

The Three Trials of Joseph E. Bailey

BY FRANK GIBBARD

Eugene H. Smith was an engineer for the Colorado and Southern Railway. He was also an abusive husband who repeatedly brutalized his wife, Anna Smith, and threatened to kill her and her brother. On July 15, 1910, Smith violently beat Anna, causing her serious injuries. As a result, she fled the family home with her two children, taking refuge, as she had many times before, at the home shared by her brother Joseph E. Bailey and her mother.

Three days later, Smith came to the house to get her back. His menacing behavior did not accomplish his objective. Instead, his wife's brother killed him. The shooting of Eugene Smith led to three jury trials and a decision of the Colorado Supreme Court that had important implications for the rights of abused spouses and their protectors.

The Shooting

On the morning of July 18, 1910, three days after Ms. Smith had fled her home, she asked her brother-in-law R. L. McDonald to go talk to Smith. She wanted to see if McDonald could help smooth things over with her husband. Smith told McDonald, "Well, if she will come back and live with me and do just as I say, I will live with her; and if she won't, God damn her, I will kill her."¹ Given this attitude, there could be no reconciliation.

Smith had become increasingly unstable. A man named Tyler who lived with the Smiths later testified that Smith came home at around 2:00 a.m. on the morning of the 18th. Smith had been drinking. He started an argument with Tyler, swore at him, and struck him. In response, Tyler drew a .38 revolver he kept under his pillow and pointed it at Smith. Keeping the

gun trained on Smith, Tyler then made his way down the stairway and out of the house.

When Tyler returned later that morning, Smith made light of the incident. He showed Tyler a gun and said, "It was a God damn good thing you got me drunk last night, or I would have gone down and cleaned out the whole God damn push [i.e., his wife's entire family]."²

That evening, at about 10:00 p.m., Smith had been drinking again. He called his mother-in-law's home and demanded to speak to his wife. Her mother refused. Smith responded with a tirade of "vile and abusive language," so she hung up on him.³

That night, Ms. Smith's little boy was camping out in the yard. Everyone else in the house had retired for the evening or was heading for bed. About 15 minutes after his grandmother hung up on Smith, the boy came running into the house and shouted to his mother that Smith was coming.

Upon hearing her son's cry, Ms. Smith peered out her window onto the darkened street. Under the streetlights, she could see her husband approaching the house. He was "almost running," in a weird gait that seemed like "plunging" or jumping.⁴ She could tell that "he was in a very angry, bad mood."⁵

Ms. Smith ran into the room Bailey occupied with his new wife, Rose. Ms. Smith begged her brother to get out of bed, because her husband was coming. She pleaded with him "for God's sake, don't let him come in here. If you do, he will kill the whole family. He will kill Mother and me."⁶

Bailey got out of bed and grabbed a revolver. He made his way to the window and yelled to Smith, telling him not to come into the yard.

Smith soon reached the porch, where a door led into the house. Bailey ran around to the porch door and called out to Smith four more times, each time telling him not to enter the house. Smith was a large and powerful man, much larger than Bailey. He threatened to "come in and get the whole God damned push of you."⁷

Smith opened the screen door to the porch, meaning to come inside. Bailey had recently injured his right hand, so he held the gun in his left. He again pleaded with Smith not to try

to enter the porch or the house, threatening to shoot him if he did. Smith did not back off. A moment later, Bailey shot him.

A lurid account in the press had Ms. Smith standing afterward over the prostrate body of her husband. She allegedly tore off her wedding ring and flung it at her mortally wounded spouse, saying through her tears, “You have met someone at last whom you can’t beat up whenever you feel like it. You are punished now. My brother would not stand for you treating me as you did.”⁸

Smith was taken to the hospital that evening. He died three days later.

The First Trial

Bailey was charged with murder. The prosecution sought the death penalty, claiming Bailey had shot Smith in the back. Bailey asserted he acted in defense of himself and his sister.

One of the more intriguing pieces of evidence at Bailey’s trial was a rusty revolver that the defense claimed Smith was carrying on the fateful night. Some switchmen at the Colorado and Southern Railway, where Smith worked, claimed they found the revolver after the shooting.⁹ If Smith had indeed been carrying a gun, this could have bolstered Bailey’s self-defense claim.

