



COMMONWEALTH

v.

JOSHUA HART & BRITTANY SMITH

MOTION TO HOLD THE DEFENDANTS WITHOUT BAIL
PURSUANT TO 276, § 58

STATEMENT OF ALLEGED FACTS BY THE COMMONWEALTH

At approximately 9:15 am on October 6, 2016, the Orange Police Department was contacted regarding a home invasion that had occurred the previous evening at 581 East River Street, Orange, Massachusetts. Further investigation revealed that the home owners, Thomas Harty (age 95) and Joanna Fisher (age 77), husband and wife, had been attacked by a white male and white female inside their home after 7:30 pm while watching television. The two suspects entered the victims' home through the door off the garage and began immediately attacking the victims. Ms. Fisher was quickly struck in the head with a hard object.

Both of the victims were beaten and stabbed during the home invasion, which lasted for approximately two hours. During the attack the suspects attempted to cut the throat of Ms. Fisher but were unsuccessful in killing her. Ms. Fisher reported that the female suspect asked the male suspect to help her suffocate Ms. Fisher because she was unable to cut Ms. Fisher's throat. The attackers were unsuccessful in suffocating Ms. Fisher. Mr. Harty died within the home following the attack after suffering stab wounds and being suffocated with a pillow.

The suspects ransacked the home following the attack in search of money. Among other things, the suspects took the victims' credit and debit cards, as well as the keys to the victims' motor vehicle registered as a gray/silver 2003 Toyota Corolla station wagon. The suspects fled the scene with the victims' motor vehicle.

Once the suspects fled the residence, Ms. Fisher, who was wheelchair-bound, crawled in an effort to call for help. She had been stabbed, beaten, and had a cut to her throat. She learned that the suspects had disabled the phone in the residence and stolen Mr. Harty's cell phone. She took refuge within her home until health care workers made a regularly-scheduled appearance at approximately 9:00 am on October 6, 2016. When workers discovered Ms. Fisher they summonsed help, and Ms. Fisher was taken by life flight to the University of Massachusetts Worcester Hospital for treatment of her injuries. Prior to her transport Ms. Fisher described the attackers as a white male, 5'8"-5'9" with facial hair, and a white female who was slender, both had dark hair and dark eyes.

Within hours of the suspects fleeing the scene, a credit card purchase was attempted at a Walmart in the Worcester area using a credit card stolen from Mr. Harty. A debit card transaction for the same merchandise was then successfully made using a card stolen from Ms. Fisher. Video surveillance from the Walmart depicted a vehicle matching the make, model and color of the victims' motor vehicle in the parking lot. The two suspects involved in the credit/debit card transactions were recorded in the video exiting the vehicle and entering the Walmart together. Video surveillance also clearly depicted the suspects shopping together and ultimately making the purchase with the stolen debit card.

Upon viewing the video, officers involved in the investigation recognized the man and woman involved in the transaction at Walmart as Joshua Hart, 23 and Brittany Smith, 27. The two also matched the physical description given by Ms. Fisher prior to her transport to the hospital. On Friday night, October 7, 2016, Massachusetts State Police Detectives assigned to the Northwestern District Attorney's Office applied for and obtained arrest warrants for Hart and Smith for larceny of a motor vehicle, in violation of G.L. c. 266, § 28, and receiving stolen property less than \$250, in violation of G.L. c. 266, § 60. State Police activated the warrants in a national warrant database (NCIC), and continued to investigate the whereabouts of Hart and Smith.

Investigators discovered multiple out of state debit card transactions utilizing Ms. Fisher's debit card throughout the investigation. The value of those transactions exceeds \$250.

On Saturday morning, October 8, 2016, members of the Rockbridge County Sheriffs' Department in Virginia located and arrested Hart and Smith without incident in a U-Haul parked in a Walmart parking lot. Following post-Miranda interviews with Rockbridge County Sheriffs, and later with Detectives from the Massachusetts State Police assigned to the Northwestern District Attorney's Office, Hart admitted that he had armed himself prior to entering the home, murdered Mr. Harty and that he had tried to help Smith in her attempt to kill Ms. Fisher. Smith similarly admitted that she and Hart had worked together, armed themselves with a knife prior to coming to the residence, and worked with Hart to attempt to kill Ms. Fisher.

Hart told investigators that they looked at homes in the area looking for an older model car – to avoid tracking technology – and a target that would have money to help the couple escape. Hart looked in the window of the home and observed Mr. Harty. They tried to make entry into the home through a window and through the rear of the home and were unsuccessful. Both defendants told investigators that they entered the victims' garage, found the keys to the vehicle, and entered the home through a door in the garage. Hart immediately attacked Mr. Harty and stabbed him with a knife. Smith struck and pushed Ms. Fisher from her wheelchair to the floor. Smith stabbed Ms. Fisher and cut her throat. They both admitted to taking the victims' credit/debit cards, cash from the residence, Mr. Harty's cell phone and the victims' vehicle and fleeing the area. Both defendants admitted to police that their intention was to steal the vehicle and enough money to make good on their escape and flee. Their motive was to avoid going to jail (Hart) and drug treatment (Smith) and to start a new life.

COMPLAINTS

Joshua Hart and Brittany Smith stand charged by means of complaints on dockets 1642CR0569 and 1642CR0570 with:

OFFENSE	CITATION	COUNTS	MINIMUM/MAXIMUM PENALTY
MURDER	c. 265, § 1	1	Life without possibility of parole
ATTEMPTED MURDER	c. 265, § 16	1	No Min/Up to 20 Years in State Prison
HOME INVASION	c. 265, § 18A	2	10 Years State Prison/Up to Life
ARMED ROBBERY	c. 265, § 17	2	No Min/Up to Life
CONSPIRACY	c. 274, § 7	1	No Min/Up to 20 Years in State Prison
LARCENY OVER \$250	c. 266, § 30	1	No Min/Up to 5 Years in State Prison

The defendants further stand charged by means of complaints on dockets 1642CR0567 and 1642CR0568 with:

OFFENSE	CITATION	COUNTS	

LARCENY OF A MOTOR VEHICLE	c. 266, § 28	1	No Min/Up to 15 Years in State Prison
RECEIVING STOLEN PROPERTY	c. 266, § 60	1	No Min/Up to 2.5 Years in the House of Correction

The defendants face a mandatory sentence of life in state prison without the possibility of parole on the charge of murder.

BAIL REQUEST

Given the strength of the Commonwealth's evidence, the savage nature of the allegations in this case, the fact that both Smith and Hart immediately fled the Commonwealth of Massachusetts with the stated intention of avoiding jail time for relatively minor offenses, the fact that the crimes that they were apparently willing to commit involved the slaying of a 95 year old man and savage beating and attempted murder of a 77 year old woman, the fact that both Smith and Hart have out of state connections that span the entire country, and are now facing a mandatory sentence of life without the possibility of parole if convicted of murder the Commonwealth requests that the defendants be held without the right to bail during the pendency of the case.