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NEWS RELEASE

Oklahoma man acquitted of murder in death of toddler daughter

MUSKOGEE, OK – A federal court jury has acquitted an Oklahoma man of two counts of murder and assaulting a police officer in connection with the 2016 drowning death of his daughter.

The U.S. District Court jury on April 10 found Devin Sizemore not guilty of first-degree murder, not guilty of second-degree murder and not guilty of assaulting then-Krebs police officer Jack Suter on July 15, 2016.

The jury rejected prosecutors' claim that Sizemore put his 21-month-old daughter Emily in a pond in Krebs, Oklahoma, and drowned her. The jury also rejected Suter's claim that Sizemore choked him and held him underwater.

By acquitting Sizemore of premeditated murder, the jury also rejected prosecutors' claim that he dug a hole in a horse barn with the intent of burying Emily's body.

The jury convicted Sizemore of voluntary manslaughter for recklessly leaving her alone near the pond for a short time, and of child abuse.

Sizemore's lawyers presented the jury with forensic evidence showing Emily could not have started drowning more than 10 minutes before she was pulled from a pond in Krebs. That timeline made it impossible for Devin to have placed her in the water, Federal Public Defender Lisa Peebles told the jury.

Peebles and her co-counsel, Assistant Federal Public Defender James Egan, also presented police officers' body-worn camera videos showing Sizemore could not have attacked Suter, as the officer claimed. The audio from the recordings showed that Suter could not possibly have been underwater, as his voice is heard constantly in the recording while he's in the pond to get Devin.

“He’s screaming the entire time,” Peebles told jurors in her closing statement. “If officer Suter was underwater, you would not hear him.”

The videos also show that Suter saw Emily floating face-down in the pond and never tried to save her. Three other officers also left her in the water in that time, the videos showed. It wasn’t until other officers arrived nearly four minutes after Suter spotted Emily that someone pulled her from the water.

“In what universe does someone walk away from a child floating face-down in the water?” Peebles asked jurors in her closing statement. It was Suter’s failure to save Emily that led him to concoct a cover-up and accuse Devin, Peebles said.

“Had officer Suter simply taken responsibility for his initial mistakes at the pond, the course of the investigation would’ve taken a different turn,” she told jurors. “Instead, officer Suter lied.”

It wasn’t until officers from the McAlester Police Department arrived on the scene that anyone pulled the girl from the water. Those officers testified that they felt a pulse on Emily as they tried to revive her.

“She was alive,” Peebles told jurors. “Unresponsive, but she was not dead.”

Instead of rescuing Emily, Suter and two other officers pulled Devin from the pond and beat him repeatedly over the head and body, leaving him with a broken nose, broken jaw and other injuries.

The police bodycam videos also showed the McAlester officers performing improper CPR on Emily, repeatedly hitting her on the back instead of doing chest compressions and rescue breaths.

A date has not yet been set for U.S. District Court Judge Ronald White to sentence Sizemore, who faces up to 15 years in prison on the manslaughter conviction. He was convicted in 2018 in Oklahoma state court of first-degree murder and assault of a police and sentenced to life in prison without the possibility of parole. That conviction was overturned in 2021 as a result of the U.S. Supreme Court ruling in McGirt vs. Oklahoma, and the case landed in federal court.

For more information, contact Peebles at lisa_peebles@fd.org or 315-345-1543.