asked Detective Summers “several times” what he could tell her about the defendant’s case but that “he never said a word.” She said that Detective Summers “was adamant . . . . No, I don’t even want to talk about it. Can we just like not ever bring it up, because I can’t say anything and I won’t say anything.” She said that most of her telephone contact was with Detective Simpson but said that she called Detective Summers “a couple of times.” She said that she primarily communicated with Detective Simpson because he “made it clear, just try to kind of minim[ize] contact.” She said that she and Detective Simpson “would text every once and a while” and she would ask what he and Detective Summers were doing “[b]ecause they were usually together.” She also said that she had minimal contact with Detective Summers “because I never wanted to send [him] a message when he was

at home possibly.”

During cross-examination, Ms. Atchley said that she “[a]bsolutely” never discussed the defendant’s case with Detective Summers other than “one time when we first met” and she asked him “what his thoughts were and he just shook his head and said, there is no way I can talk about that.” On redirect examination, she said that she knew that Detective Summers was the lead investigator in the defendant’s case at the time that she began a sexual relationship with him.

TBI Agent Michael O’Keefe testified that the district attorney’s office asked the TBI to investigate the matters raised in the defendant’s amended motions for new trial. As part of his investigation, he interviewed Detective Summers, Detective Simpson, and Ms. Atchley, subpoenaed certain telephone records, and “attempted to contact” Jessie Savage, Keri Smith, and Candie Simpson, all of whom had submitted affidavits that were appended to the defendant’s motions. He said that he interviewed Ms. Atchley first and that she admitted to having a sexual relationship with Detective Summers. He said that Detective Summers, however, denied such a relationship. Agent O’Keefe said that he did not believe that Detective Summers was truthful during his interview. Telephone records indicated that Ms. Atchley and Detective Simpson had “conversations via telephone and text messages back and forth” with as many as 86 text messages between them on certain days. Agent O’Keefe subpoenaed Detective Summers’ records from the TABC and received a copy of the termination letter, which he included in his report to the District Attorney.

Kendall Shull conducted a polygraph of Detective Summers on behalf of the TABC “to determine if [Detective] Summers and [Dennis] Lay, had witnessed [Ms. Sisson] . . . use drugs in their presence.” He conducted a preliminary interview with the detective before the polygraph and said that although Detective Summers “passed the polygraph test,” the detective later provided Mr. Shull with information inconsistent with his responses during the interview and polygraph test. Mr. Shull said that Detective Summers “admitted that he had not . . . previously given the investigator a complete account . . . regarding the activities that occurred between he, [Mr.] Lay, and [Ms.] Sisson on the night of July 31st, in [Mr.] Lay’s hotel room.” Detective Summers admitted to Mr. Shull that “both he and Mr. Lay had sex with [Ms. Sisson].” When asked why he did not disclose this information during the investigation, Detective Summers told Mr. Shull that “he did not feel it was pertinent, and he did not want his wife or those he worked for to find out.”

The parties stipulated to the fact that prior to the defendant’s trial, Detective Summers disclosed to the prosecutor that he had been terminated from the TABC and that the prosecutor did not disclose that information to the defendant. The State agreed that if

it had received a copy of Detective Summers' termination letter from the TABC, it would have turned it over to the defendant "without hesitation."

Robert Jolley, the defendant's trial counsel, testified that he did not learn of the relationship between Detective Summers and Ms. Atchley before trial. He said that Detective Summers' credibility was crucial to the State's case, explaining that "[d]uring his testimony at trial, he appeared to be the glue that the [State] used to put the case together" and "was the person that they relied on to introduce a large number of exhibits that came from the scene." He said that his cross-examination was "based on the credibility of the witness." Mr. Jolley also said that Ms. Atchley "was one of the key witnesses for the State in that [her testimony] supported an argument that this was a knowing and intentional killing based on statements that [she] supposedly heard." He pointed out that because the State relied on Ms. Atchley's testimony during closing arguments "to indicate [the defendant's] intent," her relationship with Detective Summers "would have been extremely important" to impeach her credibility, especially in light of the fact that she did not come forward with the defendant's statement "until late in the process." Mr. Jolley said that had he known of the relationship between Ms. Atchley and Detective Summers before trial, he would have cross-examined them about the relationship and "would have done the best I could" to call their testimonies into question. He said that he also would have cross-examined Ms. Atchley further about why she did not come forward with the defendant's incriminating statement until after she began a relationship with Detective Summers and would have argued that she had made up the incriminating statement "to try to damage" the defendant.