There are few details available about Bailey’s first trial. It appears he was convicted of voluntary manslaughter. After the verdict, however, he persuaded the trial court to grant him a new trial.

The Second Trial

Unfortunately for Bailey, his second trial resulted in a much harsher outcome than the first. This time, the jury convicted him of first degree murder, and he was sentenced to life imprisonment.

Following this verdict, Bailey reportedly was held under a suicide watch, since he had threatened to kill himself if convicted again.¹⁰ But Bailey did not commit suicide. Instead, he appealed his conviction to the Colorado Supreme Court.

The Appeal

The supreme court reversed, finding that two of the jury instructions at Bailey’s second trial

were “clearly erroneous and prejudicial” to his rights.¹¹ The first was a self-defense instruction. The instruction began by describing Bailey’s right to defend himself and others within his own home, which was “his own castle” and from which he had no duty to retreat.¹² This was not particularly controversial. But the instruction went on to potentially vindicate Smith’s actions against a claim of self-defense. It stated that Bailey could not successfully assert self-defense if the jury believed that Smith:

attempted to enter the said house for the purpose of conversing with and inducing his wife to leave the said house, or for the purpose of using physical force in endeavoring to do so, and had no intention of injuring, or attempting to injure, any of the inmates of the said house further than to exercise a reasonable supervision and control over his wife and her conduct.¹³

Another instruction informed the jury that Smith:

as husband of the sister of the defendant, Joseph E. Bailey, had a right to exercise such reasonable control over her as was necessary to conduce to the proper establishment and maintenance of his household as the head of a family, and as such husband had a right to enter, in a lawful manner, the house or houses of any person whomsoever for the purpose of talking with and procuring his said wife to leave the said house, if he so desired, and had a right to use such reasonable force and persuasion as was necessary to induce her to leave the house of her mother and come back to her house with him.¹⁴

In other words, the court instructed that Bailey had no right to interfere with Smith’s right to use force and persuasion to induce his wife to return to their home, and Bailey could not assert self-defense resulting from his efforts to resist Smith’s exercise of his rights as the head of his family.¹⁵

These instructions stood for the astonishing proposition that an abusive husband had the right to enter anyone’s home and use “reasonable” force there to retrieve his wife. Anyone resisting him would be stripped of his right to self-defense. This was too much for the

Colorado Supreme Court, even in 1913. The court opined that the instructions “not only announce such palpable misstatement of the law as to prejudice the rights of the defendant, but go to the extent of proclaiming a doctrine concerning the relation of husband and wife as to appear nothing less than monstrous at this period of our civilization.”¹⁶

The court identified at least three problems with the challenged instructions. First, by focusing solely on Smith’s state of mind, the instructions ignored Bailey’s state of mind concerning Smith’s intentions, which was essential to his self-defense theory. Second, irrespective of Smith’s intentions, the jury should have been asked to determine whether Smith was a person who intended to enter the dwelling in a violent, riotous, or tumultuous manner, to assault or use personal violence against anyone in the house. Finally, to give a husband the right to enter anyone’s house to retrieve his wife was “a repudiation of every reasonable conception of the law of domicile and the right of habitation” that “strikes at the very foundation and sanctity of home life.”¹⁷ Although the instruction declared that the entrance must be in a lawful manner, “there can be no such thing as a lawful entrance under the circumstances.”¹⁸

The court found “even more shocking” the proposition that a husband could enter a home and use physical force “to cause [his] wife to leave the house of her mother and come back to his home with him, and that no person, not even her brother, has a right to interfere with him in the exercise of such reasonable force or persuasion.”¹⁹ “Reasonable” force, in this context, would be “limited only by the necessity of the case in order to so secure the possession, control, and abduction of the person of the wife, and all this as against her will, her fear, and even the apparent danger of her life.”²⁰ Giving an “inebriated and drunken husband” the right to terrorize and brutalize the inhabitants of a home “is not, and can never be, the law in a civilized country.”²¹ The court found ample precedent in prior cases rejecting a husband’s right to use violent force to control and maintain custody of an unwilling wife. It emphasized that a wife is not a slave of her husband and should not be

treated as such to the derogation of her rights as an individual.