Mr. Jolley testified that since the defendant's trial, he had also learned of the TABC's determination that Detective Summers "could never be a credible witness in a criminal case," which information, he said, "would have been extremely damaging in any cross-examination of that type of witness." He said that had he known about the termination letter, not only would he have cross-examined the detective about it but he also would have subpoenaed the TABC's entire record related to the detective. He noted that the detective's being less than truthful with the polygraph examiner and later coming forward with additional information would also have been helpful information to impeach the detective's credibility. He said that he would have emphasized Detective Summers' deceptive behavior in that he communicated with Ms. Atchley through Detective Simpson's telephone and that he withheld information from the polygraph examiner. Mr. Jolley also noted that had he known of the relationship between Detective Summers and Ms. Atchley and the circumstances of the detective's termination from the TABC, it could have "play[ed] a role in discussions pretrial with how the State might treat your case and what kind of offer they might make." Mr. Jolley said that he believed that the cumulative effect of an attack on Detective Summers' and Ms. Atchley's credibility would have made a difference in the outcome of the case; specifically, that "the intent and knowledge might

not be the appropriate verdict for the jury.”

During cross-examination, Mr. Jolley acknowledged that he cross-examined Ms. Atchley about her delay in coming forward with the defendant’s incriminating statement but said that it was not an effective cross-examination because he lacked all of the information. He said that if the TABC records “were private personal records,” he would not have had access to them absent the State providing them to him in discovery. He also said that “[o]ne of the issues that comes up with an officer in an investigation who is not credible is the trial assessment of whether or not [the defendant] should testify.” He explained that “[i]f there were testimony presented concerning an affair between the lead officer and one of the key witnesses” or “suggestions concerning [the lead investigator’s] lack of credibility, it may have been to [the defendant’s] advantage to testify.”

UCSO Sheriff Billy Breeding testified that Detective Summers had been employed with the UCSO part time before Sheriff Breeding promoted him to a full-time detective. He said that he had reviewed the detective’s personnel file and found him suitable for the job. He acknowledged that he had not seen the TABC termination letter prior to this case and that the termination letter was not part of Detective Summers’ personnel file. He acknowledged that an officer’s credibility was important because it “is all we have” and that an allegation of an officer’s having a sexual relationship with a witness “would be concerning, but there are accusations a lot all the time.” He noted that had the termination letter been in the detective’s personnel file, he would have provided it to the prosecutors if requested.

The defendant made an offer of proof of the testimony of Doctor Christopher Lochmuller, the medical examiner who performed the victim’s autopsy. The doctor confirmed that the victim was shot from a distance of “at least a foot out from the muzzle” and “within two to three feet.” He acknowledged that from that range, “it can be possible for [the victim] to reach out and grab that gun or touch the gun” while the defendant held it. He clarified that he could not say that that was what happened, saying, “I can’t tell whether he reached out for the gun. I can’t say that he did or didn’t.”

The defendant rested, and the State called TBI Agent Nick Brown, who testified that nothing in the processing of the crime scene caused him concern and that he saw no manipulation of evidence. He said that Detective Summers did not participate in processing the defendant’s telephone records or Facebook account or interviewing Ms. Cook or Ms. Atchley. During cross-examination, Agent Brown said that he did not know of the alleged relationship between Detective Summers and Ms. Atchley before trial and that had he known, he “would have reported it.” He said that the detective’s TABC termination letter would have also caused him concern.

The trial court took the matter under advisement and later issued a written order denying the defendant's motion for new trial. In that order, the court determined that the State's failure to disclose the relationship between Detective Summers and Ms. Atchley violated *Brady* and that the information was favorable to the defendant, particularly in her ability to more effectively cross-examine the State's witnesses and attack their credibility. The court concluded, however, that the withheld information was not material because "neither witness revealed any communication about the homicide investigation to one another" and because "[t]his information, once elicited to the jury, would have minimal impact on the outcome of the case." The court added,

Concluding that the tawdriness of the relationship would have impacted the jury verdict requires rank speculation without some substantive showing of change, which has not been made. Had the information been timely disclosed and made an issue at trial, the weight of the evidence produced by the prosecution would have strongly supported the verdict rendered by the jury and certainly outweighed the negative inference raised by the information.

### *Brady*

In this timely appeal, the defendant argues only that she is entitled to a new trial because the State withheld favorable and material evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The State argues that the relationship between Detective Summers and Ms. Atchley was not material and that the State did not suppress Detective Summers' TABC records because they were equally available to the defendant and because they were not material.

The constitutional right to a fair trial imposes upon the State "duties consistent with the[] sovereign obligation to ensure 'that justice shall be done' in all criminal prosecutions." *Cone v. Bell*, 556 U.S. 449, 451 (2009) (quoting *United States v. Agurs*, 427 U.S. 97, 111 (1976) (citation and internal quotation marks omitted)). In *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.*, 373 U.S. at 87. "Evidence 'favorable to an accused' includes evidence deemed to be exculpatory in nature and evidence that could be used to impeach the [S]tate's witnesses." *Johnson v. State*, 38 S.W.3d 52, 55-56 (Tenn. 2001) (citing *State v. Walker*, 910 S.W.2d 381, 389 (Tenn. 1995); *State v. Copeland*, 983 S.W.2d 703, 706 (Tenn. Crim. App. 1998); *United States v. Bagley*, 473 U.S. 667, 676 (1985)). The duty to disclose exculpatory evidence extends to all "favorable information"

irrespective of whether the evidence is admissible at trial. *State v. Robinson*, 146 S.W.3d 469, 512 (Tenn. 2004) (appendix); *Johnson*, 38 S.W.3d at 56.

To prove a *Brady* violation, a defendant must demonstrate:

- (1) that he requested the information (unless the evidence is obviously exculpatory, in which case the [S]tate is bound to release the information whether requested or not),
- (2) that the State suppressed the information,
- (3) that the information was favorable to the defendant, and
- (4) that the information was material.

*Johnson*, 38 S.W.3d at 56 (citing *State v. Edgin*, 902 S.W.2d 387, 390 (Tenn. 1995); *Walker*, 910 S.W.2d at 389); see also *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999) (“There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.”).

The evidence is deemed material if “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Bagley*, 473 U.S. at 682.

The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A “reasonable probability” of a different result is accordingly shown when the government’s evidentiary suppression “undermines confidence in the outcome of the trial.”

*Kyles*, 514 U.S. at 434 (quoting *Bagley*, 473 U.S. at 678). Plainly stated, establishing materiality requires a “showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Kyles*, 514 U.S. at 435; see *Johnson*, 38 S.W.3d at 58.

After careful review of the record, we conclude that the evidence of the relationship between Detective Summers and Ms. Atchley and Detective Summers’ TABC

termination letter, even considered in the aggregate, do not undermine confidence in the verdict. Ms. Atchley's testimony was not the only evidence of the defendant's making an incriminating statement. Ms. Cook also testified to hearing the defendant say "I wasn't going to let him leave again." Even a robust cross-examination of Ms. Atchley regarding her relationship with Detective Summers, without more, would not damage Ms. Cook's credibility. The defendant has presented no evidence of a scheme by Ms. Atchley and Ms. Cook to concoct evidence against the defendant, and the fact that they both delayed disclosing the information is not enough to presume they had conspired against the defendant. Moreover, the State did not rely heavily on the defendant's incriminating statement during closing argument, referencing the statement only once. Instead, to rebut the defendant's argument of self-defense, the State relied primarily on the audio recording, the defendant's tracking the victim's whereabouts and Facebook use, and her confronting other women about their interactions with the victim.

Similarly, a robust cross-examination of Detective Summers regarding his relationship with Ms. Atchley would not have cast doubt on the veracity of the verdict. The defendant argues that she could have argued that Detective Summers' relationship with Ms. Atchley compromised the integrity of the investigation; however, Detective Summers and Ms. Atchley did not meet until approximately one year after the victim's death. Consequently, his processing of the evidence at the scene could not have been compromised or influenced by any bias resulting from a relationship with Ms. Atchley.

Furthermore, the circumstances of Detective Summers' termination from the TABC do not discredit the integrity of the investigation in this case. The fact that Detective Summers was found to be untruthful in an unrelated TABC investigation two- and one-half years prior to the victim's death does not lead to the conclusion that the detective engaged in deceptive practices while investigating this case. Other officers were present while Detective Summers collected evidence and took photographs at the scene, and Agent Brown, who was present for most of the processing of the scene, testified that he did not see anything concerning in the collection of evidence. A general attack on Detective Summers' credibility based on his prior termination from TABC, although damaging to be sure, is not enough to cast doubt over the whole of the evidence in the defendant's case.

Importantly, to support its theory of second degree murder and rebut the defendant's argument of self-defense, the State relied most heavily on the audio recording and the defendant's telephone and Facebook activities, which evidence was processed and investigated by Agent Brown. Although Detective Summers collected the defendant's cellular telephone into evidence, Agent Brown did the forensic examination and reviewed all the data retrieved from the telephone. Agent Brown's testimony established that Detective Summers was uninvolved in the investigation into the defendant's telephone records and Facebook activities. Consequently, even a robust attack on Detective

Summers' credibility would not have diminished the credibility of evidence presented by Agent Brown, which evidence was the crux of the State's case. Indeed, in its closing argument, the State conceded that some the evidence from the scene collected by Detective Summers, including photographs of the defendant's injuries and the presence of the defendant's blood throughout the scene supported the defendant's assertion that the victim pushed her down. The State argued, however, that the defendant's pursuing the victim from the camper to the truck before shooting him negated her self-defense argument and constituted second degree murder. Therefore, the evidence of a relationship between Detective Summers and Ms. Atchley and of Detective Summers' termination from the TABC were not material to the outcome of this case, and the trial court did not err by denying the defendant's motion for new trial.

Because we have determined that the challenged information, including the TABC termination letter is not material, we need not address whether the State was obligated to disclose it.

Accordingly, the judgment of the trial court is affirmed.

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JAMES CURWOOD WITT, JR., PRESIDING JUDGE