The court also found it erroneous that the jury had been instructed at the second trial that it could enter only one of three verdicts: guilty of first degree murder, guilty of second degree murder, or not guilty. The jury had been specifically instructed that it could not enter a verdict finding Bailey guilty of manslaughter. This limitation, along with the trial court's barring testimony relevant to a self-defense theory, which included testimony that Smith had caused his wife abdominal injuries that later required surgery, "overlooked the right of the brother to use such force as may be necessary for the protection of the person and life of his sister, as well as a consideration of the sudden passion that may be aroused in such a case."²²

Finally, the court found it "unusual, uncalled for, and manifestly unfair" that after barring Bailey's evidence about Smith's bad character, the trial court permitted the prosecutor to introduce evidence about Smith's good character.²³ The court expressed concern that the prosecutor was permitted to ask questions of witnesses that "tended to reflect on the moral character of the home of [Bailey] and his mother, when there was not a scintilla of testimony to justify those questions."²⁴ Particularly given Bailey's poverty, "such conduct on the part of officials, [e]ntrusted with power to enforce the law . . . breeds discontent, subjects courts to criticism, and provokes contempt of the law."²⁵

The court's reference to women's rights and concern about justice for an impoverished defendant suggest that its decision was informed by Progressive Era values.²⁶ Interestingly, one of the three justices concurred only in the result, "upon the ground that the instructions were erroneous."²⁷ Perhaps he found the court's moral tone excessive or inappropriate.

The Third Trial

The State tried Bailey again. This time, he was convicted only of involuntary manslaughter and given a three-month sentence. On July 30, 1913, he left the jail, a free man. He expressed joy at being able to breathe the free air and announced that he intended to go visit his


mother. Then he would leave for St. Joseph, Missouri, to join his wife Rose and their son, who had been born while he was in jail. With money from his father-in-law, he intended to open a grocery business.²⁸

Aftermath

Bailey's life in Missouri had a tragic aftermath. In May 1915, less than two years after his release, his son Harold, aged 4 years, died of unspecified causes at the home of Rose's parents in St. Joseph.²⁹

A month later, Bailey himself was dead. According to a newspaper article, he was taken from a saloon and boarding house at 400 Main

Street in Kansas City to the hospital, suffering from bruises on his head and other bodily injuries, where he died. The cause of his wounds was not specified.³⁰ The article mentioned his sister in Denver, Mrs. R. L. McDonald, but said nothing of his wife, Rose.

A day later, an odd piece appeared in the *Kansas City Times*. S.R. Lewis, who ran the saloon and boarding house at 400 Main Street, stated that Joseph E. Bailey had never lived there.³¹ It is tempting to speculate about the circumstances of Bailey's death. But as is so often the case, the precise facts of his sad and lonely demise remain shrouded by the mists of time. 



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NOTES

1. *Bailey v. People*, 130 P. 832, 834 (Colo. 1913).
2. *Id.* (internal quotation marks omitted).
3. *Id.* at 833 (internal quotation marks omitted).
4. *Id.*
5. *Id.*
6. *Id.* (internal quotation marks omitted).
7. *Id.* at 834 (internal quotation marks omitted).
8. "Brother Shoots Hubby; Wife Gloats," *Rocky Mountain News* p. 1, col. 1 (July 19, 1910).
9. "Rusty Revolver a Factor," *Rocky Mountain News* p. 7, col. 3 (Nov. 17, 1910).
10. "Slayer Under Guard; Threatened to Kill Self if Convicted," *Rocky Mountain News* p. 10, col. 3 (Oct. 8, 1911).
11. *Bailey*, 130 P. at 834.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* at 835.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.* at 836.
23. *Id.*
24. *Id.* at 837.
25. *Id.*
26. See generally <https://coloradoencyclopedia.org/article/progressive-era>.
27. *Bailey*, 130 P. at 837.
28. "Going to Mother, Slayer Asserts," *Rocky Mountain News* p. 10, col. 1 (July 31, 1913).
29. "Among the Parishes," *The Catholic Trib.* p. 5, col. 1 (May 22, 1915).
30. "Injuries Fatal to Joseph Bailey," *Kansas City Times* p. 13, col. 1 (June 30, 1915).
31. "Happenings of the City," *Kansas City Times* p. 2, col. 2 (July 1, 1915).